UNIT 7: JUSTICE AS FAIRNESS (DISTRIBUTIVE JUSTICE)*

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7.0 OBJECTIVES
In this unit, you will explore the idea of justice in political science. After studying this unit, you should be able to:
- Explain the meaning of justice
- Distinguish between its various dimensions
- Understand the idea of distributive justice and its limitations

7.1 INTRODUCTION
Justice is the central force of all the societies and is necessary to maintain order and harmony in a state. Individuals want to be treated in a fair way which leads to social and personal well being. A just society is based on the notion that all the members should benefit and there should be no exceptions. Classically, justice is treated as one of the four cardinal virtues (other three being prudence, temperance and fortitude). From Plato to John Rawls, many scholars see justice as the first virtue of a society or social institutions. Rawls in his 1971 book, A Theory of Justice has said that ‘justice is the first virtue of social institutions’. Justice has central place in ethics, legal and

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Justice is a fundamental concept in political philosophy. There are many dimensions of justice and this unit deals with distributive justice as propounded by John Rawls.

### 7.2 MEANING AND CONCEPT

The word ‘justice’ has been derived from the Latin word *jus* or *justus*, meaning rights or law or justitia/justus meaning justness or reasonableness. Due to its multidimensionality, it is very difficult to define the concept of justice. The dilemma is aptly summed up by D D Raphael as he says justice is Janus like or dual faced, as it can be conservative and reformative at the same time. In contemporary world, justice determines the criteria to allocate benefits like goods, services, opportunities and honours as well as burdens in a society, particularly in a situation of scarcity. Justice is not a static but a dynamic concept which adapts according to changing times, like slavery and women subordination were justified in ancient times but with gradual social changes, these practices are no more justifiable today. Another aspect of justice is that it tries to reconcile aspects of individual liberty and social equality. Liberty will not be in sync with justice until its benefits are equally extended to all members of society. If liberty is seen as absolute, it will come in conflict with equality. Hence, there have to be certain limits on liberty so that it does not pose threats to others. Equality in turn, can exist in true sense when the deprived sections are given special measures to ensure equality of outcome as against equality of opportunity. In one of the earliest interpretations on justice, Plato in his book, *Republic*, sees justice as a virtue of social order meaning the principle of justice must be based on the nature of the social set up. He saw justice both as a principle of individual right conduct and an ideal social order. Justice prevails, according to Plato when each person does what he is best suited to do as per their faculties of reason, wisdom and courage. Aristotle distinguished between three types of justice. First, distributive justice refers to distribution of divisible things like wealth and benefits. Second, corrective or remedial justice is done when a person causes harm to another and justice is done to the victim by eliminating the disadvantage. Third, commutative or reciprocal justice refers to fair exchange in voluntary transactions. It must be mentioned that distributive justice is applicable to political aspects, corrective in civil and criminal aspects while reciprocal justice applies to economic transactions. For Aristotle, justice incorporates concerns of equality, proportionality and maintenance of equilibrium in the society unlike Plato’s emphasis on hierarchy. For Jeremy Bentham, justice had a utilitarian dimension as he argued for the greatest happiness of the greatest number. Bentham subordinated justice to utility and he was against judicial activism to interpret laws. J S Mill slightly modified Bentham’s doctrine by inserting qualitative aspects as well apart from quantitative ones. For John Austin, law is the source of justice as it flows from the laws created by the sovereign. Contrary to the liberal view which sees justice as a synthesis of liberty and equality, Marxist scholars argue that class inequalities need to be eliminated by overthrow of the state and justice would prevail in a classless and stateless society.
7.2.1 Criteria for Justice

Seen in the context of distribution, justice has three main aspects, needs, desert and equality.

Justice based on needs presupposes that human beings have equal right to have their needs fulfilled, as demonstrated by socialism. Here, there is a distinction between needs, wants and desires. Basic needs like food, water and shelter etc are universal across societies while wants are market oriented in nature. A state may take steps to ensure needs of various sections of society are met but it will not take care of wants. Egalitarian distribution of resources and opportunities is the result of needs-based justice. In contrast, desert-based justice depends on natural faculties of an individual or intrinsic value of a person (merit). It is based on the principle of equality of opportunity and advocates free market capitalism where merit decides distribution of rewards. Such ideas have been supported by Edmund Burke and Herbert Spencer. Lastly, equality is one of the fundamental presumptions of justice. Instead of equality of opportunity, there is need to have equality of outcome so that the deprived sections have access to benefits of the state.

7.2.2 Four Distinctions

There are four important distinctions that one needs to keep in mind while understanding the concept of justice.

