

# Performance Assessment Arrangements & Justice in Employer-Employee Relations

**Jerome Joseph**

---

*This paper seeks to re-examine questions of justice and its modalities in the context of performance assessment practice in organizations by drawing upon the critical and insightful debate by Amartya Sen in 2009 with John Rawls work in 1971. The discussion is situated within the Rawlsian preoccupation with the crafting of the “perfectly just institutions” and the Amartya Sen submission that the focus should be on dealing with “manifest injustice” in order to come up with a theoretical and methodological positioning which can provide an alternative frame for future research and practice related to performance assessment in employer-employee relations.*

**Jerome Joseph** is Chair Professor (Industrial Relations), XLRI School of Management, Jamshedpur 831001. E-mail: jerome@xlri.ac.in

## Introduction

Questions of justice keep arising in the performance assessment arrangements and practices domain in employer-employee relations dynamics in organizations. Employers seeking to align performance assessment with the ‘results and returns’ refrain, propagate the view that “a person deserves an outcome if he/she has met the preconditions for obtaining it” (Lerner et al., 1976). Employees, on the contrary, compare outcomes with ‘similar others’ and are skeptical of the ‘rules and conventions’ which produced the outcomes (Hareli, 1999) very much in line with equity theory which suggests that employees evaluate fairness in the context of performance assessment practices by comparing their own ‘contribution to reward’ ratio to that of similarly situated others (Adams, 1963; Adams, 1965; Homans, 1974; Walster et al, 1978). Rawls (1971:4) recognizes this concern when he acknowledges that “although a society is a cooperative venture for mutual advantage, it is typically marked by a conflict as well as by an identity of interests”.

The Rawlsian view of justice is founded on the premise that the crafting

of just institutions is a prerequisite for the dispensing of justice - "justice is the first virtue of social institutions, as truth is of systems of thought" (Rawls 1971:3). Justice can also be viewed from an alternative perspective as proposed by Sen (2009: ix), that the aim of a theory of justice "is to clarify how we can proceed to address questions of enhancing justice and removing injustice, rather than to offer resolutions of questions about the nature of perfect justice." In a sense, therefore, it can be hypothesized that the employee perspective on the performance assessment and justice front, which often amplifies into resentment and resistance, is triggered by the contradiction between the employer claims of a "perfectly just institution" and the lived experiences of organizational injustice.

Just as considerations of justice are important in social relations, organizations are not exempt from justice concerns - "We argue that to the extent that business organizations are an artifact of social cooperation and are central to distributing the fruits of that cooperation by way of fair wages, they can be considered as important justice delivery instruments within a society. In other words, business organizations play an important role in helping societies operationalize (or indirectly deliver) their notions of justice" (Shrivastava et al., 2016:101). It can be argued, therefore, that the delivery of organizational functionalities cannot be divorced from the dispensation of justice. What is needed is a theoretical positioning which can guide both practice and research in the justice delivery arena of

business organizations. It is with this in view that this paper seeks to engage with the debate Amartya Sen (2009) initiated with John Rawls (1971). The next section, therefore, proposes to examine research findings related to performance assessment and justice as a first step towards bringing the Rawls-Sen debate into play in order to identify a more sustainable theoretical positioning on the issue.

### Theoretical Positioning

Performance assessment has become central to the intensification of employee resource productivity (Judge & Ferris, 1993; Cardy & Dobbins, 1994; Chen & Kuo, 2004). Its functional centrality is crafted through individual employee role-organizational goal alignment (Guest, 1997; Fletcher, 2001) with the quantification of performance assessment as means (Ilgen et al., 1979) and cost reduction oriented profit enhancement as ends (Cleveland et al., 1989; Holbrook, 2002). However, instead of enhancing performance, performance assessment not only diminishes ability to perform (Hendry et al., 2000:46) but also violates human and professional dignity and respect in performance realizations (Skarlicki & Folger., 1997). In addition performance assessment reinforces

**Instead of enhancing performance, performance assessment not only diminishes ability to perform but also violates human and professional dignity and respect in performance realizations.**

power relationships which are often perceived as being open to abuse (Townley, 1993) and enhanced hierarchical dominance also negatively impacts the nurturing of a quality oriented collective culture (Grint, 1993; Soltani et al., 2006). The power dynamics induces a form of false managerial consciousness wherein the resultant employee disaffection leading to intention to quit is dismissed as unrelated to outcome of inequity concerns (Dobbins et al., 1990). Studies also suggest that the tendency of subjects towards comparative and relative evaluation of the fairness of performance review outcomes is considered by managements as a threat to system compliance (Salimaki et al., 2009; Scott et al., 2009).

Research, in the context of the assertion of managerial prerogatives through performance assessment systems, points towards subjectivities of distortions (DeNisi & Williams, 1988; Longenecker et al., 1987) in the design of measures, in implementation, and in distributive outcomes policies (Folger & Cropanzano, 1998) in both the private and public sectors (George, 1986; Meyer, 1991). The implicit undercurrents are further muddled by the performance reviewer evaluations being biased by cognitive and motivational factors (Longenecker et al., 1987; DeNisi & Williams 1988) combined with reviewer inaccuracies in ratings (Longenecker., 1987; Folger et al., 1992), thus rendering the findings of measurement based performance assessment questionable in the eyes of the reviewed.

Faced with these problems performance systems managers committed to

measurement and quantification turn to further refinement of performance 'analytics'. Attempts to make changes in line with this approach meet with resistance from employees - "new (and presumably improved) appraisal systems are often met with substantial resistance" (Banks & Murphy, 1985:335). However, research suggests that this does not change negative perceptions as far as justice is concerned (Bernadine & Beatty, 1984; Cascio, 1981; Lawler, 1967). Concerns over justice and outcome inequities are linked to negativities related to performance assessment systems (Landy et al., 1978; Taylor et al., 1995; Erdogan, 2002; Jawahar, 2007; Narcisse & Harcourt, 2008; Greenberg, 1990). If there is a perceived fairness deficit, the effectiveness of appraisal feedback becomes negligible (Ilgen et al., 1978).

