

RAWLS'S THEORY OF JUSTICE THROUGH AMARTYA SEN'S IDEA

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Abstract

“The Idea of Justice” by Nobel Laureate, Amartya Sen is a path breaking work on the concept of justice. His book is not only an extension but also a critique of John Rawls work – Theory of Justice. He talks about *niti* and *nyaya*, former relates to just rules, whereas, the latter refers to realisation. *Niti* is an abstract exercise, if implemented completely, would result in maximum public welfare and justice. *Nyaya*, on the other hand, relates to the enforcement of laws and regulations. The concept of justice has been discussed in a very broad manner; to quote Prof. Sen “...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”¹. According to Professor Sen, Rawls’s emphasis on the importance of ‘ideal theory’, which is universal and applies everywhere, is doubtful. Through the story of Ann, Bob and Carla he beautifully exemplifies the problem of scarcity of resources and conflicting demands of valid claim.

I Introduction

CONCEPT OF justice has been, one of the most complex concepts, consuming a lot of scholarly ink, yet remaining enigmatic, cryptic and imprecise. Justice is a word of ambiguous import.² Even in Bible, Justice is regarded as a general virtue, but there, the concept is ambivalent because one can observe that all the values are rejected in favour of rather vague and general standards.³ Plato’s conception regarding justice gave more emphasis on the substantive portion rather than the procedural aspect.⁴ As per the utilitarian, justice lies in the greatest good done to greatest number of people, but the inherent fault lies as to what about the fact that justice is not being done towards those who do not constitute amongst the greatest number of people. Marx considered justice as a sham, a mask which facilitates capitalist exploitation.⁵ Some believe justice is equality, but equality is equally a nebulous concept, it is a relative concept, what may be notion of equality for me, may not be equal to a wage labour so, therefore, it would not appropriate to set standards of justice for the other.

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¹ Amartya Sen, *The Idea of Justice* 6 (Penguin Book Ltd., 2010)

² V.R. Krishna Iyer, *Social Justice – Sunset or Sun dawn* 28 (Eastern Book Co., Lucknow 1987).

³ David L. Sills (ed.), *VIII International Encyclopaedia of the Social Sciences* (The Macmillan Co., NY, 1968).

⁴ *Ibid.*

⁵ Ronald Commers, “Marx’s Concept of Justice and the two tradition in European Political thought” 108 *Philosophica* 33(1984).

But this type of comparative approach is very necessary when it comes to the question of advancement of justice, as the process of comparing, somehow makes room for debate, thereby admitting multiple sets of opinions and thereby preventing the concept of justice from a unilateral and unipolar interpretation.

The social contract theory as propounded by Hobbes, Locke and Rousseau, concentrated mainly on the institutional arrangement for a society. This approach, which can be called 'transcendental institutionalism', has two distinct features. *Firstly*, it concentrates its attention on what it identifies as perfect justice, rather than on relative comparisons of justice and injustice. *Secondly*, in the quest for the perfection, transcendental institutionalism concentrates primarily on getting the institutions right rather concentrating on the actual societies that would ultimately emerge.⁶

The buck stops here, what is justice? In order to understand it, it is very necessary to understand what injustice is and how to mitigate it, men turns to the meaning of justice when they themselves have experienced it, the history is replete with such instances, even Mahatma Gandhi started his quest for justice, for independence, when he himself experienced the ignominy, when he himself felt the brunt of injustice, therefore, injustice is that potent equipment through which a person understands the importance of justice, he associates himself to the injustice perpetrated on others and thus prepares himself against injustice, thus we can see that justice is an active process, a decisional process which helps one to bar a course which is wrong, by experiencing injustice a person tries to bring justice by rectification of that injustice or at least by devising methods through which that injustice could further be prevented. This is what lies in the heart of arguments which Professor Amartya Sen has made. He contradicts Rawlsian concept of justice. Rawls attempts to a theory of justice by proposing a new social contract theory, he construed the notion of justice in terms of maximisation of liberty, equality and opportunity as the central theme seeing 'justice' in the light of 'fairness'. Sen argues that the basic problem associated with Rawls concept of justice is that, it also rests on some pre requisites as the earlier theories of social contract, *i.e.*, on a perfect arrangement, such perfect arrangement is simply impossible as the plurality of opinions will never allow any arrangement to become perfect, therefore, in absence of such a perfect arrangement the concept of justice as such may never fructify, it is, therefore, necessary to understand the 'idea of justice' first and then to approach towards the

⁶ *Supra* note 1 at 6.

‘concept of justice’ subsequently. The aim should be to mitigate injustice and justice shall automatically advance, unfurl and bloom. The present paper shall deal with these broad frameworks, it will deal with the Rawlsian’s approach towards justice in the light of the book ‘*Idea of justice*’ written by Professor Amartya Sen. The paper shall also show that how Sen’s idea of justice completes the concept of justice propounded by John Rawls.