First, there is a difference in conservative and ideal justice. Conservative justice pertains to existing norms and practices while ideal justice seeks to reform them. Justice may seek to respect people’s rights under existing law or moral values or fulfil their expectations acquired from past social conventions but it may also radically change them. The decision of Supreme Court of India stating that marriage is not a pre-condition for adults to live together can be cited as a relevant example here.

Second distinction is between corrective and distributive justice. Corrective justice implies that a bilateral relation between the wrongdoer and the victim and demands that the fault should be cancelled by compensating the victim and eliminate any advantage secured by the wrongdoer by his faulty actions. On the contrary, distributive justice assumes a distributing agent (mainly the state) and a number of people who have a claim on what is being distributed based on some criteria like desert, need or equality. Talking of a situation of scarcity, Aristotle argued that if there are fewer flutes available than from among people who want to play them, they should be given to the best performers.

Third distinction relates to procedural and substantive justice. Procedural justice, as the name suggests is concerned with fairness of processes and procedures to arrive at policy decisions. In general terms, it is justice as per law and procedures established by law. Justice is assumed to be done when procedures are followed in accordance with the law. Traditionally,
procedural justice has been associated with formal equality among individuals which means human beings are equal before the law irrespective of differences like gender, religion and caste etc. Rights based justice is seen as procedural justice. It treats justice as a result of individual behaviour which cannot be applied to society. Since individuals are rational beings who can make their decisions on their own, state should not be allowed to interfere in individual entitlements. Hence, procedural justice theories make a case for individualism and market economy. Robert Nozick’s theory of justice explained in his book, *Anarchy, State and Utopia* is an example of procedural theory of justice. Substantive justice, on the other hand, seeks redistribution of material resources and opportunities to ensure equality of outcomes and requires ethical and moral criterion to decide the notion of justice. Needs based justice is seen as substantive justice and John Rawls’s theory of justice is an example of distributive justice.

Fourth difference is between comparative and non-comparative justice. Principle of equality that requires equal distribution of some benefit is comparative in nature. Non-comparative justice includes principles of sufficiency which holds that each person should have enough on some dimension or the other to have their needs fulfilled. Here, nobody is allowed to fall below a minimum fixed level.

### 7.2.3 Dimensions of Justice

There are four dimensions of justice, legal, political, social and economic as discussed below.

Legal justice pertains to justice based on law as propounded by Thomas Hobbes, Jeremy Bentham and John Austin. This view believes that law is the command of the sovereign and the only source of justice. Here, the focus is on how the law is formulated, whether there is rule of law and whether it is fairly applied to all the individuals. Legal justice has two interconnected elements, just laws and just administration of laws. Just laws mean that laws made by authorities must be in sync with social and moral values of society. Just administration of laws includes three things, rule of law, impartiality of judges and independence of judiciary.

Political justice means that politics should have representative character, ensure political participation, equal political rights and association of citizens in the decision making process. Political justice exists when there is political equality through rights such as universal adult franchise, right to contest elections etc. It also ensures accountability by giving the final authority to the citizens who elect the government. People’s participation is also ensured in the decision making process which can be direct or indirect through their elected representatives.

Social justice stands for reconciling individual interests with those of the society. It stands for equal opportunity without discrimination based
on caste, class, religion and gender etc. Social justice demands that the interests of the deprived sections are safeguarded by the state. The overall belief here is that the community interests as a whole will be better served if development of the marginalised sections is ensured. The idea of social justice became more popular with proliferation of liberal and democratic ideas and introduction of legal and political justice.

Economic justice has been the basis of the socialist movement. It pertains to just distribution of economic resources, benefits and opportunities to achieve a just economic order. The liberal and welfare perspectives treat economic justice in terms of fair and adequate chances to earn livelihood and economic benefits. It is mainly redistributive justice supported by neo-liberals like Harold Laski, L T Hobhouse and John Rawls. They advocate state intervention to protect weaker sections. The Anarchists, Socialists and Marxists, on the contrary, relate economic justice to the abolition of private property. The Marxist position is that all other dimensions of justice are a reflection of economic justice and without realisation of economic justice, other types of justice cannot be achieved. Economic justice also stands for the end of alienation and exploitation as per the Marxist tradition. Economic justice stands for equal pay for equal work and provision of social security to ensure development of the needy ones.

Check Your Progress Exercise 1

Note: i) Use the space given below for your answer.
   ii) See the end of the unit for tips for your answer.

1) Discuss Aristotle’s views on justice.

2) What criteria are normally seen to administer justice?
3) What is the difference between procedural and substantive justice?

