

Right to Community and Representation in Policy

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Right to Community: A Proposal

Community:

- It is a subjective experience that defies objective definition. It is felt and experienced rather than measured and defined.
- The definition of community is linked to its construct. It is useful to look at it from a historical perspective as well as from the geographical and ideological backgrounds in which it evolved.
- Robert Bellah defines community as “a group of people who are socially interdependent, who participate together in discussion and decision making, and who share certain practices that both define the community and are nurtured by it”

Community rights

- The right to its own identity
- The right to access skills and resources within the wider community
- The right to support its members within the wider community
- The right to set its own agenda, constitution and institutions
- The right to participate within the wider community
- The right to protect its members from influences that disadvantage its members, etc

Thinking within the Constitutional framework

- **Reservation:**

- The common logic of policy of reservation and the principles of power devolution.
 - In a democratic polity with a welfare state approach, especially in a diverse country like India, they presuppose justice for a target population.
 - Is justice predominant in the polity frame?
 - What does it imply?
- What does the provision of reservation as a legislative measure reflect?
 - The Historicity of Social Structure in India

The History of the Policy of Reservation in India

- Reservations are the Indian version of quotas — a legal provision that guarantees a minimum presence in various institutions of social categories considered victims of historical prejudice. In the Indian context, reservations were first started in the princely state of Mysore in 1921 and in British India through the Montague-Chelmsford Reforms in 1919. Later, they were enshrined in the Constitution of independent India, making it a pioneer in policies of affirmative action, or ‘compensatory discrimination’ (Galanter 1991). The reservation policies have evoked a recurring debate but seem nevertheless unstoppable in their slow but steady extension to new categories of beneficiaries and to new institutions. If we consider independent India only, the 1950 reservation concerned two categories: the Scheduled Caste (SC) and the Scheduled Tribes (ST). Those reservations were limited to three fields: public employment, institutions of higher education and political representation. In political reservation, seats were reserved in the National Parliament and in state Assemblies in proportion to the demographic weight of SCs and STs in the total population, i.e. 15 per cent and 7.5 per cent, respectively. Over the years, the provisions were extended to include other Backward Classes (OBC) and Women.
- Seats are now reserved in local assemblies for women (33 per cent), for SCs, for STs and in some states, for OBCs (in proportion to the local demographic weight of each category) at all three levels of local self-government Village, Block and District (or Municipality in urban areas).

- The government of independent India adopted the reservation policy for the first time in 1950 for the Scheduled Castes and Tribes.
- Those reservations were limited to public employment in higher education institutions and political representation.
- While reservations for the SCs and STs rapidly became the object of a relative consensus, its extensions to a third category, Other Backward Classes (OBC), evoked a recurring debate and repeated controversies.
- In the early 1990s, decentralisation attempts through the 73rd and 74th Constitutional Amendment Acts introduced electoral reservations for a fourth category, i.e., women. The controversy over reservation continued. The question of identifying the 'Most Backward Classes' among the OBCs and 'Economically Backward Classes' among the upper castes for making them the beneficiaries of reservations resurfaces regularly at the national as well as state levels.

(The debate around reservations is thus a complex one. It is rooted in the colonial history of India, it follows different courses at the union and state levels, is fraught with political calculations and has repeatedly evoked violent reactions. But this debate, on the whole, has not been evenly focused. It has been concerned with the categorisation of the backward classes.)

Is it a question of Representation:

Representation is a crucial element of inclusiveness (Nunan, 2018), a key principle of good governance. Representation, defined here as acting on behalf of others (Näsström, 2015), materialises through electoral and nonelectoral processes. Although past representation research focused on electoral representation, nonelectoral representation has attracted increasing attention recently.

Marginalization:

- Marginality is an experience that affects millions of people throughout the world. Marginalised people have relatively little control over their lives and the resources available to them.
- A vicious circle is set up whereby their lack of positive and supportive relationships means that they are prevented from participating in local life, which in turn leads to further isolation. This has a tremendous impact on the development of human beings, as well as on society at large. As the objective of development is to create an enabling environment for people to enjoy a productive, healthy, and creative life, it is important to address the issue of marginalisation. This unit deals, in detail, with the various aspects of marginalisation.
- Sometimes, whole societies *can* be marginalised at national and global levels, while classes and communities can be marginalised from the dominant social order at the local level. In some other contexts, the same community can be marginalised in a **certain** country (Jews in Germany or Russia), whereas they are not marginalised in another country (Jews in the U.S.A.).
- Marginalisation is a multidimensional, multicausal, historical phenomenon. There are no general laws to understand and comprehend the complex nature of marginalisation. The analytical tools that can be used in most cases include class in relation to specific social, cultural, economic and political conditions, as well as ideological systems, social awareness, and human action