Rawls’s theory of justice in a nutshell

John Rawls theory of justice had come up at a time when all what everyone talked about was regarding maximising the welfare of society or the utilitarian concept of maximising the happiness of the majority of the people, ‘justice’ as a concept was least talked about, least discussed about. Rawls’s theory of justice was in a way an alternative to the classical utilitarian.

Rawls theory of distributive justice is based on the idea that society is a system of cooperation for mutual advantage between individuals. As such, it is marked by both conflicts between differing individuals’ interests and an identity of shared interest. Principles of justice should ‘define the appropriate distribution of the benefits and burdens of social co-operation. One must not fail to observe the fact that Rawls’s theory of justice as fairness, stretches its roots from the social contract theory, Rawls argues that it is necessary to distinguish between the genuine judgements about justice (which people have) and their subjective, self-interested views. After arriving at those objective principles, it should be measured against our own judgements, there will be inevitable distinction when one resorts to such measurement, therefore, it is important to modify our own judgement in such a way that a stage of equilibrium could be reached in which these two situations are similar; this is the situation of ‘reflective equilibrium’.⁷

In his rather complex theory, Rawls starts with a moral conjecture, that justice is tied to fairness, with a fair society and fair institutions and those members of the society adopt this situation in order to arrive at fundamental principles of justice. The ‘original position’ is a central feature of John Rawls’s social contract account of justice. In the words of Rawls the original position is simply a hypothetical thought experiment that seeks to:⁸

⁷ Raymond Wacks, *Understanding Jurisprudence* 222 (Oxford University Press, New York, 2nd edn. , 2009).

⁸ *Id* at 223.

Make vivid to ourselves the restrictions that it seems reasonable to impose on arguments for principles of justice, and, therefore, on these principles themselves.

Rawls imagine people in the hypothetical situation of ‘original position’ and places upon them the restraint of the ‘veil of ignorance’. This veil denies them knowledge of their status (*e.g.* gender, ethnicity, economic standing, intelligence *etc*) and their perception about ‘good living or well being’. In the words of John Rawls’:⁹

No one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. 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. Since all are similarly situated and no one is able to design principles to favour his particular condition, the principles of justice are the result of a firm agreement or bargain.

So basically, according to Rawls this is a special type of arrangement, a contract where people favours for a strategy which maximises the prospects of the least well- off. Once the veil of ignorance is lifted and once the people leave their original position, the contract shall be maintained, out of respect for each other. So basically this is a kind of radical egalitarian liberalism in which focus is on the fact that one person should not resort to maximising profit so much that it leads to deterioration of the other person.

Rawls original position has been designed to be a fair and impartial point of view that is to be adopted in our reasoning about fundamental principles of justice and exclude personal interest when choosing the ‘basic principles of justice’ so as to ensure generality and validity.

II Principles of justice

⁹ *Supra* note 7 at 224.

Rawls's basic principles of justice are generalised means of securing generalised ends. It primarily deals with the aspect of distribution of wealth, if behind the veil of ignorance the people are confronted with the question as to whether they will accept the utilitarian principle of distribution of wealth. The answer will be a certain no, because anyone under the veil of ignorance will like to be treated with dignity, once the veil of ignorance goes up. He will stipulate basic liberties such as right to life, liberty, freedom of consciousness and religion, assembly etc and these basic liberties will similarly be demanded by a member of minority community as well, he will not take chance of ending up a member of oppressed minority being tyrannized by a majority. This brings us before the 'first principle' of Rawls *i.e.*, the 'Liberty Principle'. Rawls in his book *Political Liberalism* included this principle in a form of guarantee of fair value of the political liberties. The fair value of political liberties requires that "citizens similarly gifted and motivated have roughly an equal chance of influencing the government's policy and of attaining positions of authority irrespective of their economic and social class.¹⁰ Thus ensuring that members of a social group are able to participate in the political process which conforms to the principle of equality.

Now coming to the 'second principle', which proposes that "social and economic inequalities are to be arranged in such a way so that they are both

- i. Reasonably expected to be to everyone's advantage , and
- ii. Attached to offices and positions open to all under conditions of fair equality of opportunity

According to Rawls, social and economic inequalities should be so arranged so that they are for the greatest benefit of the least advantaged persons, also known as the 'difference principle'. The people under the veil of ignorance don't know that under what system are they going to be placed in, if the veil is lifted, whether they will be healthy or unhealthy, rich or poor. Therefore, it is advisable to have an arrangement, whereby there is an equal distribution of wealth so as to ensure that each member is on a safe side. Or the members can go for a different setup, on a qualified principle of equality (difference principle), according to which, only those social and economic inequalities will be permitted that work to the benefit or advantage of the least worst off.