7.3 DISTRIBUTIVE JUSTICE

Distributive justice is concerned with just allocation of benefits, opportunities and resources etc to ensure equality of outcome by the state based on various factors like need, equality and desert. The demands for distributive justice arose in response to utilitarianism which focused on quantity as it stood for greatest happiness of the greatest number. The idea was opposed by socialist, communist and anarchist movements which favoured some economic levelling or allocation according to the need to ensure quality of happiness as well. Distributive justice is important for a society’s efficient functioning and welfare of its members. True equality gives members a sense of membership in a society, especially the sections which are marginalised. This is important to avert political violence and avoid challenges to the state authority from internal threats. Unequal distribution can be a cause of social unrest and redistribution of benefits can help in relieving tensions. Aristotle believed that unequal distribution of property is one of the causes of injustice and civil war in a city. He further stated that men desire equality and hence, honour and rewards should be distributed as fairly as possible to avoid a revolution. For example, India resorted to land reforms after independence to eliminate social injustice and ensure equality in the agriculture sector. The most influential theory of distributive justice over the last half century has been John Rawls’s theory termed as ‘justice as fairness’ given in his 1971 book, A Theory of Justice. He developed a rival to utilitarianism, a dominant theory of his times which Rawls saw as a morally flawed theory. The flaw is that utilitarianism justifies sacrificing the good of some individuals for the sake of the happiness of the greatest number. Utilitarians believe in aggregate happiness produced by justice and not the welfare of each individual. Rawls was inspired by Immanuel Kant’s moral idea that gave due importance to equality and freedom of each human being (liberal-egalitarian). Kant argued that each human being should be seen as an end in himself and not as a means to an end. Through his theory of justice, Rawls gave central place to the moral principle of equality and freedom of each individual.
7.3.1 Justice as Fairness

After the Second World War, there was the emergence of behavioural approach and emphasis on value-neutral and fact-based political theory. Hence, normative principles and values became a scarce commodity in political science at large. It was John Rawls who brought them back in the discipline through his theory of justice. His theory stood for distributive justice and just distribution of primary goods in a society. Rawls supported a contract based theory of justice that was based on the original position (state of nature earlier envisioned by Thomas Hobbes, John Locke and J J Rousseau), individual rationality (making a choice amongst various means for optimum result) and decision making (social contract). Rawls combined liberty and equality (liberal egalitarian) in his conception of distributive justice that he called justice as fairness. In opposition to the utilitarian theory of justice that dominated Western liberal thought since the 19th century, Rawls tried to formulate his theory to meet needs of the liberal democratic welfare state that emerged after the Second World War. He described justice as the first virtue of social institutions and all political and legislative decisions should be based on justice to determine the distribution of primary goods. Primary goods are the ones for which it is rational for a person to want more rather than less. These are of two types.

- **Natural goods**: These are goods like intelligence, health, talent that are affected by social institutions but not distributed by them.
- **Social goods**: These include income, wealth and opportunities etc that are directly distributed by social institutions and are affected by them directly.

Rawls talks of a state of nature where people consensually decide the type of society in which they will live. In this state of nature, he has said that the individuals are in an original position. To eliminate selfish interests and biases of different kinds, he assumes that the original position means the following:

- Individuals are mutually indifferent, self-interested but not egoists.
- They seek to maximize their own interests like liberty, income etc by agreeing to form the society.
- There is a veil of ignorance between the individuals which prevents them from knowing details like skill, social background, income etc about others.

Despite the veil of ignorance, the individuals will make rational choices as they are rational decision makers and would devise principles that would lead to just distribution in society. Under the above mentioned conditions, each individual would want to maximize his own self-interest, but since he does not know the details of others, everyone is likely to choose a society that would minimise his potential losses. Individuals would make sure that
even the worst of persons is not too destitute, in case he turns out to be one such person. It is called the maximising principle as it maximises their minimum welfare. The negotiators or the individuals will choose the least dangerous path and would hypothetically place themselves in the least advantageous position while recommending the criteria of allocation of the primary goods. They will choose two principles according to Rawls.

- **Principle 1**: Each person to have an equal right to the most extensive basic liberties compatible with similar liberties of others.

- **Principle 2**: Social and economic inequalities are to be arranged so that both are: a) to the greatest benefit to the least advantaged members of the society, b) attached to positions offices open to all under conditions of fair equality of opportunity.

The first principle is called the equal liberty principle. The second is often divided into two parts, the first part is called the difference principle and the second is called fair equality of opportunity. The basic liberties to be protected include political liberty (right to vote and to hold public office), freedom of speech and assembly, right to hold personal property, right against arbitrary arrest etc. Rawls has argued that the first principle has an absolute priority over the second one and 2a has priority over 2b so that individual liberty is not compromised for liberty of others. In his general conception of justice, Rawls holds that social and economic advantages must be arranged to ensure greatest benefit to the least advantaged members of a society.