Since the constructions of performance assessment justice are crafted by employer controlled hierarchies, how these constructions are perceived and experienced by employees also determines employer credibility (Jawahar, 2007; Narcisse & Harcourt, 2008; Landy et al., 1978; Folger & Konovsky, 1989; Tyler, 1987; Bies & Shapiro, 1987; Folger et al., 1989; Taylor et al., 1998). Studies have also established that positive perceptions of equity evoke positive perceptions of the system; high outcome acceptability is linked to perceived fairness of the systems; in fact, positive perceptions

**Positive perceptions of assessment systems also induce tolerance for negative outcomes.**

of assessment systems also induce tolerance for negative outcomes (Greenberg, 1987; Lau & Moser, 2008; Lind & Tyler, 1988).

Equitable policies and procedures, improving appraiser conduct and provision for appeals enhance perceptions of fairness (Cloutier & Vilhuber, 2008; Scott et al., 2009). However, research clearly shows that whatever changes are brought about in the systems and processes, negativities persist on the outcome inequities front (Cardy & Dobbins, 1994). Research indicates that in order to deal with a persistent sense of outcome inequities among subjects, the discourse in both the world of practice as well as of scholarship has broadened in scope because, as suggested by Dipboye and Portbriand (1981), Greenberg (1986) and Cropanzano, Bowen and Gilliland (2007), engineering positive perceptions of justice tend to evoke positive sentiments towards appraisal processes and outcomes. Empirical studies towards this end have identified distinct justice dimensions - procedural, distributive (Cohen-Charash & Levy, 2001), interactional (Bies & Shapiro, 1987) while Colquitt et al (2001) and others (Ambrose & Shminke, 2009; Jawahar, 2009; Thurston & McNall, 2010) added informational justice as a fourth variant. Colquitt (2001) also validated the four construct model through empirical validation.

The underlying employer logic appears to be that, given the intractability of the dilemma of distributive justice, the game plan appears to be to deploy the concepts and measures of procedural and

interactional justice in trying to either reduce outcome negativity or at least to try and induce a "sense" of acceptability of outcome inequities. Consequently, the research line adopted to operationalize procedural justice in to seven process elements serve the purpose of assuaging negative sentiments surrounding outcome inequities which are the main sources of disenchantment (Folger & Bies, 1989). If procedures are perceived as fair, there is evidence of some tolerance even for outcome injustice (Sabeen & Mehboob, 2008); even if rewards are low, higher commitment is likely; if procedures are perceived to be unfair, if rewards are low, lower commitment is likely (Lau & Moser, 2008). Taylor et al. (1995) reported that employees whose managers trained to emphasize due process in their appraisals had more favorable reactions to the appraisal process. Employees blaming organizations for low rewards are less likely to do so if procedures are perceived to be fair (Lau, Wong & Eggleton, 2008). Satisfaction with performance assessment outcomes like pay raises (Cloutier & Vilhuber, 2008; Chiaburu & Lim, 2008), promotions (McFarlin & Sweeney, 1992) and retention (Cloutier & Vilhuber 2008; Chiaburu & Lim, 2008) are impacted by perceptions of fairness related to the criteria which determine the outcomes.

Similar conclusions can be drawn on the interactional justice fronts. 'Behavioral' operationalization of interactional fairness has been found to impact appraisal acceptance and satisfaction (Loi et al., 2009; Thurston & McNall, 2010) and the attitude of employees towards

appraisals (Ambrose & Schminke, 2009; Loi et al., 2009; Moorman, 1991). Interactional fairness has a positive impact on job satisfaction, satisfaction with supervisors, conflict handling, trust in management (Alexander & Ruderman, 1987); higher levels of commitment to the organization (Konovsky et al., 1987); better performance (Lau & Moser, 2008).

These studies, though showing that procedural and interactional fairness have a positive impact on six outcome behaviors, also provide evidence to support the 'obfuscation of outcome inequity' thesis wherein better procedures even induce tolerance for outcome injustice. Procedural and interactional justice research clearly shows that practices are not only meant to act as palliatives in order on the one hand to reduce pervasive negativities and hostile sentiments in the performance assessment context but also on the other hand to become instrumental in inducing a grudging tolerance for outcome injustice, lower rewards and deprivations.

Further, the critical appraisal of relevant studies referred to above shows that procedural fairness has been depicted as process *parity* just as interactional fairness is framed as a certain level of *civility* in the appraisal process. But the key question is left unanswered - when managerial constructions of justice are articulated as procedural parity and interactional civility, does this change the reality of inequities related to outcomes? Or do constructions of parity and civility actually camouflage inequity by acting as palliatives which lull subjects into a se-

dated suspension of resentment against appraisal outcomes?

Parity and civility may help in creating positive perceptions related to the appraisal process but the real problem lies with distributive justice. Literature has shown that in spite of the induction of procedural and interactional justice, experiences and perceptions related to distributive justice continue to be negative on in the performance assessment practice context. Theoretically therefore one can take a position that what is relationally and procedurally fair by employer standards of fairness may be perceived as unjust by employee yardsticks of distributive justice.

**What is relationally and procedurally fair by employer standards of fairness may be perceived as unjust by employee yardsticks of distributive justice.**

The next section examines whether there is a methodological argument in Rawlsian justice constructions and a plausible counter argument discernible in the Amartya Sen approach to unravel not only the theoretical position which has emerged but also to provide guidance for research to be able to decode the dilemma of the theoretical position.

### Methodological Positioning

The studies referred to so far suggest that for the most part the relationship between justice and performance assessment has been examined using

measures and scales (Folger & Konovsky, 1989; Moorman, 1991). A careful examination of the statements constituting the scales suggests that they are akin to what Weber refers to as “ideal types” (Weber, 1949:91) – “In its conceptual purity, this mental construct cannot be found empirically anywhere in reality. It is a utopia”. Harvey et al. (1980:17), in the context of measuring the sociological construct of alienation, suggest that each of the items in the scales and even the combination of these items into a measurement index signify a “restrictive epistemology” which constructs “partial conceptions” as representations of phenomena and can only elicit decontextualized responses from respondents. The concepts, measures, responses and findings within such a methodological positioning may represent and characterize a ‘just’ utopia in the Weberian sense but may not necessarily reflect and capture the lived experiences of injustice faced by employees.

