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## Theory of Justice and the Capability Approach

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**Abstract:** This paper discusses what justice means at its most basic and core functioning. Thereafter, it explores what John Rawls, in particular, explained about the just society and the procedure to attain justice. It further discusses how Amartya Sen's critique paves the way in furthering the debate from mere achievement of goods to utilizing them in order to achieve the best of the capabilities. Examining Sen's capability theory, it is further argued that though Sen appears to be presenting an appealing theory of justice, yet the essence of institutions cannot be negotiated. The paper also highlights the contribution of the works of Martha Nussbaum with respect to capability approach. In entirety, this paper is an attempt to compare and explain justice through the works and ideas of John Rawls and Amartya Sen.

**Key words:** Theory of justice, Capability Approach, Human Resource, Social welfare

“Justice is a term which exist in our day to day life, without objectively knowing what the mean. Progressive mind discuss about economic justice; legal people discuss about criminal justice; Common people usually talk about justice very much, without knowing it as justice. When there is a conflict in a playground, or you acquire a grade you think you don't deserve, We usually talk about right and wrong or fairness, which is also a part of justice. We practice it but don't aware about this or we don't believe in it. Therefore, is justice about equality? Or is it about fairness? Or is it about getting what we deserve? Or getting what we need?”[1]

At times we try to equalizing the standard of justice. To understand justice as harmony we have to look in ancient Greek world. Every society has an structure and role on everyone is decided to run society continuously. If anyone try to go beyond their roles it would be the step toward breaking the societal structure. In other hand some researchers and politician believe that society is something that improve living standard

of people and give a place to live with maximum freedom. This conflicting views show the complexion in the term justice. It is too subjective to everyone. It is hard to decide justice in many scenario like “feeding people who are poor or feeding people in jail.” Your answer in such scenario decide how you perceive the society.[2]

## Understanding Justice as a Concept

In the strict philosophical aspect, justice is one of the most important moral and political concepts. It is the ideal, morally correct state of things and persons. Although the central issue in any theory of justice is the unequal relation between people in our societies in political power, in social standing and in the command over economic resources, yet the concept of justice differs in every culture. There are various approach of justice given by different researchers.

Mostly while talking about justice, people discuss things like who has more of things of day to day life like food, education etc. But its hard to decide why some should receive something. Distribute justice focus on these questions. There are many school of thoughts in it:

- **Justice as Equality:** This thought believe that everyone should have equal amount of things. Though it sounds fair, a deeper scrutiny shows that it is not always true since two people may different kinds of need.
- **Need-based Justice:** Its premise is based on that everyone should not get the same because everyone’s needs are not necessarily the same. However, the counter-argument holds that giving importance to one more than other is not fair.
- **Merit-based Justice:** This concept focus on what a person deserves and its should be treated according. Therefore, it means rewarding the hard workers and punishing the trouble-makers.

Thus, it manifests that justice can mean different things to different people at different times. This is where John Rawls’s conception of justice comes into picture. John Rawls, a twentieth century American political philosopher, advanced a very simple-sounding approach. He believe that *justice as fairness*. There should not be any inequality in society.[3] This can be said to be a form of need-based that believe in fulfilling basic need of everyone.

(However there exists a counter argument that this is a dissatisfaction in hard workers.)

## Defining Justice


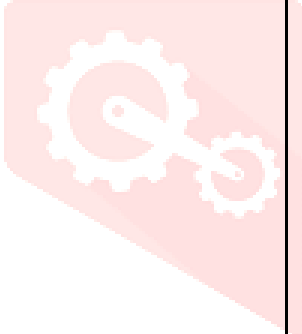
Justice is derived from the latin word '*jus*' meaning right or law. However, it is used interchangeably with fairness and impartiality. Many philosophers and sociologists go on to define justice as the appropriate order or arrangement of people and things for the workability of a social set up. All sorts of races, sects, religions and regions have their own set of moral codes of conduct which thereby define their process of attaining justice.