Why should Rawls’s principles be accepted? There can be two arguments. One, the idea is to refine the social contract tradition. Justice is conceived to be what persons would agree to under conditions for choosing principles to regulate basic social structure that is fair. The original position given by Rawls is an example of fair proceduralist standard of justification as something is believed to be fair only after an ideal procedure would accept it as right. Second, Rawls discards the idea of natural talent, saying skills and talents are the result of naturally and socially acquired advantages. These social advantages should extend to the least advantaged sections for fair justice. After deciding about the principles, the individuals decide on the constitution that protects liberty of conscience and freedom of thought, liberty of the person and equal political rights. In legislations and policies by the state, laws that favour the privileged sections are excluded unless they lead to benefits for the least advantaged sections. Thus, Rawls marked a departure away from classic liberalism that stood for individual liberty, but left the individual alone to face the market risks. He also departed from the socialist ideas that made individual subservient to social equality. Rawls’s theory of justice was in line with the needs of the liberal democratic welfare state.

In the Indian context, the idea of justice propounded by Rawls has a lot
of relevance. The Indian Constitution makes systemic departures from norms of equality to achieve justice. Such modification is required to eliminate discrimination against the deprived sections in order to promote national integration. Dr B R Ambedkar, as the Chairperson of the Drafting Committee of India’s Constitution argued that political democracy could not be sustained on the basis of social inequality. In line with the ideas of Aristotle, Dr Ambedkar argued that if social inequality is not addressed, there could be political instability in India. He said:

“On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognising the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has laboriously built up.”

Hence, the Indian Constitution has many provisions that depart from the principle of formal equality to ensure benefit of the least advantaged sections, mainly the Schedules Castes, the Schedules Tribes and the Other Backward Classes. There is a provision for reservation for the deprived sections in education, administration and legislative bodies as well.

Check Your Progress Exercise 2

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Why is distributive justice important for a society?

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2) What is meant by Rawls’s difference principle?

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7.4 LIMITATIONS OF RAWLS’S THEORY

Rawls’s conception of justice has been criticised on the following grounds.

Brian Barry in his 1973 book, *The Liberal Theory of Justice*, has doubted the rationality of individuals as argued by Rawls in the original position. He further says that it is very difficult to define the least advantaged sections in any society.

Communitarians have criticised Rawls’ liberal-egalitarian conception of justice as it gives more importance to the individual at the cost of the community or society. Michael Sandel in his 1982 book, *Liberalism and the Limits of Justice*, calls Rawls’ individual as disembodied who is not a part of the society. Another communitarian theorist, Charles Taylor criticises Rawls’ atomistic conception of the individual. For Rawls, individual comes ahead of society while for the communitarians, the society is first and then the individual. Communitarians further argue that individual choices have a social context and they may not choose Rawls’s principles in the original position. Michael Walzer in his 1983 book, *Spheres of Justice*, argues that we cannot distribute goods to men and women until we understand what the goods mean; what parts they play, how they are created, and how they are valued, among those same men and women. Distributions flow out of and is relative to social meanings. Hence, he says that justice can be understood only as a community principle and not as an individualistic one.

Libertarian thinker, Robert Nozick’s entitlement theory of justice is in response to Rawls’s distributive theory given in his 1974 book, *Anarchy, State and Utopia*. He said each individual has the moral right as one chooses on any mutually agreed terms with others so long as the person does not thereby harm non-consenting other people in ways that violate their rights. Nozick was influenced by the ideas of John Locke. According to him, the moral authority of state to coerce people without their consent even just to maintain minimal public order appears problematic. The idea that society has the right to redistribute property to achieve more fair distribution is against natural rights of individuals. Property is owned by people, and the state, acting as the agent of society, has no more right to take from some and give to others than a robber does. Nozick justifies private property as long as it has been acquired by just means. In sum, Nozick defends market
freedom and is against welfare policies of the state achieved by redistributive
taxation schemes. Such scheme of taxation is inherently wrong which
violates people's rights according to Nozick.

Marxists have criticised liberal egalitarians for their failure to address
inherent exploitative inequalities between capitalists and workers by solely
focusing on fair distribution within a capitalist system. They have also
argued that Rawls idea of veil of ignorance is a hypothetical condition as
any deliberations without the knowledge of social and economic conditions
of each other is meaningless. Justice can be analysed in the light of class
relations and ownership of private property.

