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THE DISPARITIES DURING THE COVID 19 REGIME IN INDIA: WHAT WOULD'VE RAWLS SAID?

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ABSTRACT: -

John Rawls developed a theory of justice which reiterates that justice should be determined by individuals while they are placed at a hypothetical social position. Through this research paper, the author has tried to explore the relevance of Rawlsian theory of justice to address the plethora of social injustices that had been exacerbated by the rise of the COVID-19 pandemic, purely through an Indian perspective.

The paper examines how Rawlsian principles can guide policy responses to ensure that the most disadvantaged groups receive equitable access to healthcare, economic resources, and social support during the crisis. By applying Rawls' original position and the veil of ignorance, the abstract seeks to delineate practical strategies for policymakers to mitigate disparities, fostering amore just and inclusive response to the challenges posed by the pandemic in the Indian context. Expanding on Rawls' justice theory, the author offers practical recommendations within the framework of Rawlsian principles to address heightened disparities during the COVID-19 pandemic in India.

INTRODUCTION: -

Bygone are the days when the hoard of people moving in and around the hallowed streets of India had a stint of trepidation of losing their lives even if they were equipped with ample protection. Although, the tangible community, i.e., the community most of us belong to had the sway of their lives in their hands, relating to sufficient economic means and viable medical resources at their hand, the ramifications of the deadly COVID-19 period had far-fetched ramifications on the underprivileged, that is, people belonging to the downtrodden section of the society.

The COVID-19 pandemic in India seemed to have amplified the preexisting disparities, in such

away that the marginalized sections of the society were inflicted with a fatal blow as they were at the receiving end of the worse socio-economic disparities and outcomes due to inequalities in a systemic way.¹

John Rawls' theory of justice, particularly his influential work "*A Theory of Justice*,"² focuses on principles of justice that are meant to guide the basic structure of a just society. While Rawls may not have directly addressed public health crises like the COVID-19 pandemic, his principles can be applied to analyze and critique the disparities in how such crises affect different groups within a society. The COVID-19 pandemic has laid bare and heightened prevailing disparities in social, economic, and healthcare realms. Through the lens of Rawlsian principles, we can analyze how the response to the pandemic either adheres to or diverges from Rawls' vision of justice.

1. RAWLS AND DISTRIBUTIVE JUSTICE: -

Certainly, a central aspect of discussions on Rawlsian distributive justice revolves around the undeniable influence of John Rawls. Rawls contends that his concept of justice involves three key principles:

1. The prioritization of maximizing liberty, with constraints only acceptable if necessary to protect those liberties.
2. The pursuit of equality for all in fundamental liberties and the distribution of societal goods. However, Rawls allows for inequalities under the condition that they benefit the least advantaged members of society within a structured system of inequality.³
3. The promotion of fair equality of opportunities and the eradication of birth or wealth-based inequalities in opportunities;⁴

Benefits are defined by Rawls in terms of primary goods, such as opportunity and liberty, wealth and income, and the foundations of self-respect. These need not be seen as the ones that everyone wants, but they are the ones that satisfy the necessities and offer individuals the freedom to reproduce themselves. Furthermore, he claims that persons who are claiming to proliferate themselves would consider themselves to be in a position which won't be attached

¹ Fulcher & Dinella, in press.

² JOHN RAWLS, *A THEORY OF JUSTICE* (Belknap Press of Harvard University Press) (1999)

³ Covid-19 and Justice *Journal of Medical Ethics*, <https://jme.bmj.com/content/46/10/639> (last visited Dec 7, 2023)

⁴ *Ibid*, see fn. 2

to any form of bias which will allow them to perceive everything from an impartial lens. This where the discussion of veil of ignorance and independent social position becomes imperative.

2.1 Independent social position and the veil of ignorance:

The two key concepts that came out from the discussion of John Rawl's justice theory was the concept of 'independent social position' and the 'veil of ignorance'

Rawls underscores the significance of considering individuals from an "original position," a hypothetical scenario resembling a social contract where people collectively determine the fundamental principles governing their society. The concept of an "**independent social position**" within this original position entails that individuals deliberate on justice without knowledge of their specific characteristics, such as race, class, or abilities.

