

AN ETHICAL CONSIDERATION OF PREFERENTIAL TREATMENT

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When we ponder over the term 'preferential treatment', we are often led into thinking the ethical dilemmas associated with it. The ethicality of advancing the policy is controversial and contentious. It is contentious and controversial as it barely has any 'right' or 'wrong' decision over the question of whether or not preferential treatment is ethical. The preferential treatment is based on the idea of provisioning a special privilege with an aim to restore the members of social groups which have been discriminated against in the past which undeniably may lead to conflict. However, the practice of the policy is not invariable in nature. Some important questions to be pondered over are: What is wrong with preferential treatment? Is not discrimination of some sections of people based on caste, creed, birth, and sex morally wrong? Is the justification of the treatment derived its basis from the utilitarian principle? This short paper in an attempt to highlight the concept and briefly analyse the ethical dilemmas, secondly, argues how resorting to preferential treatment is not discriminatory and finally argues that although preferential treatment may not be the best solution but it is the most practicable and efficient means of redressing past institutional discrimination, mistreatment and exploitation..

The term 'preferential treatment' is synonymous with different phrases such as, positive discrimination, affirmative action, reverse discrimination, preferential discrimination, special consideration, and quota system. Its uses have provoked immense debates. Preferential treatment is generally understood as a set of policies and practices within a particular system seeking to include particular groups based on their gender, race, sexuality, creed or nationality in areas in which they are under-represented such as education, employment, etc. It is founded on the idea of rectifying past discriminatory policies inflicted on certain socially and economically disadvantaged individuals. It is an attempt to make equal opportunity by giving special privilege to a particular group of community whose economic and social condition are comparatively much lower and underdeveloped due to past discrimination. As in the case of India, the preferential treatment is known by the name quota system or reservation policy. Any serious attempt to discuss the issues

concerning preferential treatment can be considered from two different perspectives. The first approach is to stop discrimination against any groups and treat them at par with the rest of the members in the society or nation. It neither involves compensation for the past injustices nor helps to undo the effects of past discrimination.⁶⁵ The second approach is to venture further and give preferential treatment to the victimised groups temporarily for a fixed period of time so as to rectify the on-going effects of past discrimination.

To make more conversant with the discussion, it is imperative to explicate what are the policies involved in preferential treatment. Most of the arguments about preferential treatment may be characterized as either compensatory or inclined towards the past or towards the future. The preferential policies involve fixed quota systems in the field of political sphere, education, employment, promotion of the members of the victimised groups. However, it is to be mentioned here that the policies and programs intended for the victims of the past must be within the scope and limits of the constitution of a territory and are not invariable in nature. One can pose a question: Is not discrimination of people on the basis of caste, creed, birth, and sex morally wrong? The critics is of the view that preferential treatment is a social evil as it denies justice to others or involves a 'reverse discrimination' that bestows 'undeserved preferences' on its beneficiaries and deprives the others sans any faults of theirs. Some critics also argue that preferential treatment is morally unjustified since it infringes the principle of justice to equality and the principle demands that everybody should be given equal consideration for equal benefit. Some argues that preferential treatment is a social evil because it victimizes certain classes of people who are deprived of the benefits. Alan Goldman says "the non-members of the preferred minority will feel that some people are getting undeserved benefits which are not available generally. The persistence of such feelings will slow down the whole process of the integration of the previously disadvantaged groups; as a result, there will be 'more friction and resentment than that inevitable from residual

⁶⁵ Y. V. Satyanarayana (2010) *Ethics: Theory and Practice*, Published by Dorling Kindersley(India) Pvt. Ltd, Pearson Education in South Asia, New Delhi, India.

bigotry”⁶⁶. It is not untrue to say that we cannot hold people of the present generation morally responsible for the harms and exploitation and injustice done in the historical past. Discrimination may be defined as making a policy or decision on the consideration of irrelevant factors in questions such as caste, colour, creed, race, sex and so on. These factors are almost irrelevant to decisions about whom to give special preference and whom to exclude and thus seems to indicate unfairness and prejudices.