A plausible explanation for this contradiction can be sought in the Rawls constructs of the “original position” and the “veil of ignorance”. For Rawls, “the original position is not, of course, thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice” (Rawls, 1971:10). The main protagonists place themselves in an imaginary state of ‘original’ consciousness completely detached from any particular view or position or preference or interests of any participating constituency in a pristine

state of freedom as a precondition for spelling out the principles of justice and fairness which will then go on to inform all subsequent collective interactions. The principles which evolve from the Rawlsian “original position” are sustainable because of what he terms as the “veil of ignorance” – “The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances.” (Rawls, 1971: 10)

According to Rawls, such an independent and impartial design of just institutions founded on the “original position” and the “veil of ignorance” almost magically results in just principles and fair processes which facilitate acceptance of outcomes as just. “The original position is, one might say, the appropriate initial status quo, and thus the fundamental agreements reached in it are fair. This explains the propriety of the name “justice as fairness”: it conveys the idea that the principles of justice are agreed to in an initial situation that is fair.”(Rawls, 1971: 10)

It is evident from the earlier review of studies that neither of the conditions for the applicability of “justice as fairness” – the notion of “original position” nor the concept of “veil of ignorance” - is applicable to the performance appraisal arrangements and practices in organizations. Organizations have strategic employer interests of ‘results and returns’ in view and interactional and procedural justice constructs operationalized as ci-

vility and parity by employers are deployed to manage negativities related to distributive justice. Employer claims of fair arrangements and practices do not measure up to the twin tests of impartiality and independence which are intrinsic to the Rawlsian theory of justice as fairness.

**Employer claims of fair arrangements and practices do not measure up to the twin tests of impartiality and independence which are intrinsic to the Rawlsian theory of justice as fairness.**

In the absence of the independence and impartiality imperatives enjoined by Rawls for crafting “just” institutional practices, employer claims of fairness are not perceived as credible by employees. The review of studies related to performance assessment practice shows that employers are clearly focused on the crafting of just institutions to protect their own interests and related research is preoccupied with devising empirical measures and scales representing idealized justice signifying ‘restrictive epistemologies’. Sen (2009:6) characterizes this line of approach as “transcendental institutionalism” in which “it concentrates its intentions on what it identifies as perfect justice, rather than on relative comparisons of justice and injustice..... The inquiry is aimed at identifying the nature of ‘the just’, rather than finding some criteria for an alternative being ‘less unjust’ than another.” As we have seen earlier in the context of performance assessment practice, idealized facades of interactional and procedural fair-

ness camouflage the lived experiences of outcome inequities. This is simply because the research preoccupation is with employer constructions of “perfect justice” in all its “ideal type” expressions rather than on focusing research based on specific instances of injustice. Sen again laments that “in searching for perfection, transcendental institutionalism concentrates primarily in getting the institutions right, and is not directly focused on the actual societies that would ultimately emerge. The nature of the society which would result from any given set of institutions must, of course, depend also on non-institutional features, such as actual behaviors of people and their social interactions” (Sen, 2009: 6). Institutions and practices are not just by themselves but justness of these mechanisms are a function of actual behaviors of people performing defined roles in organizations in concrete contexts dealing with lived experiences of injustice.

Sen proposes an alternative approach to methodological positioning with the proposition that his “aim is to clarify how we can proceed to address questions of enhancing justice and removing injustice, rather than to offer resolutions of questions about the nature of perfect justice (Sen, 2009:ix). While the Rawls preoccupation is with the creation of “just” institutions, Sen gently directs our attention towards “ways of judging how to reduce injustice and advance justice, rather than only aiming at the characterization of perfectly just societies – an exercise which is such a dominant feature of so many theories of justice in political philosophy today”.

Sen also points towards an alternative formulation to “transcendental institutionalism” in which “realization-focused comparisons were often interested primarily in the removal of manifest injustice from the world that they saw”. (Sen, 2009: 7) We have seen in the review of studies related to performance assessment and justice that the management claim that the focus is on creating fair practices is belied by the persistent disaffection of the rank and file on account of deficiencies on the distributive justice front in spite of employer efforts to reduce negativities through interactional and procedural justice practices. Employees on the other hand are not primarily enamored of management claims of commitment to the creation of perfectly just institutions but are more concerned with dealing with actual instances of injustice. Research also shows that the resultant negativities associated with performance measures, processes and outcomes often lead individuals and collectives to put up a resistance to manifest injustice whenever it occurs.

Employer propensity is towards designing seemingly ‘just’ arrangements and practices and methodological positioning within this frame is committed to crafting concepts and measures which only elicit aspirational responses of ‘what ought to be’. On the contrary, employee focus is on manifest injustice with a methodological positioning located in the realm of the experiential ‘what is’. The methodological insight which emerges when seeing Rawls through Sen’s lens is that the ‘methodological-positional’ options are a choice between the methodology

of the aspirational and the methodology of the experiential. The methodology of the aspirational of ‘what ought to be’ has its focus on researching performance assessment and justice using behavioral measures in an idealized abstract form while the methodology of the experiential is directed towards explaining instances of manifest injustice.

On the question of research on ‘manifest injustice’ from a ‘lived experience’ perspective, according to Sen – “importance must be attached to the starting point, in particular the selection of some questions to be answered (for example, ‘how justice would be advanced?’), rather than others, e.g., ‘what would be perfectly just institutions?’” (Sen, 2009: 9). And the goal is with seeking the advancement of justice by struggling for “actual realizations”.

**“Employee lawsuits can be seen as a “strong” form of negative employee reaction.**

One of the forms of “actual realization” available to the aggrieved employee is to seek to remedy manifest injustice through recourse to legal action. As Taylor et al. (1995) suggest, “Employee lawsuits can be seen as a “strong” form of negative employee reaction. Judges generally take appraisal systems as given, and do not wish to act as “super personnel departments” (Barrett & Kernan, 1987:496) but, “what they seek to determine is whether the system was applied fairly in the case at hand” (Veglahn, 1993). As Thibaut and Walker (1978:556)

argued - “the primary goal of the legal process must be the attainment of distributive justice between the parties.” The employer-employee exchange before an independent and impartial justice system generates not only factual data related to the litigants but also flushes out alternative constructions as depicted in the Sen-Rawls debate on the question of justice. “By allowing groups to realize that individual members have different perceptions of justice, discussion of their differences may provide a basis for understanding how differences may provide a basis for understanding how groups develop justice principles, the legitimacy of those principles and how conflicts over justice are resolved (Hogtvedt, 2005:17)

Thus judicial scrutiny of employer-employee disputes is a potent investigative site for research on manifest injustice. This methodological positioning follows a pertinent point made by Sen (2009: x) – “Reasoning and impartial scrutiny are essential. However, even the most vigorous of critical examination can still have conflicting and competing arguments that are not eliminated by impartial scrutiny.....but I emphasize here that the necessity of reasoning and scrutiny is not compromised in any way by the possibility that some competing priorities may survive despite the confrontation of reason. The plurality with which we will then end up will be the result of reasoning, not of abstention from it.” The advantage from a research perspective is the additional research advantage of providing researchers a window in to alternative constructions of justice of con-

tending protagonists embedded in the factual and legal submissions before the judiciary.