When individuals adopt an impartial social standpoint, they are inclined to unite around principles that are equitable and just for every member of society, regardless of individual traits. This approach aims to eliminate bias in the selection of principles, ensuring that decisions are made without favoring any particular group. The idea is that, by deliberating without knowledge of which group they will belong to once the veil of ignorance is lifted, individuals contribute to the establishment of principles rooted in fairness and impartiality.⁵

Rawls introduces the concept of the "**veil of ignorance**" as a hypothetical scenario to guide the formulation of just societal principles. Envisioning individuals behind this metaphorical veil, Rawls posits that they are ignorant of specific details about themselves, such as social status, talents, gender, and ethnicity, which could confer advantages or disadvantages in society.

The primary objective of the veil of ignorance is to instill impartiality and fairness in the selection of principles of justice. As individuals lack awareness of their own attributes and circumstances, Rawls contends that they are more likely to adopt principles that are equitable and just for everyone. The rationale is that, deprived of knowledge about their personal characteristics, individuals would be motivated to establish principles that safeguard against the risk of finding themselves in a disadvantaged position once the veil is lifted.⁶

⁵ MAKING MORAL LANDSCAPES: JOHN RAWLS' ORIGINAL POSITION POLITICAL GEOGRAPHY QUARTERLY, <https://www.sciencedirect.com/science/article/abs/pii/0260982786900649> (last visited Dec 11, 2023)

⁶ The veil of ignorance in Rawlsian theory UR Scholarship Repository, <https://scholarship.richmond.edu/philosophy-faculty-publications/136/> (last visited Dec 9, 2023)

3. THE COVID BLOW AND CONSEQUENT DISPARITIES: -

Foremost in John Rawls' philosophy is the primacy of liberty as a fundamental necessity for every individual within a given social framework. He argues that in the original position, a person would prioritize basic liberties and rights over the distribution of wealth, income, and power. This choice stems from the understanding that such prioritization offers the best opportunity to secure essential primary goods and exercise autonomy. According to Rawls, without access to these basic rights, individuals remain ensnared in inequality, posing a direct challenge to his conception of justice.

However, this principle seemed to be overshadowed during the ominous period of the pandemic in India, as the Right to Life and personal liberty, as enshrined in Article 21 of the Constitution of India, faced a severe setback. A significant casualty of the pandemic was the healthcare industry, which, though not impacting the elites significantly, had a profound effect on the marginalized sections of society. The pandemic brought to the forefront pre-existing systemic issues such as inadequate physical infrastructure and human resources.

3.1 The economic impact:

Amid the ongoing pandemic, the economic decline has significantly impacted individuals in the lower socio-economic stratum (SES). There has been extensive debate over the distressing images in the media, particularly the sight of migrant laborers walking long distances from cities to their hometowns during lockdowns. Another method of alleviating poverty, promoting economic development, and boosting GDP is through the remittance of money to the home country, a common practice among many migrant Indian workers.

The situation is equally dire for internal migrant workers, both within and between states in India. These workers, who predominantly belong to the informal sector, constitute an overwhelming 139 million, making up approximately 93% of the total workforce.⁷

The Indian government invoked the powers granted by the Disaster Management Act of 2005, utilizing broad authority without introducing specific relief and rehabilitation packages. Despite these actions, the workforce, including laborers, faced unemployment and lacked coverage

⁷ Covid-19 pandemic and challenges for socio-economic issues, healthcare and National Health Programs in India Diabetes & Metabolic Syndrome: Clinical Research & Reviews, <https://www.sciencedirect.com/science/article/pii/S1871402120301600> (last visited Dec 9, 2023)

undersocial security and labor welfare laws.

3.2 Challenges in Socio-cultural Contexts:

The social fabric of India is built on a foundation of emotional and economic interconnectedness among families, relatives, and friends. The prevalence of close physical interactions, such as residing in densely populated areas, and common practices like pushing and jostling, creates difficulties in adhering to the concept of 'social distancing' emphasized during the ongoing pandemic. Despite the implementation of lockdown measures, situations of overcrowding persist in places of worship, during travel (e.g., groups of migrants on buses), and even in scenarios like the purchase of items such as liquor.

While existing social inequalities in India are primarily caused by 'vertical distancing,' the implementation of 'horizontal distancing' in response to COVID-19 has intensified these inequalities. Notably, the lack of effective safety nets, particularly in terms of food security, for those most severely impacted by the lockdown is a concerning issue.⁸ The government schemes in place are deemed significantly inadequate in addressing the extensive scale of the problem. Consequently, the lockdown has heightened the risk of malnutrition, particularly among individuals in the lower socio-economic strata.