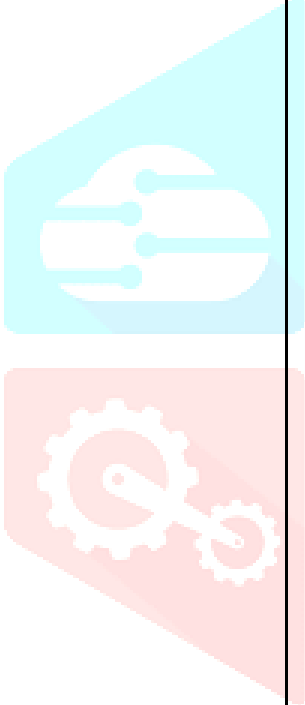
## Varying Aspects of Justice

- **Retributive Justice:** This thought believes that if someone has done wrong he should be punished in the same form as he made mistake.
- **Utilitarian Justice:** This school doesn't believe in same punishment as someone's mistake. They believe in society welfare maximization. Being harsh on wrongdoer is not good for society. But they also believe in little punishment of doing something wrong.
- **Restorative Justice:** It concerns with giving change to improve wrong doing. It simply means that you must right your wrongs. This approach is not focusing on punishing or forgiving it is more than forgiving. This approach brings a fruitful growth in society.
- **Distributive Justice:** This is the resource based concept. This focuses on the measurement of resource distinction in society. What are the resources available in society and who should be benefited on what bases.
- **Corrective Justice:** It focuses on undeserved harm and unfair advantage between people. It believes that injured party should be treated wisely and should get compensation for their losses.

### Diverse Perspectives on Justice

<b>Liberal Perspective</b>	<ul style="list-style-type: none"> <li>● Rawls' Theory of Justice is the chief propeller of the liberal view on justice.</li> <li>● It seeks liberty as the central theme of justice, but is concerned majorly with the substantive liberty, accommodating fraternity and equality.</li> </ul>
<b>Libertarian Perspective</b>	<ul style="list-style-type: none"> <li>● Although the central idea of libertarian perspective also revolves around liberty, yet it is different from the liberal perspective as it talks about the formal sense of liberty.</li> </ul>

	<p>Herein, it is opposed to the interference of state in an individual's economic matter, and professes minimal involvement of the state.</p> <ul style="list-style-type: none"> <li>● According to this school of thought, right to property is a crucial part of the individual liberty.</li> <li>● Therefore, as is evident, this thought goes against the idea of a welfare state.</li> <li>● Nozick's theory of justice is a chief representative of this thought.</li> </ul>
<p><b>Marxist Perspective</b></p>  	<ul style="list-style-type: none"> <li>● For Marxists, justice is about the establishment of a classless society.</li> <li>● Abolition of private property is the premise of communist theory.</li> <li>● Personal property is considered necessary since the Marxists regard it to be the reward of one's own labour, and their source of security. However, private property is despised to be the source of class exploitation and injustice in the society.</li> <li>● The Marxists fail to consider the fact that class distinction can be based on a variety of other factors other than merely ownership of property.</li> </ul>
<p><b>Democratic-Socialist Perspective</b></p>	<ul style="list-style-type: none"> <li>● The basic tenet of democratic-socialism revolves around provision of democratic and socio-economic rights and guarantees, along with civil liberties.</li> <li>● They basically seek to achieve social justice in the society, however unlike Marxists, their means are more inclined towards democratic features rather than a sudden revolution which Marxists consider unavoidable.</li> <li>● Expanding their target of socialism, they also believe in satisfying moral and material needs of the individual,</li> </ul>