The proposed method of investigation is to relate the theoretical and methodological positioning discussed thus far to a case of manifest injustice experienced by an employee who challenged employer action before the Supreme Court of India (INSC 885, 12 May 1988). The analysis of the case will examine - a) the aggrieved employee’s argument to augment his/her case in his/her plea for redressal of manifest injustice; b) employer reasoning before the Supreme Court when its ostensibly “perfectly just” performance assessment systems, processes and outcomes were challenged by an aggrieved employee; c) the judicial marshalling of facts and interpretation of relevant case laws in pronouncing her judgment which provides grounded insights into theoretical and methodological positioning in justice constructions in the performance assessment context.

### **The Case Facts**

The case is an instance of the lived experience of an employee of the Indian Border Roads Organization of being denied promotion in spite of years of consistently high ratings in the annual performance appraisal. The rules related to promotion to higher levels were three-fold: a) The minimum qualifying period between one level and another was five years; b) During the interim five year period, the manager should have got an overall final rating of ‘Very Good’ to be

declared eligible for promotion; c) The candidate will have to face an interview before the 'Departmental Promotion Committee'.

As per facts recorded in the case before the Supreme Court, Dev Dutt, was promoted to the post of Executive Engineer on 22.2.1988. He was given a final overall rating of 'Very Good' in the annual performance appraisal ratings from 1988-1993 and in February 1993 he was declared eligible for promotion to the higher post of Superintending Engineer. However, the departmental promotion committee was convened only on December 12, 1994. In the interim period Dev Dutt's performance rating for 1993-94 was a final overall 'Good'. Since Dev Dutt did not have a final rating of 'Very Good' for the immediate previous 5 years (1989-1994) he was declared ineligible for promotion. Dev Dutt's juniors were promoted. Dev Dutt's attempt to represent his grievance with his employer on the lower rating being denied, he filed a writ petition on 21.8.2001 before the Assam State/Guwahati High Court only to be dismissed by the single judge; on 26.11.2001, Dev Dutt went on appeal to the Division Bench of the Guwahati High Court which was again dismissed. Dev Dutt persisted with his quest for justice by filing a Special Leave Petition before the Supreme Court Civil Appellate Jurisdiction on 12.05.2008.

The analysis and interpretation of the case facts and legal reasoning of the litigants undertaken from three perspectives – the employee perspective, the employer perspective and the judicial

perspective—help in grounding theoretical and methodological positioning within the alternative Rawls-Sen justice constructions being examined in this paper.

### **The Employee Construction**

The Dev Dutt case facts show clear case of "manifest injustice" in search of vindication. The denial of the right to be heard in the context of the lower rating was experienced as a denial of an opportunity to present evidence to show that the lower rating was unfair, to provide relevant data to justify an upgrade from a "good" entry to a 'very good' entry, to try and reverse what was perceived as an unfair elimination from the 'zone of consideration' for promotion to a higher level in the organization (INSC 885, 2008: para 6). The adverse consequences of elimination from the zone of consideration for promotion on grounds of what is claimed by management to be "not at all" an adverse entry was experienced by the employee as a violation of the principle of effort-reward "reciprocity" (Eckhoff, 1974; INSC 885, 2008:para 7/22). Besides, when the system was challenged on the question of what constitutes adverse ratings, the employer interpreted the rules, procedures and laws in an arbitrary and opportunistic manner thus intensifying a sense of injustice (INSC 885, 2008:para 11-12). The interpretation of rules and case laws with claims of standardization and uniformity as proof of a "perfectly just institution" was perceived as opportunistic obfuscation of manifest injustice (INSC 885, 2008:Para 12-13).

Non-communication of lower ratings at any level in a rating scale and denial

of the right of representation to redress any injustice as has happened in this case destroyed an otherwise outstanding career, shattered the morale and motivation of a high performing manager and also damaged the organization by the promotion of a less endowed, less competent, lower rated, junior manager and seriously dented the effort-reward reciprocity in employment relations (INSC 885, 2008:para 24).

### **The Employer Construction**

The employer stand before the Supreme Court was that the performance system was a 'perfectly just institution' standardized across all employees. Then they went on to argue that - "if the graded entry is of going a step down, like falling from 'very good' to 'good', that may not ordinarily be an adverse entry since both are a positive grading"(INSC 885, 2008:Para 21). Therefore, it was contended that there was neither lack of fairness nor any illegality on the part of management in not communicating the lower rating (INSC 885, 2008:para 7).

The stance taken by the employer showed that managerial fairness was constructed as standardization of the performance appraisal system, systemic parity in terms of processes adopted to review performance and uniformity of application of benchmarks across all employees in producing performance linked outcomes. Even when it related to outcomes, fairness was projected as a function of whether management had used the same measures, same bench-

marks and same processes in determining the outcomes.

### **The Judicial Construction**

Reviewing the litigant's representations, the Supreme Court Justices declared employer notions of fairness in its performance appraisal practice as violative of the principles of natural justice. "In the present case, the action of the respondents in not communicating the 'good' entry for the year 1993-94 to the appellant is in our opinion arbitrary and violative of natural justice, because in substance the 'good' entry operates as an adverse entry."(INSC 885, 2008: para 25).

