

REFLECTION ON THE CURRENT HIGHER EDUCATION POLICY OF SRI LANKA WHICH RECOGNIZES PUBLIC UNIVERSITIES AND ALSO THE RIGHT OF PRIVATE PARTIES TO ESTABLISH FEE-LEVYING UNIVERSITIES IN THE LIGHT OF THE ARISTOTALEAN AND RAWLSIAN CONCEPTS OF JUSTICE

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Introduction

Jurisprudence is measured as the basis of all forms of law in the world. A lot of philosophers, political thinkers have contributed to the development of schools of thought related to a particular time period. We can't deny any of such thoughts because each school has its own validity and merit. Therefore, it is our responsibility to understand each and every school of thought with regard to the legal issues in the current situations.

Education is considered as one of the most important elements of human development. It became major establishment of social advance in Sri Lanka even before gained independence. In 1945, The Universal Free Education Policy was introduced in Sri Lanka. As a result, the Sri Lankan population has a literacy rate of 92 percent, higher than that expected for a developing country. (History of Education)

In Sri Lankan history, it is commonly known that higher education has been established through several prominent *Pirivenas* during the local Kingdoms. The University of Ceylon was established on 1

July 1942 by the *Ceylon University Ordinance No.20 of 1942*. After that separate universities and *University Grants Commission* were established after the *Universities Act No. 16 of 1978*. Furthermore, in 1980s, *Lalith Athulathmuthali* has contributed to the vast development of higher education by introducing *Mahapola Fund* for university students. (History of Education)

In addition to that there are number of higher education policies and amendments were introduced throughout the education history of Sri Lanka. It is important to note that the free education policy has lead to 100% primary and secondary education in Sri Lanka. Yet, there is no similar position in higher education regarding university education. The writer's aim is to analyse the current education policy in the light of jurisprudence. Accordingly, the writer is going to analyse the current education policy in relation to the Aristotalean and Rawlsian concept of justice in broad manner.

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I. The Aristotalean Concept of Justice

Treating 'Equals' equally and 'Unequals' unequally:

The law is commonly equated with justice. The very important concept of justice commonly started with the idea of justice by Aristotle. His claim is that justice includes in treating equals equally and "unequals" unequally, in part of their inequality. According to Aristotle, the man who takes too much is unfair to someone else; the man who takes too little is unfair to himself. In addition to that the just treatment of one man by another is a mean in the sense that there are two extremes to be avoided, unfair gain and unfair loss.

When the writer analyse about the Aristotalean concept of justice in relation to the current higher education policy, it is important to look at the previous education policies regarding public universities as well as private universities. The concept of justice is impossible without the clear understanding about equity.

Equity, Excellence and Efficiency are considered as the basic principles of education. When consider about the higher education in public universities, equity must be considered regarding the educational opportunity to all irrespective of their caste, class, ethnicity and location. For Aristotle, the doctrine of justice in the sense of law-abidingness is commonly called '**universal justice**'; justice in the sense of equality or fairness is called '**particular justice**'. According to Aristotalean concept of justice, every

student who has the capacity must get the equal opportunity to enroll the university, and then only the equity will be satisfied. It is important to note that while equity give equal access to higher education for all equals, excellence includes the objectives of higher education.

Admission and selection procedure of students for public universities play a significant role in higher education policy. In Sri Lanka, admission to universities is highly competitive by the result of G.C.E (A/L) examination. From 1942, the enrolment of students was increased to different disciplines. It is to be noted that during this thirty year period, student enrolment was not based on ethnic or religious division. In 1979, the number of university admissions was raised 17 fold increase during 37 years. However, the number of available places is limited. Every Year, about 200,000 students sit for the GCE (A/L) examination. While 4060% of students are qualify for university admissions, and only about 20,000 students are admitted to public universities (National Education Commission 2009).

Enrolment of students to universities is based on the policy drawn from time to time by the University Grants Commission with the guidance of Ministry of Higher Education. From 1974 the district quota system was practiced regarding privileges to students from rural areas in the issue of university admissions. According to the current higher education policy, there are different criteria followed by the UGC (National Education Commission 2009).

On the one hand, students are selected based on the all-island merit basis in the cases of Arts courses, Ayurveda, Unani and

Siddha medicine. On the other hand, the students are selected based on dual criteria all-island merit, and district-merit basis. According to these criteria, about 40% of available places are filled based on all-island merit basis. About 55% of places are allocated to 25 administrative districts based on the total population. The rest 5% of places in each course study are allocated to 16 educationally disadvantaged districts based on population (National Education Commission 2009).