	<p>ensuring freedom of thought and expression, avoiding any sort of dictatorship and promoting free competition for power.</p> <ul style="list-style-type: none"> <li>● Conclusively, though democratic-socialism appears to be a highly ambitious approach, yet if achieved, it could serve as an almost ideal state for social justice.</li> </ul>
<p><b>Anarchist Perspective</b></p> 	<ul style="list-style-type: none"> <li>● This perspective finds its roots in the theory of anarchism which advocates abolition of any kind of political authority.</li> <li>● They believe that society is a natural institution, government is bad and men are kind in nature.</li> <li>● Whereas men are entirely capable enough to fit in the society by their volunteer actions and cooperation, but the intervention and coerciveness of the state corrupts them.</li> <li>● Therefore the belief is that justice could be made to exist in the society if the government is abolished either partly or wholly.</li> <li>● Though anarchism is a vibrating idea, anarchists often do not have any idea of implementation. Also, it cannot be denied that anarchism has put forward the debate for social reconstruction, highlighting the negative aspect of the existing institutions.</li> </ul>
<p><b>Feminist Perspective</b></p>	<ul style="list-style-type: none"> <li>● Highlighting the role of females in the society, the feminist perspective seeks to ensure inclusivity and justice for women have been devoid of their basic rights and their deserved share in the society since the earliest times.</li> <li>● They appeal for an all inclusive, all rounded development of women in the society, on varying parameters which include health, education, sanitation, adequate income and economic and political participation along with active participation in the decision making processes.</li> </ul>

	<ul style="list-style-type: none"> <li>• They insist that women should be given their deserved due and recognition not only in the outer world, but very basically in their household matters as well.</li> </ul>
<p><b>Subaltern Perspective</b></p>	<ul style="list-style-type: none"> <li>• This is associated with the predicament of those societal groups which are generally placed in a more or less subordinate position (<i>viz.</i> the exploited, oppressed or marginalized groups) as compared</li> <li>• to the others.</li> <li>• The main reason behind such a condition is often attributed to the kind of social structures that tend to exist, for example sixty percent of the share of wealth is owned by one percent of the population in India. Such a condition automatically shifts the major chunk of benefits away from the ones who are actually in need of them.</li> <li>• The proponents of this perspective, like Antonio Gramsci mainly focus on the division of society into elite and subaltern groups, along with demanding equitable distribution of benefits to the two.</li> <li>• According to the subaltern perspective, to ensure justice, it is imperative that the rights of such groups, which are deprived and suffer from such undeserved discrimination, are protected; their societal contribution is appropriately recognized and rewarded. Such restoration of their dignity would thereby ensure a just society.</li> </ul>

## John Rawls and his Theory of Justice

John Rawls (2002) is an American philosopher. *A theory of Justice (1971)* is one of the most celebrated and relevant treatise on justice in the contemporary times. Herein he lays down that of the various virtues necessary for a good society, justice is of critical importance. He argues that though justice is a necessary condition for a good society, it is not the only criteria.

## Understanding Rawls' Theory of Justice

This theory of Justice is perhaps the best-known modern conception of justice. He combines utilitarian right-based concepts in his theory of distributive justice. Basically, he proposes an equal distribution unless a different distribution would benefit the disadvantaged. He believes that any inequalities should be to the benefit of those who are least advantaged. In other words, Rawls believes that the problem of Justice is concerned with ensuring a just distribution of primary goods.

● **Primary Goods:** These are essential for developing and exercising moral powers, and are useful for pursuing a wide range of specific conditions of the good life. Primary goods are:

- Basic rights and liberties;
- Freedom of movement, and free choice among a wide range of occupations;
- Powers of offices and positions of responsibility;
- Income and wealth
- The social bases of self respect: the recognition by social institutions that gives a sense of self worth, dignity and the confidence to carry out their plans (Kantian influence: human being as a moral creature)

● **Viewing Justice as Fairness:**

- Rawls in his Theory of Justice tries to bring together both *procedural and substantive justice* in the liberal tradition. Like many philosophers before him, he tries to bridge the debate between procedural and substantive justice.
- Views justice like an overarching virtue, akin to Plato.
- Rawls sees justice as an overwhelming virtue that should be the moral standard for arranging institutions in the society.
- Justice as fairness seeks to create an egalitarian society such that the citizens are free and equal.
- Rawls proposes to develop a theory of justice by revising the *social contract tradition* of theorizing about justice, associated with the 17<sup>th</sup> and 18<sup>th</sup> century writers John Locke, Jean Jacques Rousseau and Immanuel Kant.
- Locke sees legitimate political authority as deriving from the free and voluntary consent of the governed, from a contract or agreement between governor and the governed person.
- According to Rawls, justice is what free and equal persons would agree to as basic terms of social cooperation in *conditions that are fair to this purpose*. This idea he calls "justice as



fairness". The conditions that Rawls takes to be most appropriate for the choice of principles of justice constitute what he calls *original position*.