The Supreme Court went even further and affirmed that all ratings should be communicated or else ratings would be in violation of Article 14 of the (Indian) Constitution (INSC 885, 2008:para 12), which enjoins equality before the law (<http://indiankanoon.org/doc/237570/>). The Supreme Court further stated that whether there was a performance benchmark for determining benefits to employees or not made no difference - "it makes no difference whether there is a benchmark or not. Even if there is no benchmark, non-communication of an entry may adversely affect the employee's chances of promotion (or getting some other benefit), because when comparative merit is being considered for promotion (or some other benefit) a person having a 'good' or 'average' or 'fair' entry certainly has less chances of being selected than a person having a 'very good' or 'outstanding' entry" (INSC 885, 2008: para 14). The employer claim of just processes if evaluated

keeping in view behavioral transgressions reflective of arbitrariness which, according to the Supreme Court Justices, could result from personal pique of the supervisor, or because the superior asked him (her) to do something wrong which the incumbent refused, because the incumbent refused to do sycophancy of his superior, or because of caste or communal prejudice, or for some other extraneous consideration. This stricture resonates with Sen's observation that "the presence of remediable injustice may well be connected with behavioral transgressions rather than with institutional shortcoming (Sen, 2009: x-xi). The contention that a "good" rating was not a "poor" rating and therefore not adverse was, according to the Supreme Court, a perverse argument because nomenclature was not relevant, it was the effect which the entry had which determines whether it was an adverse entry or not (INSC 885, 2008:para 10).

The action of management and its claim to fairness in this case on grounds that the standardized rating systems and processes applied to all employees would ipso facto produce fair outcomes was challenged by the Supreme Court – Arbitrariness, in whatever form and in whatever garb – policy, rule, procedure, circulars and memos from "higher" authorities, partisan interpretations of legal pronouncements masquerading as "expert" legal opinion, opportunistic interpretations by the managerial agents of organizations – is illegal since it violates Article 14 of the Constitution of India." (INSC 885, 2008:para 12). Sen (2009: x-xi) supports this view - "Justice is ulti-

mately connected with the way people's lives go, and not merely with the nature of the institutions surrounding them."

Canons of fairness as depicted by management clearly did not find favor with the Supreme Court, an observation which finds an echo when Sen reiterates – "In contrast, many of the principal theories of justice concentrate overwhelmingly on how to establish "just institutions", and give some derivative and subsidiary role to behavioral features (Sen, 2009: x-xi).. The Supreme Court demonstrated with ringing clarity that what was posited as managerially fair was legally unjust. Judicial scrutiny of managerial fairness also demonstrated how the Rawlsian "original position" is hardly discernible in managerial claims and what emerges is proof of what can be termed as an "opportunistic position" informed by the "veil of obfuscation".

#### **"Arrangement-Focused" versus "Realization-Focused"**

The analysis and interpretation of the case shows that employers utilize existing judicial reasoning to demonstrate that the performance assessment practices qualify as "perfectly just institutions" in terms of parity and standardization. The perceptions of employees which are founded on lived experiences of manifest injustice see through the façade of legalistic sophistry and recognize that process parity and interactional civility hardly succeed in camouflaging "manifest injustice" on the distributive outcomes front.

The managerial interpretation of a "perfectly just institution" is revealing -

a “good” entry is not an adverse entry, a “good entry” is as positive a rating as a “very good” entry and therefore there is no merit in the employee’s view that a “good” entry is an “adverse” entry. By taking this stand they have demonstrated how behavioral opportunism can occur even as the “perfectly just institution” in terms of parity across employees is in operation. This finding is very much in line with Sen’s alternative interpretation (2009:10) wherein he points towards “the need to focus on actual realizations and accomplishments, rather than only on the establishment of what are identified as the right institutions and rules”.

**Behavioral opportunism can occur even as the “perfectly just institution” in terms of parity across employees is in operation.**

The performance grading system alone cannot determine whether a good entry is adverse or not from an employee perspective. “The contrast here relates, as was mentioned earlier, to a general – and much broader – and much broader – dichotomy between an arrangement-focused view of justice, and a realization-focused understanding of justice. The former line of thought proposes that justice should be conceptualized in terms of certain organizational arrangements – some institutions, some regulations, some behavioral rules – the active presence of which would indicate that justice is being done. The question to ask in this context is whether the analysis of justice must be so confined to getting the basic institutions and general rules right?”(Sen, 2009:10).

The equity concern gets further accentuated because the performance-assessed relative ratings employed by employers are based on the “principle of elimination” – “It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a pyramidal structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout” (INSC, 2008: para 24). Within this frame of reference, in which elimination is the key outcome, there is also relative impact of disaffection towards employers and resentment towards fellow employees pitted against each other for higher performance assessment linked sweepstakes. This situation “often results in grave injustice and heart-burning and may shatter the morale of many good officers who are superseded due to this arbitrariness, while officers of inferior merit may be promoted.” (INSC, 2008: para 24).

It is argued in this study that the Rawlsian “original position” morphs into an ‘opportunistic position’ in concrete instances of “manifest injustice”. The Rawlsian “veil of ignorance” gives way to a Machiavellian “veil of obfuscation” where notions of interactional and procedural justice are used to camouflage distributive justice deficits. And this contradiction comes to the fore when confronted by an impartial third party like the higher judiciary who, while seeking “a proper balance between competing claims” (Rawls, 1958:165), scrutinize the factual

veracity and constitutional legality of the employer claim of systemic fairness, and reject the claim as untenable because of the absence of the impartiality which characterizes the Rawlsian “original position” informed by the “veil of ignorance”. What is proffered as “perfectly just” through organizational constructions characterized by parity, civility, distributive normality and information opacity may not be just by judicial-normative standards of reasoning which is based on equity, legality, normativity and constitutionality, as has been borne out in this case.

Sen (2009: ix) offers theoretical support for the need for scrutiny through the reasoning based on a – “ a theory of justice that can serve as the basis of practical reasoning and must include ways of judging how to reduce injustice and advance justice, rather than only aiming at the characterization of perfectly just societies”. The employee construction of “manifest injustice” in the context of performance measurement revolves around the denial of the right to be heard when unfairly rated, right to represent when unfairly downgraded by the systems and processes, right to be considered to be in the zone of consideration for “performance as assessed” outcomes which are primarily based on the principle of relative grading based elimination.

Ironically, this ruling points towards a certain kind of normative myopia of employers as they appear to represent a form of fairness which may appropriately be characterized as “unjust fairness” - fair by their own notions of process parity and interactional civility and unjust

when in reality their interpretations of facts and laws serve as an opportunistic cover for their dissimulation on the question of distributive justice.