¹⁰ John Rawls, *Political Liberalism* 358(Columbia University Press, New York, 1993).

Fair equality of opportunity maintains that “offices and positions” should be open to individual, regardless of his/her social background, ethnicity or sex. Rawls rejects the idea of feudal aristocracy. Rawls argues that an individual should not only have the right to opportunities, but also an effective equal chance as another of similar natural ability. Formal equality of opportunity is satisfied if there are no discrimination legal barriers that bar some groups in society from access to social institutions and offices.¹¹

Rawls do not overrule the possibility that these two primary principles will be in conflict with each other. To meet this difficulty Rawls proposes certain ‘Principles of Priority’. Such priority is ‘lexical’, *i.e.*, the first has to be fully satisfied before the second is to be considered. These principles have been arranged lexicographically which means that the first principle of justice takes priority over the second and the principle of fair equality of opportunity takes priority over the difference principle. This implies that the equality of basic liberties and rights, including the fair value of the political liberties, is not to be overridden by other considerations.

Rawls and beyond- Sen’s critique of Rawlsian’s approach

Sen’s chief argument against Rawls theory is that the ‘transcendental institutionalism’ is nothing more than a moral conjecture, a hypothesis, on which he progresses his theory and which subsequently gets infested with certain limitations.

The first objection which Sen raises is that the ‘original position’ which Rawls is talking about, creates a hypothetical situation, in practicality it may never be able to incorporate multifaceted, diverse, variegated, conflicting but very genuine and cogent demands of a large plurality. Sen beautifully exemplifies his point with the help of the example of the illustration of three children and a flute.¹² With resources being limited we may not be able to meet the plurality of genuine voices airing their genuine demands. Anne, Bob and Clara are all well raising their genuine arguments and these genuine demands cannot be brushed aside by giving a superficial argument of being foundation less which is based on the pursuit of human fulfilment, or removal of poverty, or entitlement to enjoy the products of one’s own labour.¹³

¹¹ Arneson, Richard, “Equality of opportunity” *The Standard Encyclopedia of Philosophy* (Summer 2015 edn.), Edward N. Zalta (ed.), available at: http://plato.stanford.edu/archives/summer_2015/entries/equality-of-opportunity/ (last visited on Mar. 25, 2015).

¹² *Supra* note 5 at 128.

¹³ *Ibid.*

So in a way transcendental theories of justice do not resort to comparative assessment between pair of alternatives, what Prof. Sen wants to propose is that concept of justice should not be indifferent to the lives of people which they are actually living.

Discussing further about his 'principles of justice', Sen argues that there is an inner dichotomy in Rawls's liberty principle. As said before, priority has been given to the liberty principle over the second principle which relates to the equality of certain general opportunities and to equity in the distribution of general – purpose resources.¹⁴ In other words liberty is that sacrosanct principle which people will not like to compromise about even if it is related to better distribution of wealth or even if it facilitates furtherance of wealth *i.e.*, the concept of liberty cannot be reduced to the level of a mere facility, but if we see when Rawls deals with the 'primary goods' then it includes things such as rights, liberties and opportunities, income and wealth, and the social bases of self respect.¹⁵ We can see that liberty though has entered but just in from of a mere facility. One can see that the concept of liberty is being treated like a king and a slave simultaneously. Again, why such kind of unrestrained priority is being given to liberty, aren't hunger, starvation and medical neglect etc less important than personal liberty?

It is important to see that in his pursuit of advancing his principles of justice he excluded the idea of merits and just deserts, or on ownership of property. He allows room for only those inequalities that would help the worst off. May be incentives can be given so that it instils amongst the member a new vigour and new vitality which can catapult them to do their work more efficiently. Here Sen argues that should not the principles adopted at the original position eliminate the need for incentives? Somehow we can see that Rawls is taking one step forward and then simultaneously going back two steps.

IV Niti over nyaya – The cornerstone of Sen's idea of justice

It has been dealt that how Sen consider the perfect model of justice as redundant, he believes that all these transcendental system of justice are impregnated with a basic flaw that do not emphasizes on reduction of justice and instead emphasises on advancement of justice without taking into consideration that plurality of demands will not let this perfect system of justice to stand on its feet. According to Sen, presence of remediable injustice may well be connected with behavioural transgressions rather than with institutional shortcomings. Justice is

¹⁴ *Supra* note 2 at 15.