Whereas, defenders on the other hand argue that preferential treatment is a social good because it gives justice to certain sections of people who have been victims of past institutional discrimination, mistreatment and exploitation.⁶⁷ They argued that victims of past discrimination were so far behind in the race that without preferential treatment, equal opportunity would never be more than a high-sounding phrase. There is nothing unreasonable in bringing about neutralizing or rectifying the effects of the past discrimination and giving advantage to the victims on the factors such as caste, colour, creed, race, sex, are not considered as irrelevant factors because the history of discrimination has turned them into relevant factors. It can be further argued here that the past discrimination, mistreatment and exploitation have adversely affected the present position and unless substantial provision is arranged, uplifting of the plight of the victims cannot be possibly practical. In this regards, Brooks aptly argues that “... a mere barring of discrimination acts...may not be enough to cure the evil. Affirmative action is one of the bits of social engineering which has been devised to rectify an entrenched practice of discrimination.”⁶⁸ Many thinkers expressed their views in consonant with him that discontinuation of the practice of discrimination is not simply enough and that people who have been discriminated against in the past must be adequately compensated for the injustice done to them. They emphasized on the point that the present provision is intended to neutralise the on-going effects of past discrimination and to rectify the social disparities existent in the social system. Preferential treatment as a rectification of past discrimination reduced based on the notion of equal opportunity.

⁶⁶ Goldman A.H (1979) *Justice and Reverse Discrimination*, p-143.

⁶⁷ Jagat Pal (2012) *Justice, Equality and Morality: An Essay in Applied Ethics*, Masdhav Books, Gurgaon(Haryana), p-22

⁶⁸ D.H.M. Brooks (1987) ‘Why Discrimination is Especially Wrong’, in Thomas A. Mappes and Jane S. Zembaty (eds), *Social Ethics: Moral and Social Policy*, McGraw-Hill, New York, p-204.

The principle of compensatory justice states that whenever a particular injustice has been done to some persons, just compensation, or reparation should be given to those injured persons. The history of discrimination and its persistence requires restoration of the balance of justice to the victimized groups to obtain the requirements. The advocates of compensatory justice argue that, 'the past lives in the present'. The inequalities resulting from past discrimination necessitates compensatory provision to members of groups victimized in the past to develop equally with others. There exist morally good reasons to justify difference in treatment among different classes of people in a particular social context. The principle of justice to equality does not logically assume equality in the same degree. It only prescribes that everybody should be treated equally unless there are morally relevant reasons to justify difference in their treatment. Not giving special means to the underprivileged people to uplift themselves would amount to letting them suffer due to past discrimination which is not morally justifiable. However, it is to be mentioned here that the policies that are to be implemented may be morally justifiable if it is intended to level the playing field for all other actors marked by inequalities in a social context for providing and ensuring equality of opportunity to them in genuine sense of the them.⁶⁹ While discussing the principle of redress John Rawls says, "the principle holds that in order to treat all persons equally, to provide genuine equality of opportunity, society must give more attention to those with fewer native assets and to those born into the less favourable social positions. The idea is to redress the bias of contingencies in the direction of equality"⁷⁰. It is to be understood that equality of opportunity calls for a differential approach to different classes and it is a consequence of the principle of equality of opportunity that those with inferior initial means of obtaining the types of competence required should be treated in a more favourable way: otherwise their opportunities are unequal. The principle of utility also states that an action or a practice is morally correct if it produces better consequences. It is not for compensation or rectification of past injuries but for morally good consequences to

⁶⁹ Jagat Pal (2012) *Justice, Equality and Morality: An Essay in Applied Ethics*, Masdhav Books, Gurgaon, Haryana, p-45

⁷⁰ Rawls J., (1972) *A Theory of Justice*, Oxford: Clarendon Press, p-100-1

happen to the victimized groups of the past. Richard⁷¹ argues that preferential programs can be justified on the basis of utilitarian claim to have good consequences for an integrated and egalitarian society. He further argues that, “It is also wrong to think that program of preferential treatment in any strong sense is either unjust or unprincipled... Such programs may reasonably be viewed as potentially valuable, effective means by which to achieve admirable and significant social ideals of equality and integration.”⁷² In order to rectify the past discrimination it is important that factors which can restore the members of groups which have been discriminated against in the past be implemented.