As the Supreme Court itself has averred, Sen argues that the “the presence of remediable injustice may well be connected with behavioral transgressions rather than with institutional shortcoming” (2009:x-xi). What is articulated as “perfectly just” in organizational parlance may indeed be experienced as “manifest injustice” in the court of lived experiences. In the absence of “the original position”, it is left to independent institutions of justice to remove the “veil of obfuscation” informing the “justice as fairness discourse” on the performance assessment practice and research fronts.

It is precisely on this account that Sen (2009: x) goes on to argue that “reasoning and impartial scrutiny are essential”. Sen (2009: 10) also asks– “Should we not also have to examine what emerges in the society, including the kind of lives that people can actually lead, given the institutions and rules, but also other influences, including actual behavior that would inescapably affect human lives?”

## Conclusion

Research on distributive justice in the context of performance assessment needs to shift from a predominantly “arrangement” based positioning towards a “realization” focused positioning of measures and methods. This will enable distributive justice policy and practice related to performance assessment in or-

ganizations to move away from merely managing negativity-positivity through civility and parity towards a more sustainable comprehension of manifest injustice in employer-employee relations and action to reduce injustice.

Based on the insights emerging from this study seven hypotheses have been generated related to both theoretical as well as methodological positioning for future research explorations

*Hypothesis 1:* The theoretical positioning of current research on performance assessment and justice practice is more aligned with employer interests of using procedural and interactional justice constructs to manage negativities related to distributive justice concerns.

*Hypothesis 2:* The theoretical positioning of performance assessment and justice research is more aligned with the Rawlsian theory of justice as fairness premised on crafting perfectly just institutions rather than on Sen's view that the focus should be on reducing manifest injustice.

*Hypothesis 3:* The methodological positioning of measures of justice in the performance assessment context is more aligned with managing employee negativities and enhancing positivity related to outcomes rather than on responding to distributive justice concerns.

*Hypothesis 4:* The methodological positioning of performance assessment justice research is more aligned with

the Rawlsian theory of justice as fairness premised on crafting perfectly just institutions rather than on Sen's view that the focus should be on reducing manifest injustice.

*Hypothesis 5:* The employee reasoning is theoretically positioned as a quest for a remedy from manifest injustice which is pitted against the employer claim of perfectly just procedural arrangement.

*Hypothesis 6:* Employer reasoning is theoretically positioned in the defence of perfectly just institutions in which interactional and distributive justice practices are used to obfuscate distributive justice.

In conclusion, the final hypothesis on theoretical and methodological positioning of justice research and practice related to performance assessment arrangements and practice, emerges from Sen's frame of reference- "The contrast here relates, as was mentioned earlier, to a general – and much broader – dichotomy between an arrangement-focused view of justice, and a realization-focused understanding of justice" (Sen, 2009: 10).

### **Hypothesis 7**

The recourse to judicial remedy for manifest injustice yields a theoretical and methodological positioning wherein what is claimed as fair by an *arrangement-focused view* of justice is decoded as unjust when public reasoning is oriented to a *realization-focused* understanding of justice.

The employee's quest for distributive justice interpreted as "the division of advantages from social cooperation" (Rawls 1999: 6) is currently entangled within the contested terrain of a dominant "arrangement-focused" positioning of justice and a justiciable "realization-focused" positioning of remediable injustice in the realm of practice as well as in the world of scholarship.

## References

- Adams, J.S. (1963), "Toward an Understanding of Inequity", *Journal of Abnormal and Social Psychology* 67: 422-36
- Adams, J.S. (1965), "Inequity in Social Exchange", *Advanced Experimental Social Psychology*, 2: 267-99.
- Alexander, S. & Ruderman, M. (1987), "The Role of Procedural and Distributive Justice in Organizational Behavior", *Social Justice Research*, 1(2): 177-98.
- Ambrose, M.L. & Schminke, M. (2009), "The Role of Overall Justice Judgments in Organizational Justice Research: A Test of Mediation", *Journal of Applied Psychology*, 94(2): 491-500.
- Banks, C.G. & Kevin, R.M. (1985), "Toward Narrowing the Research-Practice Gap in Performance Appraisal", *Personnel Psychology*, 38: 335-45.
- Barrett, G.V. & Kernan, M.C. (1987), "Performance Appraisal and Termination: A Review of Court Decisions since Brito v. Zia with Implications for Personnel Practices", *Personnel Psychology*, 40(3): 489-503.
- Bernardin, H.J. & Beatty, R.W. (1984), *Performance Appraisal: Assessing Human Behavior at Work*. Boston: M.A., Kent Publishing Company.
- Bies, R.J. & Shapiro, D.L. (1987), "Voice and Justification: Their Influence on Procedural Fairness Judgments", *Academy of Management Journal*, 31(3): 676-85.
- Bies, R. J. & Shapiro, D.L. (1987), "Interactional Fairness Judgments: the Influence of Causal Accounts", *Social Justice Research* 1: 199-218.
- Boxall, P. (1996), "The Strategic HRM Debate and the Resource-based View of the Firm", *Human Resource Management Journal*, 6(3): 59-75.
- Cardy, R.L. & Dobbins, G.H. (1994), *Performance Appraisal: Alternative Perspectives*. Cincinnati, OH, South-Western Publishing Company.
- Cascio, W. F. (1981), "Fair Personal Decision Making", in C.J. Brotherton (Ed.), *Towards Fairness in Selection and Placement Processes*, London: Wiley.
- Chen, H.M. & Kuo, T.S. (2004), "Performance Appraisal across Organizational Life Cycles", *Human Systems Management*, 23: 227-33
- Chiaburu, D.S. & Lim, A.S. (2008), "Manager Trustworthiness or Interactional Justice? Predicting Organizational Justice Behaviors", *Journal of Business Ethics*, 83(3): 453-67.
- Cleveland, J.N., Murphy, K.R. & Williams, R.E. (1989), "Multiple Uses of Performance Appraisal: Prevalence and Correlates", *Journal of Applied Psychology*, 74: 130-35.
- Cloutier, J. & Vilhuber, L. (2008), "Procedural Justice Criteria in Salary Administration", *Journal of Managerial Psychology*, 23(60): 713-40.
- Cohen-Charash, Y. & Levy, P.E. (2001), "The Role of Justice in Organizations: A Meta-analysis", *Organizational Behavior and Human Decision Processes*, 86: 278-321.
- Colquitt, J. (2001), "On the Dimensionality of Organizational Justice: a Construct Validation of a Measure", *Journal of Applied Psychology*, 86: 386-400.