- **Original Position**

- Via the original position, Rawls hopes to provide a fair method to arrive at the principles of justice.
- The original position is actually a thought experiment (like the platonic idea, or the social contract theory's state) consisting of free and equal citizens, with a representative who tries to come up with model principles of fairness, liberty and equality.

- **Veil of Ignorance**

- The veil of ignorance prevents the interference of irrelevant and arbitrary facts in the determination of principles of justice.
- Each representative in the original position is therefore deprived of the knowledge of race, class, and gender (societal values) of the real citizen that they represent . So much so that the veil of ignorance deprives the parties of all the facts about the citizens that are irrelevant to the choice of principles of justice: not only facts about their race, class, and gender but also facts about their age, natural endowments and more.
- However, they do have a general sense of justice and the situation prevalent in the society. These representatives are rational and reasonable.

- **Basic Structure of Society**

- The organisation of the basic structure of the society becomes relevant because this is the platform where justice would be applied.
- The basic structure of society constitutes the primary subject of justice. The basic structure is the location of justice because these institutions distribute the main benefits and burdens of social life: who will receive social recognition, who will have which basic rights, who will have opportunity to get what kind of work, what the distribution of income and wealth will be, etc.
- It is within this structure that member citizens devise principles of justice in the original position regarding the distribution of primary goods, This requires the rational and reasonable citizens to apply the method of reflective equilibrium. This requires our considered judgments with a solid ground of thinking to come up with more general principles.



- In moral argument we seek a reflective equilibrium - a position in which our considered particular judgments that we want to affirm can be derived from general principles we find intuitively attractive, the entire set being internally consistent.
- Since moral principles are the main focal point here, and there may be a plurality of equally important ones, there comes a question of priority. Rawls therefore devises the *lexical priority principle* so as to ascertain which value has a priority over others.

### ● Lexical Priority Principle

- According to Rawls, the principles of justice are to be considered in a lexical order, where one has priority over the other. For example, priority is given to liberty over equality of opportunity.
- It is rational to think that liberty has priority over all other principles, since man would like to take maximum advantage of his own talents.

### ● Two Principles of Justice

- The idea of justice as fairness acquires concrete form in the two general principles given in lexical priority:
  - “Each person has the same *indefeasible claim* to a fully adequate scheme of *equal basic liberties*, which scheme is compatible with the same scheme of liberties for all.”<sup>4)</sup>
  - Social and economic inequalities must satisfy two conditions:
    - “They are to be attached to offices and positions open to all under the conditions of *fair equality of opportunity*.
    - They are to be to the greatest benefits towards the least advantaged members of society (*Difference principle*).”<sup>(5)</sup>
- The basic liberties in the first principle consist of constitutional liberties- the sorts of fundamental liberties that might be protected by the political constitution of a modern democratic society. The equal basic liberties specify a status of equal democratic citizen to be accorded to all members of the society.
- The equal opportunity principle requires that people with the same talents and willingness to use them have the same educational and economic opportunities regardless of whether they were born rich or poor. The difference principle allows inequalities of wealth and income, so long as these will be to everyone’s advantage, and especially to the advantage of those who are placed worst off.

## ● The Maximin Solution

- By combining the principle of equal liberty and the difference principle, we can obtain the “maximin solution”, which means we will benefit the least advantaged in society.
- The worst outcome of a decision must be better than the worst outcome of alternative solutions.

