A Study of Discrimination and Related State Frameworks

Anshuman Bunga, Alhad Sethi, Chehak Malhotra, Mehul Arora, Srimant Mohanty

Indraprastha Institute of Information Technology, Delhi

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Dr. Manohar Kumar

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The Morality of Discrimination

The concept of discrimination relates to disadvantage. Discrimination, in essence, is partiality in terms of rules, behaviour, or application of certain norms to different sections of people. It is believed that the application of bias in society, resulting from the imposition of any sort of disadvantage to a section, also qualifies as Discrimination. Discrimination in its moralised sense can be broadly distinguished into direct, indirect, and organizational/structural discrimination. Direct discrimination refers to the specific targeting of a section of society to discriminate them from the rest (Schiek et al., 2007). In Indian society, it has been observed that people from particular castes are prohibited from entering temples. This, being a solid example of Discrimination, is enforced explicitly to prevent that specific group from praying in the temples; hence it is a case of direct Discrimination (Jost et al., 2009). When an imposition in the form of legal order or rule is passed, there may be a disproportionate disadvantage to a certain section of the population. This act may not be intentionally designed to cause an unpleasant mental state or bias, but it has the potential to be discriminatory in nature. Such Discrimination is indirect Discrimination. To further exemplify this, the reservation of females for entry into courses at educational institutes and job sectors amounts to gender-based indirect Discrimination as this reservation favors one gender while not permitting the same privilege to the other gender, consequently putting them in a disadvantageous position. However, the justification for such reservation usually is to encourage more female participation in these sectors. Therefore, although there is explicit Discrimination, the intention is not directed to target the other gender negatively. Organizational Discrimination says that the discrimination acts are implemented as a group or are collective. This type of Discrimination is known as "organizational discrimination". Here, the discrimination acts are at the discretion of the organization and are decided and implemented by the organization in an organized way. This type of Discrimination cannot be explained universally. Institutional/Structural Discrimination is one where Discrimination normally arises as a consequence of the longtime disadvantages inflicted on a section of society (Ture et al., 1992). One may justify this Discrimination as not wrong as it is formulated keeping in view the long-term disadvantaged class, who need to be uplifted. Reservation in education in some institutes of specific classes/castes/religions in our society exemplifies this.

Even at first glance, Discrimination appears to be an act of immorality, and in most political or legal debates, 'discrimination' is used in a moralised sense. Discrimination, however,

can have moralised and non-moralized concepts. The moralised concept is the imposition of a wrongful act that negatively affects a section of society or a social group. In contrast, the non-moralized concept of Discrimination simply refers to a wrongful act. Thus, one may emphasize here that wrongfulness of Discrimination is associated to the discriminatory act in relation to a social group.

A Tri-Perspective Analysis of Discrimination

By and large, modern society condemns discrimination and decries it as immoral (United Nations, 1969). From a philosophical perspective, however, the issue remains unclear and needs to be clarified. This section examines various philosophical critiques of discrimination and the non-trivial moral arguments for and against it.

Utilitarianism

Utilitarianism is a philosophical theory that conjoins consequentialism and hedonism: it argues that all actions must work towards maximising the total amount of happiness experienced by the members of society. Accordingly, any activity or practice is quantified by the joy it produces: if discrimination provides a net positive utility in society, it can be considered morally correct. (MacAskill, 2022)

For example, if it turns out that younger people are more 'efficient' at translating resources into happiness than older people, the utilitarian would be obliged to allocate more resources to the young. Through this example, we see that utilitarian philosophy holds discrimination to be correct so long as maximal utility is maintained.

Libertarianism

True to its name, libertarianism enshrines the ideals of liberty and autonomy. The philosophy seeks to maximise one's freedom from external influences. Libertarians regard the individual as the basic unit of society and emphasise the dignity of each individual. Individuals have rights, not just as guaranteed by the government but as they are inherent in the nature of human beings. (Boaz, 2019)

One can exercise their liberty so long as another individual's liberty isn't harmed. Accordingly, discrimination would be allowable under this philosophy if the other party wills to it. However, it is rarely the case that discrimination is consensual, making it morally incorrect.

Kantian

Kant believed morality must be rational and focused on deriving a universal moral framework of duties and obligations from the 'categorical imperative.' This focus on universality led him to formulate the categorical imperative: "act only in accordance with that maxim through which you can at the same time will that it become a universal law." (Kant, 1785)

To test the practice of discrimination, we first look at the maxim underlying the action: "If I want something, I can get an advantage by treating a certain community unjustly" What would happen if everyone were to discriminate? Everyone would be discriminated against, putting them at a disadvantage in other aspects: neutralising the advantage gained via discrimination. The maxim included the idea of an advantage, but if, when universalised, advantages cease to have any meaning, then we could not get an advantage. Since we cannot universalise the maxim, we should not follow it; thus, we derive the duty not to discriminate. (Kranak, n.d.)

Philosophical Analysis: State Frameworks to Prevent Discrimination

When the constitution of a state provides its citizens with the human right of equal treatment, the responsibility of ensuring this is on the state. The rights enjoyed by the citizens of this state are an institution provided and protected by the state. Just like the institution of education manifests in the form of schools and tutoring, this institution that provides everyone equal treatment must also be given a form. The manifestation of such an idea can be done through a state framework.

Implementation and interpretation of ideas differ from person to person, and states are similar in this respect. Each country faces the same challenges in different ways, and so frameworks are not fully universal but are tailor-made for the state in question. It is, therefore, the responsibility of the state to survey their 'lands', to assess the objectives of the framework and how to achieve them.