The writer believes that treat someone unjustly will harm him/her voluntarily. No one wants to be treated unjustly in any circumstance. In Sri Lanka, higher education policy aims at maintaining the equal opportunity for all students in public universities. According to Aristotle, the lawless man and the grasping and unfair (unequal) man are thought to be unjust, where the law abiding and the fair (or equal) man will be just.

According to Aristotle, *'distributive justice'* is that seeks to give each person his due according to what he deserves. When we consider about the district quota system, students who are in different districts have different and unequal opportunities for their education. Students who study in developed area have more access to well-organized education system through their urban public schools, private institutions, other academic programmes and their educated family members. Even though there are free school text book, free uniform and *Navodya programmes* are established to promote educational opportunities in rural areas, still the students of rural areas have very less opportunity than the urban areas of Sri Lanka. As a result, the writer's believes that higher education policy regarding public

university admission is the reflection of Aristotle's distributive justice where students get what they deserve.

Some argue that because of this quota system, students from urban areas loss their equal opportunity. Therefore, the current higher education policy creates inequality in the Sri Lankan community. But, the reality is that students with limited resources also need to take same marks with the students from well developed school. It is injustice for any reasons.

Here, the writer observes that students from urban areas are admitted to rural district schools which are educationally undeveloped and access all opportunities from their hometowns. Consequently, they entered universities based on district merit basis (quota). On the other hand, some may argue that students from rural areas also can access educational benefits from urban or developed districts in Sri Lanka.

Therefore, the criteria for university admission have many barriers. The writer's opinion is that the opportunities for the students of undeveloped districts to access educational benefits from developed areas of the country are less with regarding the total population. According to Aristotle, injustice relates to the extremes or boundaries. Therefore, we can't able to prove injustice in the public university admission criteria.

Aristotle made two assertions as follows; 1. They aim at producing or preserving happiness or the common interest either of all or of the best or of those who hold power. 2. They prescribe conduct in accordance with the virtues, courage and moderation. (Aristotle's Theory of Justice)

Accordingly, only 5% of available places are filled by educationally disadvantaged districts. Therefore, these quota systems preserve happiness or the common interest of educationally disadvantaged districts to achieve their justice in this country.

When consider about the academic staff, non academic staff and resources for higher education there must be just and fair treatment to all. According to Aristotle, distribution of public money or other divisible public commodity like payment of citizens for service as jurymen; distribution of land on the foundation of a colony, public assistance for people must be just. The writer observes that in the recent past university academic staffs were on the strike to seek higher salaries and to increase GDP for higher education. According to Aristotle, there is nothing to prevent the work of one being better than that of the other, and that they must therefore be equated. Therefore, the academic and non academic staffs of universities must be treated equally according to their merits.

The right of private parties to establish fee-levying universities

Some argue that the establishment of fee-levying university education is unjust on the basis that private universities would harm the present free education system in Sri Lanka. According to Aristotle, what is just in distribution must be according to merit in some sense, based on wealth or noble birth or excellence. Here, personally I believe that fee levying universities can't be unjust. Sri Lanka couldn't give equal opportunity for all students with qualification for university education. Therefore, this barrier creates a big social and economical gap in the society.

When compare to other countries, the lack of university education for majority students create many crisis in Sri Lanka. Even though the free education system provides 100% in primary and secondary education, it can't be successful in university education. In the current situation, with the expansion of international and private schools there is a need for fee levying universities to students who don't get opportunity in public universities. Aristotle state that conventional or legal justice is men made laws and all can changes. A rule of justice is merely conventional.

In addition to that the Sri Lankan government permitted private parties in hospitals, transportation and secondary education. Consequently, the right of private parties to establish fee-levying universities must be given to ensure justice in the community.

II. The Rawlsian concept of justice

John Rawl is the author of the well-known *A Theory of Justice* (1971) and the more recent work *Political Liberalism* (1996). John Rawls (1921-2002) rejects the very idea of inequality even if it secures maximum welfare. In addition to that equality and liberty are important elements of justice and he defined Justice as fairness.

According to Rawls, the principles of justice for assigning basic rights and duties and determining the division of social benefits in a society are the aim of original social agreement. These types of agreements determine the types of social cooperation and the forms of government.

Through analysing the higher education policy regarding public universities, the majority districts are considered as the educationally disadvantaged districts. Therefore, in order to achieve better political and social justice students must be given equal opportunity for their higher education.