One can understand the frustration of the opponents of preferential treatment the generosity of programs and may argue that the program to rectify the past discrimination is at the expense of other innocent persons who have nothing to do with the past discrimination. They suggest that the cost of preferential treatment overrides the benefits and thus persistence on provisioning of preferential treatment is uncalled for. However, it is not out of place to make a little mention here that the program designed for rectification of past discrimination is mostly compensatory. The society in which we live is thoroughly dug in with full of social disparities and injustices. And we have never been free from the so-called network of the problems, amongst which, the problem of social disparity is one that has drawn serious attention not only to a few educated citizens but it also provokes even the attention of the commoners and this perhaps need to be everyone’s business to ponder upon. The problems of social disparities in the society are too important to ignore. The role of a state ought to be strengthened to promote social harmony and social balance and hence it is the duty of the state to design appropriate policies to have a just and equal distribution of position concerning the affairs of education, employment, wealth etc. And thereby, the state needs to establish some fact that there are social disparities in the society and this is partly because of the past history. The members belonging to certain social groups have been subjected to discrimination in the past and the consequences of the past have put them in a disadvantaged position to compete

⁷¹ Y. V. Satyanarayana (2010) *Ethics: Theory and Practice*, Published by Dorling Kindersley(India) Pvt. Ltd, Pearson Education in South Asia, New Delhi, India, p-90.

⁷²Richard Wasserstrom (1987) ‘A Defence of Programs of Preferential Treatment’, in Thomas A. Mappes and Jane S. Zembaty (eds), *Social Ethics: Morality and Social Policy*, McGraw-Hill, New York, p-218-219

equally with the members of non-preferred groups and as a result, the members of the victimized groups are under-represented in many areas. The principle of human rights requires an equal, respectful and dignified life to all members and hence, there is a need to program or design to neutralise the effects of the past discrimination as well as to rectify the on-going social disparities and such remedial recourse can be taken only when the victimized groups are adequately compensated for the injustice done to them in the past. The program associated with preferential treatment is essentially devised to address the social disparities prevailing in our society. It is a method to rectify the social imbalance in the social system. It is a tool designed to bring about and maintain a level of equality in the society by uplifting sections of people who had suffered due to past discrimination, mistreatment and exploitation. Thus, by neutralizing the present wide disparities the goal to achieve the so-called “ideal society” or ‘casteless society’ based on the ‘principles of justice’ can be realised as envisaged by Dr.Ambedkar.

In any serious discussion, a general question about the incompatibility of preferential treatment with the concept of equality for all arises. It is, however, not untrue to be sceptical about whether the implementation of reservation policies in India or other places are effective in fostering equality, harmony and social peace. It may be argued here that although preferential treatment may not be the finest solution and yet it is the most practicable and efficient means of redressing the past institutional discrimination, mistreatment and exploitation despite uncertainties over the efficacy of the implementation and its impacts. As a moral community, it is the responsibility of the state as well as individual to promote the welfare of the disadvantaged groups by ameliorating their situation. Ameliorating the status of such groups may not be meaningful unless provisioning of facilities is implemented for uplifting the welfare. And such means, perhaps may ensure creation of adequate and ample opportunities for self-development, enhancement and advancement of their status to the fullest standard possible. The success of such implementation may develop a conducive avenues which may preferably lead to productive insights which is worthwhile, not only because there are some interesting policies enshrined in the concept but because

the very possibilities of creating a conducive avenue per se is a positive alternative. James Warnock⁷³ has rightly stated that the general object of moral evaluation must be to contribute in some respects, by way of the actions of rational beings to the amelioration of the human predicaments, that is, of the conditions in which these rational beings, humans, actually find themselves. And the content of morality is to help human predicament, namely the underprivileged sections of society, by expanding our sympathies, which has a tendency to get worse. The tendency to get worse is mainly because of the limitations of resources, such as intelligence, knowledge, rationality and sympathy and because of which the social condition tend to fall apart and hence it is the role of ethics to offer an anti-entropic response, to offer order and structure within society which people may flourish as human being.⁷⁴ And to make it so it is important to rectify the past discrimination by eliminating causes of discrimination in order to restore the members of groups which have been discriminated against in the past to a position of equality with other groups in the society because the ultimate aim of the preferential treatment is to remove inequality prevailing in society.

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⁷³ James Warnock (1971) *The Object of Morality*, Methuen.

⁷⁴N. Ramthing, (March 2020) "Structural Violence and Human Predicaments: A Brief Introduction", *Journal of the Department of Philosophy*, V o l u m e - 16, p-116