- Colquitt, J., Conlon, D., Wesson, M., Porter, C. & Ng, K. (2001), "Justice at the Millennium: A Meta-analytic Review of the 25 Years of Organizational Justice Research", *Journal of Applied Psychology*, 86:425-45.
- Cristina, G. B. & Kevin, R. M. (1985), "Toward Narrowing the Research-practice Gap in Performance Appraisal", *Personnel Psychology*, 38: 335-45.
- Cropanzano, R., Bowen, D. E. & Gilliland, S.W. (2007), "The Management of Organizational Justice", *Academy of Management Perspectives*, 32 (2): 34-48.
- David, L. Lyle, Warner, G., Harvey, Warner, Smith, Lawrence & Harvey, Elizabeth Safford (Fall/Winter.1983-84), "Critical Analysis of Seeman's Concept of Alienation", *Humboldt Journal of Social Relations*, 11(1): 16-52.
- DeNisi, A.S. & Williams, K.J. (1988), "Cognitive Approaches to Performance Appraisal", in G.R. Ferris & Rowland K.M. (Eds.), *Research in Personnel and Human Resources Management*, Greenwich, CT: JAI Press
- Dev Dutt Vs. Union of India & Ors. (2008), INSC 885 12 May 2008 in the Supreme Court of India Civil Appellate Jurisdiction, Civil Appeal No 7631 of 2002 Dev Dutt..Appellant-vs- Union of India & Ors., Respondents - Supreme Court of India Bench of Mr. H. K. Sema J. and Mr. Markandey Katju J.
- Dipboye, R. L. & De, Pontbriand, R. (1981), "Correlates of Employee Reactions to Performance Appraisals and Appraisal Systems", *Journal of Applied Psychology*, 66(2): 248-51.
- Dobbins, G.H., Cardy, R.L. & Platz-Vieno, S.J. (1990), "A Contingency Approach to Appraisal Satisfaction: An Initial Investigation of the Joint Effects of Organizational Variables and Appraisal Characteristics", *Journal of Management*, 16(3): 619-32.
- Eckhoff, T. (1974), *Justice: Its Determinants in Social Interaction*, Rotterdam: Rotterdam Press
- Erdogan, B. (2002), "Antecedents and Consequences of Justice Perceptions in Performance Appraisals", *Human Resource Management Review*, 12(4): 555-78.
- Fletcher, C. (2001), "Performance Appraisal and Management: The Developing Research Agenda", *Journal of Occupational and Organizational Psychology*, 74(4): 473-87.
- Folger, R. & Cropanzano, R. S. (1998), *Organizational Justice and Human Resource Management*, Thousand Oaks, CA: Sage.
- Folger, R., Konovsky, M.A. & Cropanzano, R. (1992), "A Due Process Metaphor for Performance Appraisal", *Research in Organizational Behavior*, 14: 129-77.
- Folger, R. & Konovsky, M.A. (1989), "Effects of Procedural and Distributive Justice on Reactions to Pay Raise Decisions", *Academy of Management* 32(1): 115-10.
- Folger, R & Bies, R.J. (1989), "Managerial Responsibilities and Procedural Justice", *Employee Responsibilities and Rights Journal*, 2(2): 79-90.
- George, J. (1989), "Appraisal in the Public Sector: Dispensing with the Big Stick", *Personnel Management*, 18:32-35.
- Glinow, M. A. V, Drost, E.A. & Teagarde, M.B. (2002), "Converging on IHRM Practices: Lessons Learned from a Globally Distributed Consortium on Theory and Practice", *Human Resource Management*, 41(1): 123-40.
- Greenberg, J. (1990), "Organizational Justice, Yesterday, Today and Tomorrow", *Journal of Management*, 16(2):399-432.
- Greenberg, J. (1987), "Reactions to Procedural Injustice in Payment Distributions: Do the Means Justify the Ends"? *Journal of Applied Psychology* 72(1): 55-61.
- Greenberg, J. (1987), "A Taxonomy of Organizational Justice Theories", *Academy of Management Review*, 12(1): 9-22.
- Greenberg, J. (1986), "Determinants of Perceived Fairness of Performance Evaluations", *Journal of Applied Psychology* 71: 340-42