¹⁵ *Supra* note 7 at 226.

ultimately connected with the way people's lives go, and not merely with the nature of the institutions surrounding them.¹⁶

Professor Sen took cue of the early Indian jurisprudence to shed light on the different concepts of justice, '*Niti*' and the '*Nyaya*'. The idea of *niti* relates to organizational propriety as well as behavioural correctness, whereas the latter, *nyaya*, is concerned with what emerges and how, and in particular the lives that people are actually able to lead.¹⁷ In other words it is necessary to assess the roles of institutions on the basis of fact that how much inclusiveness is reflected in them *i.e.*, in the broader perspective of *nyaya*, which pertains to the world that actually emerges and not just constricted to the institutions that we possess.

Sen gives an example to show the difference between *niti* and *nyaya*. Ferdinand I, roman emperor in the sixteenth century claimed: '*Fiat justitia , et pereat mundus*', which can be translated as 'Let justice be done , though the world perish'. This is an example of a very austere form of *niti* which advocates even bringing of catastrophe, but without considering the fact that how justice will be done if world will perish? According to Professor Sen, a realization- focussed perspective also makes it easier to understand the importance of the prevention of manifest injustice in the world, rather than seeking the perfectly just.¹⁸ He further gave an example that the agitation against slavery in the eighteenth and the nineteenth century was not successful because they were labouring under the belief that abolition of slavery will lead to a perfectly just society. It was intolerably nauseating injustice that made abolition of slavery a priority.¹⁹ Even though the arrangement – centred perspective of *niti* is often interpreted in ways that make the presence of appropriate institutions themselves adequate to satisfy the demands of justice, the broader perspective of *nyaya* would indicate the necessity of examining what social realizations are actually generated through that institutional base.²⁰ Such a system can help to incorporate and accommodate divergent points of view. Sen also visualises a set of principles for justice for the modern world that will avoid parochialism and address the vital questions of global injustice.

Sen acknowledges the fact that institutions play a very important role in sharpening our ability to scrutinize the values and priorities that we can consider , especially through public discussions and democracy is such an institution, which is assessed in terms of public

¹⁶ *Supra* note 1 at X.

¹⁷ *Supra* note 1 at XV.

¹⁸ *Supra* note 1 at 21.

¹⁹ *Ibid.*

²⁰ *Supra* note 1 at 82.

reasoning , an institution of democracy should be judged on the touchstone of the extent, as to how different voices from diverse sections are able to put forth their voice and their voice actually been heard and not just about the formal existence of the institution, because a democratic institution, if fails to provide representation to the people, fails to provide the much needed opportunity to put forth their voice then the institution is insipid.

V Conclusion

Sen's work though criticizes the notion of perfect justice and rather advocates removal of injustice, but this very idea can be debated. The search for perfect justice aspires to an unachievable completeness but the problem is that many plausible cases of injustice are much more complicated.²¹ If we look into the complex question of gender inequality, we may get conflicting opinion regarding what really is unjust as our conception may differ regarding what should be considered as injustice pertaining to gender. Today questions are coming before society that whether men should also be given incentives on the line of women as a man also involves his labour in child rearing and domestic care, should there be a concept of paternity leave? Some people think that in order to ensure equality in opportunity between men and women, legal barrier must be lifted. These questions are very difficult to answer both men and women may reason that injustice is being done to them. The point is that there are times when a person cannot figure out what constitutes a move to a superior, more just position without reflecting upon and working out her own conception of what "perfect" justice entails. There are times when we need a Mona Lisa to anchor our judgements about Picasso and Dali.²²

A vision of just society puts forth before an existing society a sort of vision, a noble pursuit which a society should aspire to accomplish, it is not necessary that the vision comes into reality but at least it leads to fulfilment of some tenets of that vision. Karl Marx theory was also regarding a perfect society in which labourers were no more the subjugated class, the theory was brushed aside as being hypothetical and not tenable and yet it has not led to the establishment of setup which Marx envisioned, but it paved a way, where economic reforms were rolled down, legislatures such as workmen compensation act, labour laws etc. were possible. A vision for perfect society also leads to lessening of injustice.

²¹ Debra Satz, "Amartya Sen's The Idea Of Justice : What Approach , Which Capabilities" 43 *Rutgers Law Journal* 277(2012).

²² *Id* at 281.

However, both Rawls and Amartya Sen are traversing on the same path and they have similar opinion in this regard that utilitarianism or a conception of system which only promotes welfare of majority or happiness of greatest number is not correct. Sen uses an analogy of old Hindu jurisprudence regarding the *Matsyanyaya* or the judgements of the fishes, where big fish devoured small fish, is somewhat identical to the utilitarian principle that exists today, and cannot be said to be chink free.

It is hard to conclude that whether Rawls's 'Concept of Justice' is better or Sen's 'Idea of justice' and this would not be a good point to discuss about. However, it can be to put forth that Sen's 'Idea of Justice' in a way completes and moves forward Rawls's 'Concept of Justice'. So, Sen's effort should be seen as fulfilling the grooves of Rawls's concept and not an alternate view.