Ronald Dworkin has given importance to choices made by people or luck
instead of distribution of primary goods to attain justice. Dworkin argued
that people with equal resources could end up with unequal benefits due
to their choices. He distinguished between option luck and brute luck. If
somebody suddenly goes blind due to a genetic problem, it means bad brute
luck and if someone wins a lottery, this means good option luck. In other
words, option luck is a deliberate choice made by individuals while brute
luck means unforeseen problems. Some bad events are such that they can
be avoided like losses suffered in gambling. Dworkin feels that inequality
arising out of such choices should be part of any conception of justice.

Nobel laureate Amartya Sen addresses the question of what metric egalitarians
should use to determine the degree to which a society could realise its
ideal of equality. He has addressed the debate over two candidate metrics,
welfare (utility) on one hand and Rawlsian primary goods on the other. He
introduced the concept of 'capability equality' between these two extremes
where capability means what various goods do for people, apart from the
welfare they achieve. Rawls believed that just institutions would distribute
primary goods in a fair manner. The fair distribution, according to him is the
one in which the worst off are as well off as possible according to the primary
social goods measure. Sen, on the other hand, objects arguing that persons
born with different physical and psychological propensities will generally
be unequally efficient transformers of resources such as primary social
goods into whatever goals they might seek. He considers two individuals
with the same allotment of primary goods but one is fit, hardy and quick-
witted while the other is lame, illness prone, slow-witted lacking in physical
coordination. Although the two individuals have different conditions but
primary social goods metric will not show this disparity. Hence, Sen believes
that we should look beyond the distribution of opportunities, income
and other primary goods allotments given the circumstances of different
individuals. The basis of interpersonal comparisons for a theory of justice
should, according to him, be a measure of people’s real freedom to achieve
functionings they have reason to value. Capability thus, represents freedom
whereas Rawlsian primary goods are just means to this freedom. People have
varying capabilities due to genetic, age or other factors to convert resources
into actual freedoms. These variations influence people in different ways to build freedom in their lives, despite having the same primary resources.

Feminist scholars have also criticised Rawls theory of justice on a number of counts. Susan Moller Okin’s 1989 book, Justice, Gender and the Family argues that family should be considered as a main unit for any discussion on justice. The family is considered as a private sphere while as an idea; justice has a bearing on the public sphere which is outside the family. Rawls is unable to address oppression that surfaces in the so called private sphere of government non-interference. Okin argues that any theory of justice that does not address inequalities in a family is incomplete. There is unequal division of labour in the family where women have no option but to do things like cooking, child bearing and rearing with little or no help from the male members. Hence, they face similar inequality in public sphere as well backed by social customs and ultimately, women are robbed of any desire to enjoy active life outside the family. She argues that justice as fairness articulated by Rawls is not fair to women and hence, lacks credibility. Some other feminists have argued that the model of autonomous, self-interested, rational and individualistic person is a typically male conception of human behaviour and it leaves very less or no scope for values such as care, nurturing, empathy and cooperation that are typically female qualities. Hence, they argue that female qualities are not represented in Rawls original position.

Check Your Progress Exercise 3

Note: i) Use the space given below for your answer.
ii) See the end of the unit for tips for your answer.

1) Discuss Amartya Sen’s critique of Rawls’s theory of distributive justice.

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7.5 LET US SUM UP

Justice is important for stability and well being of any society. Needs, desert and equality are the main criteria for administering justice by state. There
are four distinctions – conservative vs ideal, corrective vs distributive, procedural vs substantive and comparative vs non-comparative justice that one has to keep in mind while understanding the concept of justice. It can be political, economic, social and legal in terms of its dimension. John Rawls’ theory of justice often referred to as justice as fairness is a reaction to utilitarianism. It contends that social and economic advantages must be arranged to ensure greatest benefit to the least advantaged members of a society. Although it has been criticised by communitarians, libertarians and feminists, Rawls theory has played a significant part in ensuring that benefits are allocated to deprived sections in liberal democracies and India is one such example.

7.6 REFERENCES


7.7 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

1) Your answer should highlight three types of justice – distributive, corrective and commutative

2) Your answer should include three criteria – need, desert and equality

3) Your answer should highlight that procedural justice pertains to fair procedures while distributive justice means equality of outcome
Check Your Progress Exercise 2

1) Your answer should highlight that distributive justice is needed in any society to avert political violence and avoid challenges to state authority from internal threats
   - Also include Aristotle’s views on revolution

2) Highlight that it stands for greatest benefit to the least advantaged members of a society

Check Your Progress Exercise 3

1) Your answer should highlight the following:
   - Concept of capability equality
   - Mere distribution of primary goods is not enough, individual capability to convert those goods into freedom and justice is also important.