Welfare State

- The term 'welfare state' describes collectively a range of social policies that aim to provide basic services such as health and education, according to the need and normally, free of charge through state Funding. It is sometimes extended more loosely to areas such as social security, in which individuals are legally required to make substantial contributions in order to receive the benefits. The theory of the welfare state is the basis of positive liberalism.
- It is a kind of state which provides extensive social services to all the citizens, protects the weaker sections, provides economic and social security and tries to reduce the gap between the rich and the poor. It makes laws to control the economy, nationalised industries, makes laws to protect the weaker sections, arrange the supply of essential commodities, maintain essential services and through progressive taxation and income redistribution, tries to reduce the gap between the rich and the poor and thereby, harmonises the different interests in society.

The question of Justice

- Following the ‘successful’ end of the Assam Movement, Various Popular movements started in North-east India, Including Meghalaya, that raised the question of Identity or nationality.
- Rise of KSU in Meghalaya
- Movement Against outsiders and foreigners

The Outcome and the Question of Justice

- While transitioning from colonial subjects to citizens of independent India, the contest between the right to citizenship and the rights of ‘indigenous’ people evolved into a contestation of rights over resources, including access to land.
- The roles of the regional/ethnic identity-based political mobilization, which sought to undo economic and political injustices resulting from the new nation-state-making process, changed the political discourse around citizenship’s entanglement with nationality.

Idea of Justice

- The word “justice” is derived from the Latin words *jungere* (to bind, to tie together) and *jus* (a bond or tie). As a bonding or joining idea, justice serves to organise people together into a *right* or *fair* order of relationships by distributing to each person his or her *due* share of rights and duties, rewards and punishments.
- Justinian’s precepts of justice were derived from the Greek philosopher Aristotle, who had defined justice as the treating of equals equally and of unequals unequally in proportion to their inequalities. He also distinguished three types of justice, namely, distributive justice, corrective justice and commutative justice (i.e. the justice of equivalence in the exchange of different kinds of goods).
- As a moral-political value, justice is interlinked with such other moral-political values as liberty, equality and fraternity. What makes a society or state just in a basic sense is its *right* or *fair* ordering of human relations by giving to each person her or his *due* rights and duties as well as *due* rewards and punishments. Justice does this by bringing about adjustments between the principles of liberty, equality, cooperation, etc.

Procedural Justice and Substantive Justice

- In discussions of justice, a distinction is drawn between procedural justice and substantive justice. The former refers to justice or fairness or impartiality of the processes and procedures through which a law or policy or decision is arrived at and applied. Substantive justice refers to justice or fairness of the content or outcome of laws, policies, decisions, etc.
- Needs Rights and Deserts

Theories of Social Justice

- Utilitarianism (Jeremy Bentham, JS Mill, Harriet Taylor Mill, Henry Sidgwick, Richard Hare, Peter Singer (Major contemporary thinkers-Effective Altruism is about doing good better))
- Deontological Theory of Justice/Egalitarian ToJ (Kant Rawls, Amartya Sen, Martha Nussbaum, Thomas Nagel, T.M. Scanlon, Thomas Pogge)
- Virtue Theory of Justice (Aristotle, Paul Ricoeur, Rosalind Hursthouse and others)
- Communitarian Theory of Justice (Sandel, Walzer, Charles Taylor etc.)

RAWLS'S LIBERAL-EGALITARIAN PRINCIPLES OF SOCIAL JUSTICE

- Rawls's principles of social justice are a corrective to the liberal-utilitarian principle of the greatest happiness of the greatest number
- Rawls recognises that liberal utilitarianism marked a progressive, welfare-oriented departure from classical liberalism's preoccupation with individualistic rights. Yet, in Rawls's view, utilitarianism is a morally flawed theory of justice. Its moral flaw is that it justifies or condones sacrificing the good of some individuals for the sake of the happiness of the greatest number. For utilitarians, the criterion of justice in a society is the aggregate sum of utility or happiness or welfare it produces and not the well-being or welfare of *each* member of the society.
- According to Rawls, a stable, reasonably well-off society is "a cooperative venture for mutual advantage." Along with cooperation, there is conflict among its members regarding their share of the burdens and benefits of social living. The purpose of the principles of social justice is to ensure that the distribution of the benefits and burdens of society is just or fair to all its members.
- Rawls argues that the distribution of the primary social goods among the members of a society is just if that distribution is made in accordance with the following principles of justice:

Principle 1 (Principle of Equal Basic Liberties)

- Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, a scheme which is compatible with the same scheme of liberties for all.

Principle 2

- i: Fair Equality of Opportunity
- ii: Difference Principle

- **The Social Contract Procedure**
- **The Basic Structure of Society**
- **Criticism**