## ● Conception of a Just Society

- These principles become the hallmark for institutions in a well ordered society. Rawls also emphasizes publicity as an aspect of fairness. In what he calls a *well ordered society* all citizens accept the principles of justice and know that their fellow citizens also do so, and all recognize that the basic structure is just.
- After agreeing to the two principles of justice, the citizens also agree to the principle of just savings to regulate how much each generation must save for the future generations. Since the parties do not know which era the citizens they represent live in, it is only rational for them to choose a savings principle that is fair to all generations.
- At the second stage of original position, the parties are given more information about the society’s political culture and economic development, and take on the task of crafting a constitution that realizes the two principles of justice.
- At the third stage the parties learn still more about the details of society, and agree to specific *legislation* that realize the two principles within the constitutional framework decided at the second stage.
- At the fourth stage, the parties have full information about the society, and reason as *judges and administrators* to apply the previously-agreed legislation to particular cases.
- It is after the completion of these four stages that Rawls believes the stage is set for the functioning of social and political life, ingrained with the principles of Justice as fairness.

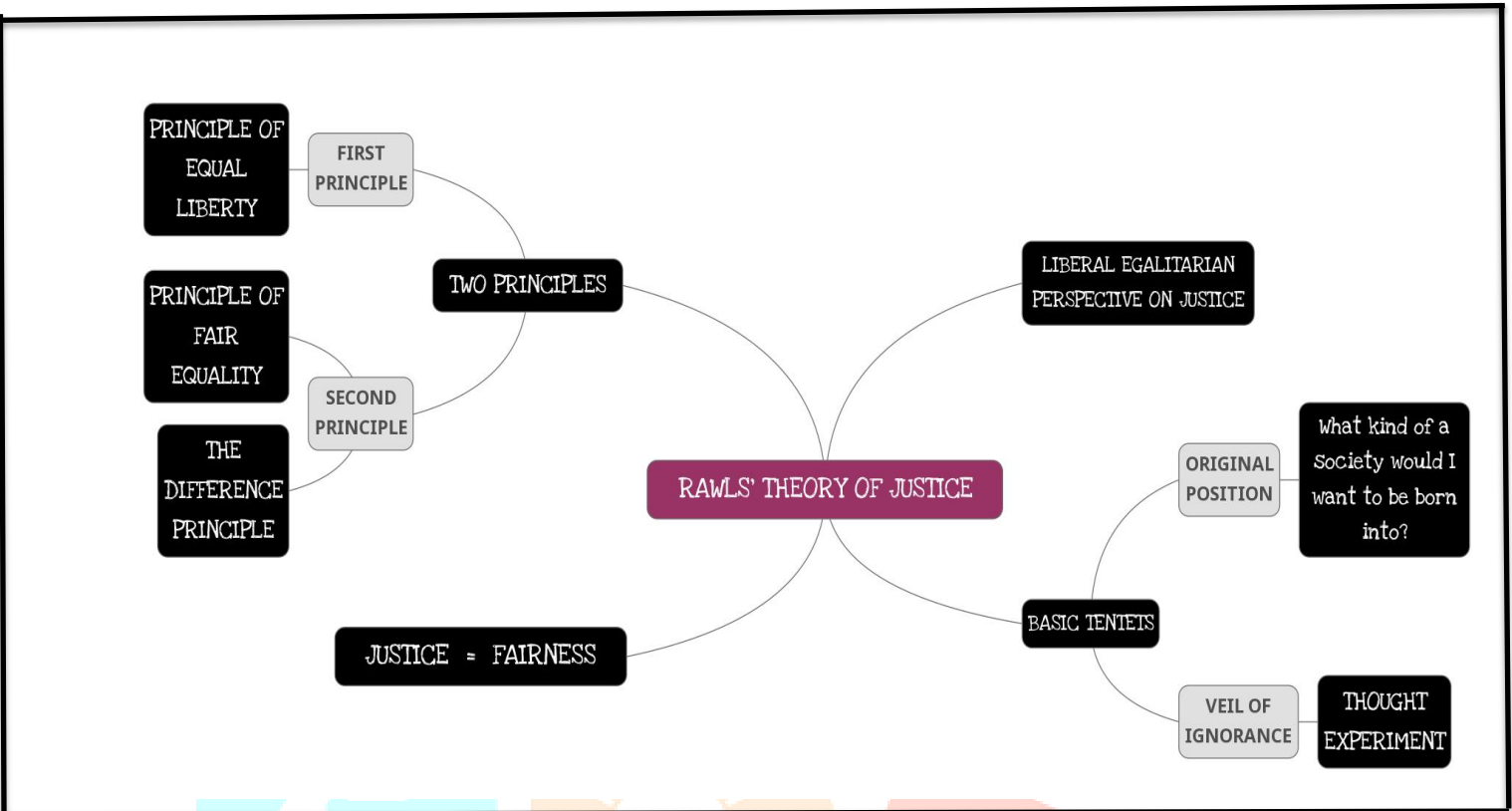


Figure: Conceptual Framework

### Influences evident in Rawls' Theory

- **Neo-Kantian in Nature**

- Immanuel Kant has revived the tradition of rationalism. As per Kant, all human beings are rational in nature and should therefore be treated with respect. Hereby Kant has given the concept of “categorical imperatives.”
- Categorical imperatives refer to certain fundamental principles which should govern human conduct. These basics of categorical imperatives have given the concept of pure reason.
- Rawl's theory is neo-Kantian because it begins with a rational estimate of what everyone would think, believing that what everyone would think behind the veil of ignorance is the fair and just thing to do.
- The guiding principle for determining social justice is “Justice as Fairness”.
- When Rawls writes from the perspective of the least advantaged in the society, he reinforces the influence of Kant, as Kant had emphasized that each man is an end in itself and no one ought to treat the other as a means to achieve an end.

- **Influence of John Locke**

- John Locke revived the tradition of social contract. Rawls has adopted the methodology of social contract.
- Rawls has tried to depict that liberalism attaches greater importance to liberty over utility of the greatest number.
- As per Rawls, human dignity of even a single individual cannot be violated for the argument for greatest happiness of greatest number.