- Grint, K.(1993), "What's Wrong with Performance Appraisal? A Critique and a Suggestion", *Human Resource Management Journal* 3(3): 61-77.
- Guest, D.E. (1997), "Human Resource Management and Performance: A Review and Research Agenda", *International Journal of Human Resource Management*, 8(3): 263-76.
- Harely, S. (1999), "Justice and Deservingness Judgments - Refuting the Interchangeability Assumption", *New Ideas Psychology*, 17:183-93
- Hendrey, C, Woodward, S, Bradley, P& Stephen P (2000), "Performance and Rewards: Cleaning Out the Stable", *Human Resource Management Journal*, 10: 46-62.
- Hegtvedt, K.A. (2005), "Doing Justice to the Group: Examining the Roles of the Group in Justice Research", *Annual Review of Sociology*, 31:25-45.
- Holbrook, R. L. (2002), "Contact Points and Flash Points: Conceptualizing the Use of Justice Mechanisms in the Performance Appraisal Interview", *Human Resource Management Review*, 12(1):101-23.
- Homans, C.C. (1974), *Social Behavior: Its Elementary Forms*, New York, Harcourt Brace and World, <http://indiankanoon.org/doc/237570/> [Accessed on March 27, 2014].
- Ilgel, D. R. Fisher C.D & Taylor, M.S. (1979), "Consequences of Individual Feedback on Behavior in Organizations", *Journal of Applied Psychology*, 64(4): 349-71.
- Jawahar, I.M. (2007), "The Influence of Perceptions of Fairness on Performance Appraisal Reactions", *Journal of Labor Research*, 28(4): 735-54.
- Konovsky, M. A., Folger, R. & Cropanzano, R. (1987), "Relative Effects of Procedural and Distributive Justice on Employee Attitudes", *Representative Research in Social Psychology*, 17: 15-24
- Landy, F. J., Barnes, J. L. & Murphy, K.R. (1978), "Correlates of Perceived Fairness and Accuracy of Performance Evaluation", *Journal of Applied Psychology*, 63(6): 751-54.
- Lau, C.M. & Moser, A. (2008), "Behavioral Effects of Non-financial Performance Measures: The Role of Procedural Fairness", *Behavioral Research in Accounting*, 20(2): 55-71.
- Lau, C.M., Wong, K.M. & Eggleton, I.R.C. (2008), "Fairness of Performance Evaluation Procedures and Job Satisfaction: "The Role of Outcome Based and Non -outcome Based Effects," *Accounting and Business Research*, 38(2): 121-35.
- Lawler, E. E. (1967), "The Multi Trait Multi Rater Approach to Measuring Managerial Job Preference", *Journal of Applied Psychology*, 51: 369-81
- Lerner, M.J., Miller, D.T., Holmes, J.G. (1976), "Deserving and the Emergence of the Forms of Justice", *Experimental Social Psychology*, 9:133-62
- Lind, E.A. & Tyler, T. R. (1988), *The Social Psychology of Social Justice*, New York, Plenum.
- Loi, R., Yang, J. & Diefendorff, J.M. (2009), "Four Factor Justice and Daily Job Satisfaction: A Multilevel Investigation", *Journal of Applied Psychology*, 94: 770-81.
- Longenecker, C. O & Nykodym, N. (1996), "Public Sector Performance Appraisal Effectiveness: A Case Study", *Public Personnel Management*, 25(2): 151-65.
- Longenecker, C. O., Gioia, D. A. & Sims, H. P. (1987), "Behind the Mask: The Politics of Employee Performance Appraisal", *Academy of Management Executive*, 1(3): 183-93.
- Masterson, S.S., Lewis, K., Goldman, B.M. & Taylor, M.S. (2000), "Integrating Justice and Social Exchange: the Differing Effects of Fair Procedures and Treatment on Work Relationships", *Academy of Management Journal*, 43: 738-48.
- McFarlin, D. B. & Sweeney, P.D. (1992), "Distributive and Procedural Justice as Predictors of Satisfaction of Personal and Organizational Outcomes", *Academy of Management Journal*, 35(3):626-37.

- Meyer, Herbert (1991), "A Solution to the Performance Appraisal Feedback Enigma". *Academy of Management Executive* 5(1): 68-76.
- Moorman, R.H. (1991), "Relationship between Organizational Justice and Organizational Citizenship Behaviors: Do Fairness Perceptions Influence Employee Citizenship", *Journal of Applied Psychology*, 76(6): 845-55.
- Narcisse, S. & Harcourt, M. (2008), "Employee Fairness Perceptions of Performance Appraisal: A Saint Lucian Case Study", *International Journal of Human Resource Management*, 19(6): 1152-69.
- Rawls, J. (1958), "Justice as Fairness", *The Philosophical Review*, 67(2): 164-94.
- Rawls, John (1971), *A Theory of Justice*, Cambridge, MA: The Belknap Press of Harvard University Press.
- Rawls, J. (1999), *A Theory of Justice*, Cambridge, MA, Harvard University Press.
- Sabeen Z & Mehboob, S.A.A. (2008), "Perceived Fairness of and Satisfaction with Employee Performance Appraisal and Its Impact on Overall Job Satisfaction", *The Business Review, Cambridge*, 10: 185-191.
- Salimaki, A., Hakonen, A. & Henemen, R. L. (2009), "Managers Generating Meaning for Pay", *Journal of Managerial Psychology*, 24(2): 161-77.
- Skarlicki, D. P. & Folger, R. (1997), "Retaliation in the Workplace: The Roles of Distributive, Procedural, and Interactional Justice", *Journal of Applied Psychology*, 82:434-43.
- Scott, B. A., Colquitt, J. A. & Paddock, E.L., (2009), "An Actor-focused Model of Justice Rule Adherence and Violation: The Role of Managerial Motives and Discretion", *Journal of Applied Psychology*, 94(3): 756-69.
- Shrivastava, S., Jones, R., Selvarajah, C. & Van Gramberg B. (2016), "Organizational Justice: A Senian Perspective", *Journal of Business Ethics*, 135(1): 99-116.
- Soltani Evan de Meer R, Williams TM & Lai P (2006), "The Compatibility of Performance Appraisal with TQM Principles - Evidence from Current Practice", *International Journal of Operations and Production Management*, 26(1): 92-112.
- Taylor, S. M, Masterson, S.S, Renard, M.K. & Tracy, K.B. (1998), "Managers' Reactions to Procedurally Just Performance Management Systems", *Academy of Management Journal*, 41(5): 568-79
- Taylor, S.M, Tracy, K. B., Renard, M.K., Harrison, J.K. & Carroll, S.J. (1995), "Due Process in Performance Appraisal: A Quasi-experiment in Procedural Justice", *Administrative Science Quarterly*, 40(3): 495-523.
- Thurston Jr, P. W. & McHall, L. (2010), "Justice Perceptions of Performance Appraisal Practices", *Journal of Managerial Psychology*, 25(3): 201-28.
- Townley, B. (1993), "Performance Appraisal and the Emergence of Management", *Journal of Management Studies*, 30(2): 221-43.
- Tyler, T.R. (1987), "Procedural Justice Research", *Social Justice Research*, 1(1): 41-65.
- Veglahn, P.A. (1993), "Key Issues in Performance Appraisal Challenges: Evidence from Court and Arbitration Decisions", *Labor Law Journal*, 44(10): 595-606.
- Walster, E., Walster, G.W. & Berscheid, E. (1978), *Equity: Theory and Research*. Boston: Allyn and Bacon.
- Weber, Max (1949), *The Methodology of the Social Sciences*, Translated by Shils Edward A & Finch Henry A, New York: The Free Press
- Werner, J. M. & Mark, C.B. (1997), "Explaining U.S. Courts of Appeals Decisions Involving Performance Appraisal: Accuracy, Fairness, and Validation", *Personnel Psychology*, 50: 1-24.
- Willmott, H. (1984), "Images and Ideals of Managerial Work: A Critical Examination of Conceptual and Empirical Accounts", *Journal of Management Studies*, 21(3): 349-68.