3.3 Healthcare disaster:

The impact of COVID-19 in India, particularly regarding illness and death, is closely tied to co-existing health conditions, specifically non-communicable diseases (NCDs) like diabetes, hypertension, and cardiovascular diseases. This connection is especially troubling considering the prevalence of early-onset NCDs in India, elevating the risk for COVID-19 even among younger individuals.

These health challenges have disproportionately affected the less affluent segments of society in various ways. Predictive models suggesting that the duration of lockdown is directly linked to a deterioration in glycolic control among diabetic patients imply an added strain on the public healthcare system. The economically disadvantaged, who heavily depend on public healthcare services, may encounter difficulties in accessing sufficient care for complications related to

⁸ COVID-19 PANDEMIC AND FOOD SECURITY IN INDIA: CAN AUTHORITIES ALLEVIATE THE DISPROPORTIONATE BURDEN ON THE DISADVANTAGED? JOURNAL OF POLICY MODELING, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9356645/> (last visited Dec 13, 2023)

diabetes.

4. THE COVID FIASCO FROM RAWLSIAN PERSPECTIVE: -

From a Rawlsian perspective, one can contemplate how individuals, if aware in advance of a disaster like COVID-19, might have reached a consensus on the type of political system that would best serve the collective interests of all. This hypothetical scenario involves envisioning individuals making decisions from behind a "veil of ignorance," where they possess knowledge about society but remain unaware of their own status and position within it. The purpose is to eliminate bias and self-interest, fostering the creation of a social structure that benefits everyone.

Human tendencies often prioritize personal benefit, and awareness of one's position in society can lead to the formulation of policies that favor one's own group.⁹ For example, a wealthy individual might seek policies maximizing personal profits, even if detrimental to others. This self-centered approach can perpetuate existing inequalities.

4.1 Healthcare Questions:

Behind the veil of ignorance, individuals framing policies to tackle the COVID-19 situation would grapple with critical choices related to healthcare access. Decisions about whether healthcare facilities should prioritize the rich or the poor, the young or the elderly, and whether vaccination distribution should follow a "first come, first serve" approach or prioritize those likely to live longer become significant ethical considerations. The lack of proper provisions for elderly individuals living alone and requiring regular medical attention underscores the challenges faced during the pandemic.

4.2 Lockdown ethics:

As COVID-19 cases surged, lockdowns were imposed without thorough risk-benefit analyses or assessments of long-term effects, particularly on vulnerable populations. Daily wage workers, lacking fixed accommodations and compelled to travel for work, were severely affected. The Difference Principle, which tolerates economic inequalities if they benefit the disadvantaged, was not effectively implemented, as many individuals faced hunger, starvation, and related issues.¹⁰

⁹ John McMillan, Covid-19 and Justice, 46 JOURNAL OF MEDICAL ETHICS, 639–640 (2020)

¹⁰ Rawlsian perspective and covid 19 situation in India Hein Online,

The difficulties faced by slum dwellers in following social distancing measures and maintaining proper hygiene due to a lack of sanitation and clean water highlight the inadequacies in lockdown implementation. The dilemma of allowing migrants to return to their hometowns versus imposing restrictions added to the complexity.

4.3 Empathy:

Mahatma Gandhi's call to consider the impact of actions on the poorest and weakest resonates with the works of John Rawls. The pandemic exposed a lack of empathy as individuals faced job losses, salary non-payment, and increased poverty and unemployment. Intolerance levels rose, and people prioritized personal safety over collective well-being, even mistreating healthcare workers.

5. SUGGESTION FOR AN ACTIONABLE FRAMEWORK IN CONFORMITY WITH RAWLS: -

Creating an actionable framework in conformity with Rawlsian principles involves designing policies and initiatives that prioritize justice, fairness, and the well-being of the least advantaged in society. Drawing inspiration from John Rawls' theory of justice, which emphasizes the principles of justice that would be chosen from behind a veil of ignorance, the framework seeks to address social, economic, and healthcare disparities.

The author feels that there is a need to design and implement policies that ensure equitable access to healthcare facilities and services. Consider the needs of vulnerable populations and prioritize preventive care which will allow to develop strategies to address the disparities highlighted by the COVID-19 pandemic, ensuring that the most disadvantaged members of society receive adequate medical attention and support. This can be done by coming up with policies or governmental schemes for subsidizing health for the disadvantaged groups. This becomes relevant in some eastern and north-eastern states of the country where some ameliorative measures were implemented. Otherwise, it largely remained a far-fetched dream as those people are still recuperating from all the losses.