In democratic settings, the framework to provide the necessary rights to the people may be chosen and accepted by the people as a whole. The democratic system is naturally suited to create equal citizens, and so with its frameworks and tools, the state may formulate a tailor-made framework to provide the promised rights to the people. Non-elected bodies may be discriminatory in nature, but they still boast of the capability to boost the quality of life for its citizens through many schemes and once again, frameworks. The ruler in this system may choose

to provide human rights to the citizens at their own discretion, with or without consulting the citizen in question. Rights, or laws as such may be simply forced onto the citizens.

The state, as it will be seen, need not be a government, but a governing body. When there is a body of individuals whose decisions affect a group of people on a daily basis, they may also be required to create a framework that ensures equal treatment within their community. Hence the 'state' in the context of this paper is extended to corporations, committees and other bodies as well. Even within the kinds of states there lies differences in ideology. This paper, which aims to approach discrimination through the utilitarian eye, the libertarian eye and the Kantian view, in itself provides different perspectives to give form to a framework against discrimination. The paper may assert that each state has a unique challenge against discrimination, but this does not ignore the fact that theory must be brought to practice in this context. A framework, once created, must be implemented to bring real change. A framework that is self-contained, which provides ease of implementation will be in a position to bring better results in contrast to frameworks that ignore this design principle. Furthermore, it will be up to the state to determine if it has achieved the objectives through this framework, an analysis of which leaves little room for bias.

A layer of complexity to the thought experiment is added once again when one comes to realise that ideas that led to a framework may be temporary in nature. A framework to prevent discrimination will have to face continuous tests against time, succeeding which, it will be strengthened, and failure to do so leading to the rise of alternative frameworks. In light of this information, states and organisations aim to create frameworks that stand this described test of time and stay on the right side of history. The following case studies discuss frameworks built under the utilitarian, libertarian and Kantian views.

Case Study: Existing Frameworks against Discrimination

The International Olympic committee developed a Framework on Fairness, Inclusion, and Non-discrimination on gender identity and sex variations to ensure that individuals are not excluded on the basis of their gender identity. A 10-principle guiding approach was given to each sporting body to develop its eligibility criteria. From a utilitarian point of view, this ensures maximum happiness for the greatest number of people as the policies are not one size fits all but are tailored to give everyone a fair opportunity and include all athletes. The decisions are made

on goodwill to create an inclusive framework, and no one's liberty is harmed as everyone is given a fair chance and unfair advantage is regulated.

In contrast, reservation for historically disadvantaged groups may not be utilitarian, as people have greatly opposed it. A majority believe it is unfair to offer a seat to a lower-qualified candidate over a higher-qualified one. One can argue for the removal of the reservation criteria so that the majority of the people are happy. Here the minority is given the pleasure of opportunity while ensuring that the majority faces as less pain as possible (Bentham). It is not precisely libertarian either, as people believe that this does hamper their opportunities. According to Kantism, It is undoubtedly laid out to uplift the backward class. Still, the state cannot universalise it across all spheres as people's historic disadvantage depends on various factors.

Another example is the recently framed female supernumerary quota rule in IITs. The supernumerary seats- additional to the existing lot explicitly reserved for women - aim to increase female representation in a male-dominated sphere; hence it has a sound Kantian moral basis. Looking at it from a libertarian point of view, it does not harm anyone's liberty or deprive them of any right. It simply balances out the hidden disadvantages an average female aspirant faces.

Sex determination tests on pregnant women have been illegal since 1994 in an attempt to curb female foeticide, resulting from a gender bias social construction that discriminates against women. The people of Punjab gave utilitarian justifications for this discrimination. They prefer having a son over a daughter to run their business, family protection, old-age insurance, and descent. Also, viewing this law from a libertarian point of view, people's liberty and autonomy are compromised.

The Equal Remuneration Act, for example, states equal pay for men and women for the same work. There have been issues in achieving this practically. A survey of IT professionals said that only 14% of women generally have more than 11 years of work experience, which is a factor for the difference in gender pay parity. If we do not take into account past work experience here and offer a similar wage regardless of it, people might be unhappy and label this as unfair. Hence it is not precisely utilitarian. The policy has a solid moral basis for creating equality. Thus, it fits the Kantian point of view.

Other acts directly bar any discrimination, such as the HIV Act (2017), which prohibits discrimination and hate propagation based on HIV. It is relevant to utilitarian, libertarian, and Kantian views.

Conclusion

In sum, discrimination can be viewed as immoral when done to create and impose a bias wrongfully. Viewing it from the lens of utilitarianism, libertarianism and Kantism offers somewhat varied views that one may try to accommodate while dealing with discrimination. The analysis of the topic from the perspective of a state and how it deals with discrimination by setting up frameworks shows that arriving at a static framework is difficult owing to the diversity of moral norms and practices over societies, historical periods, and cultures. While the framework and the parameters to judge it might be different according to the context of the state's view on discrimination, the parameters they set need to be self-contained and independent of an external bias. There are several examples of such frameworks, ranging from the International Olympic Committee's Framework on Fairness, Inclusion, and Non-Discrimination based on gender identity and sex variations to the Equal Remuneration Act and the HIV Act (2017). The frameworks developed by the states to provide their citizens with the human right of equality need to be regulated, adapted, and regularly maintained while aiming to provide equal opportunity, resulting in a decrease in bias and discrimination. Therefore, it is essential that the framework set up by a state is not only practical but should also be justifiable in terms of its impartiality and independence.

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