Furthermore, the principles of justice can't be found through human rationality, nature, religion, intuition but in the '*original position*'. Each person seeks such principles which will give him or her greatest opportunity of accomplishing his or her chosen conception of the good life. He argues that the people, who are in the original position, may choose the following principle;

1. 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.
2. *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. (A Theory of Justice, p.212)

Equality for all:

Accordingly, we can analyse every highlighted concept of justice one by one in relation to the current higher education policy of Sri Lanka. First of all we move to the first concept of equality for all. There must be equality in ensuring basic liberty of

social life like caste, class, gender differences. In addition to that there should not be discrimination on the basis of wealth or birth (social status). If we apply equal liberty principle to all without any district quota, educationally disadvantaged districts only developed, urban students can access to higher education in public universities.

Social and economic inequalities and maximization of liberty:

Rawls argue that when the natural liberty and fair equality of opportunity could not give them the prosperity, the people in the original position will select the „difference principle“. We can limit the liberty because of the maximization of liberty itself. Statistics shows that Sri Lanka needs additional universities and the university admissions of students must be increased. When we consider the number of student admission in other countries, we need to set up a number of new universities in Sri Lanka. With the development of other infrastructure like health, transport, electricity it is not an easy task to establish more public universities.

The students have the liberty to choice their higher education in relation to their interest courses according to their merits. However, as a developing country to achieve justice we have to limit the liberty for the maximization of liberty of the country through affirmative action or reverse discrimination. Therefore, the writer believes that the university admission based on quota basis is close to the John Rawls“ idea of limitation for the liberty and inequalities for the greatest benefit of the society.

Greatest benefit of the least advantaged people:

It means that the worst anyone could be the „least advantaged“, It can be entirely based on reason rather than either total equality or some form of greater inequality. John Rawls“ second principle includes two important limitations like „*just savings principle*“ and availability of job to all. In other words, the people who are in the original position must ask themselves how much they would be willing to save at each level for their future generation.

Take for example, In India early generations of untouchables or low caste people got opportunity through quota system which was determined by scheduled caste. But, unfortunately nowadays third generation of the low caste students get such privileges. According to Rawls, this is unfair and unjust. The reason behind is that these low caste people became middle class by improving their educational opportunities. Therefore, they can't be considering as the least well off.

This situation is totally different in Sri Lanka. Because, state has listed majority districts as educationally disadvantaged districts. Rawls didn't look at personal justice but about political justice. In the USA, *Justice Harry A. Blackmun* stated that “...in order to treat some person equally we must treat them differently”. Accordingly, in Sri Lanka, without the district quota system, the students from underdeveloped districts can't secure a place in a good university due to the lack of resources while students from urban schools fill the place in such universities. Therefore, the quota system for university admission in public

universities is greatest benefits of least advantaged.

The right of private parties to establish fee-levying universities:

When consider about the idea of the greatest benefit of the least advantaged, the right of private parties to establish fee-levying universities must be ensured. The reason is that on the other hand students who get education from international and private schools loss their opportunities in public universities. Therefore, they became the category of least advantaged. Therefore, the establishment of fee-levying universities can create opportunities for those students. Then only all can achieve John Rawls“ justice with supporting just institutions, mutual respect, mutual aid without harm and be faithful in a broad manner.

Offices and positions open to all:

According to Rawls, institution should work for the maximization of liberty not for the individual. In Sri Lanka, the UGC supervise the public university system according to the national higher education policy. It should be accessed by all. Laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Therefore, the higher education policy of Sri Lanka must be reformed in accordance with the needs and changes of the society to ensure the maximization of liberty.

Conclusion

According to Aristotle, Sometimes Equality became injustice. In this situation equity is important. Special needs must be considered in every situation. Reasonable opportunity must be considered. Therefore,

state must consider about the social needs of the society and reform the policies to give right to the private parties to establish fee-levying universities. The writer argues that this is not against the Aristotle's theory of justice.

There are many critics on some features of Rawls' idea of justice like original position and distribution of social goods. However, for Rawls, justice as fairness is not to provide a universal standard of social justice. His idea of justice is a practical one, because it leads to modern constitutional democracies in a broad manner. But, the veil of ignorance is not practical in the current world. By analysing the current higher education policy, in a Sri Lankan pluralistic society with several different interests, John Rawls' theory of justice gives people to achieve their political and social position based on hypothetical forum.

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