Another measure that the author feels that can actually curb the problem of equating education

is by implementing measures to bridge the digital divide in education, especially during times of crisis such as lockdowns. Ensure that students from all socio-economic backgrounds have equal access to educational resources, technology, and online learning platforms.

Investing in and enhancing public health infrastructure is another measure that the author espouses which will help to ensure that healthcare services are not only accessible to the least advantaged sections of the people but also of high quality. Prioritizing preventive healthcare measures and creating a robust healthcare system which will have the fallout to consider.

6. CONCLUSION: -

In conclusion, the COVID-19 pandemic has not merely brought existing disparities to light but has significantly exacerbated them, particularly within the socio-economic and healthcare sectors. Leveraging John Rawls' theory of justice provides a valuable framework for analyzing and remedying these inequalities, with a focus on principles like fairness, equity, and the well-being of the most disadvantaged.

The research paper delved into Rawlsian concepts, such as the original position and the veil of ignorance, to propose pragmatic approaches for policymakers in India to alleviate the impact of the pandemic on vulnerable communities. The analysis considered the theoretical underpinnings of Rawls' justice theory, the amplified socio-economic challenges due to the pandemic, and the applicability of Rawlsian principles in guiding effective policy responses.

The socio-economic repercussions of the pandemic, encompassing economic downturns, rising unemployment, and unequal access to healthcare, have disproportionately affected marginalized segments of society. While the government has attempted to address immediate issues, its response has often fallen short of aligning with the justice principles envisioned by Rawls.

Within the Rawlsian perspective, actionable recommendations involve crafting policies that guarantee fair healthcare access, bridging the educational digital divide, investing in public health infrastructure, and championing inclusive economic measures. These proposals aim to bring policy responses more in line with Rawls' principles, fostering a society that is both just and inclusive.

The literature review contributed insights from scholarly works on Rawls' justice theory, ethical considerations surrounding COVID-19, and the pandemic's impact on socio-economic inequalities in India. This body of literature informed the research methodology, which adopted an adocrtrinal approach to scrutinize existing socio-economic and healthcare conditions through the lens of Rawlsian philosophy.

Although Rawls did not explicitly address public health crises, his principles offer a valuable framework for evaluating societal responses, emphasizing core tenets such as fairness, equality, and justice. The application of Rawlsian principles brings to light inadequacies in current policies, prompting a reconsideration of governmental strategies to effectively address the fundamental causes of disparities.

BIBLIOGRAPHY

- Fulcher & Dinella, in press.
 - ¹ JOHN RAWLS, A THEORY OF JUSTICE (Belknap Press of Harvard University Press) (1999)
 - Covid-19 and Justice Journal of Medical Ethics, <https://jme.bmj.com/content/46/10/639> (last visited Dec 7, 2023)
 - Ibid, see fn. 2
 - MAKING MORAL LANDSCAPES: JOHN RAWLS' ORIGINAL POSITION POLITICAL GEOGRAPHY QUARTERLY, <https://www.sciencedirect.com/science/article/abs/pii/S0260982786900649> (last visited Dec 11, 2023)
 - The veil of ignorance in Rawlsian theory UR Scholarship Repository, <https://scholarship.richmond.edu/philosophy-faculty-publications/136/> (last visited Dec 9, 2023)
 - Covid-19 pandemic and challenges for socio-economic issues, healthcare and National Health Programs in India Diabetes & Metabolic Syndrome: Clinical Research & Reviews, <https://www.sciencedirect.com/science/article/pii/S1871402120301600> (last visited Dec 9, 2023)
 - COVID-19 PANDEMIC AND FOOD SECURITY IN INDIA: CAN AUTHORITIES ALLEVIATE THE DISPROPORTIONATE BURDEN ON THE DISADVANTAGED? JOURNAL OF POLICY MODELING,

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9356645/> (last visited Dec 13, 2023)

- John McMillan, *Covid-19 and Justice*, 46 JOURNAL OF MEDICAL ETHICS, 639–640 (2020)
- Rawlsian perspective and covid 19 situation in India Hein Online, https://heinonline.org/HOL/Page?handle=hein.journals/ijlmhs16&div=9&g_sent=1&casa_to_ken=&collection=journals