### Various Critiques of Rawls' Theory

Various Critiques of Rawls' Theory	
<b>Collectivist Critique</b>	<p>It is argued that Rawls promotes the existing capitalist system by his theory.</p> <p>His theory proves that if the rich have the freedom to accumulate wealth, the poor would be automatically benefitted. Even if his principle of fair equality of opportunities is strictly adhered to, still the existing disparity between the rich and poor will not be substantially reduced. On the contrary, a slight improvement in the condition of the most disadvantaged sections will be treated as an excuse to permit vast socio-economic inequalities.</p>
<b>Marxist Critique</b>	<p>Marxists oppose the “veil of ignorance” concept, which forms the basis of Rawls' Theory. They opine that the actual knowledge of class relations and the patterns of ownership of private property is extremely relevant while deciding and deliberating upon the principles of justice.</p> <p>The veil of ignorance renders the purpose of such deliberations to be futile. Also, for Marxists, dignity holds the most prioritised position and they believe that Rawls's theory of justice is vulgar of inequalities.</p>

<p><b>Libertarian Critique</b></p>	<p>Libertarians contend that Rawls placed equality over liberty, ignoring the importance of liberty. They believe that it is unfair to make meritorious and industrious ones to work for the benefits of the most disadvantaged sections, and sacrifice their risk taking tendency for their own benefits in life. Libertarians argue that Rawls's negotiators are averse to taking risks.</p>
<p><b>Communitarian Critique</b></p>	<p>Communitarians criticize the ethical neutrality of Rawls' Theory. They believe that its approach does away with any possibility of the pursuit of common good. The fact that Rawls' Theory nowhere discusses whether the good life is better or worse than the others, bypasses the further debate of developmental good in the society.</p>
<p><b>Feminist Critique</b></p>	<p>Rawls' Theory of justice has invited criticism from various feminists on different grounds.</p> <p>Liberal feminist political philosopher Susan Moller Okin in her book Justice, Gender and Family states that Rawls has ignored the prevalence of justice at the level of family, maintaining tradition and therefore separating personal from political.</p> <p>Carole Pateman in her book Sexual Contract criticized Rawls theory as being sexual since Rawls proposes the participation of the heads of the family in the original position experiment and more often than not, the heads of the family are men rather than women.</p> <p>Similarly, Carol Gilligan has criticized Rawls' Theory of Justice as the one being based on a masculinist perspective. She puts forward the argument that men and women differ in nature. Whereas men would discuss reasoning, rights and fairness; women would as well discuss relationships, responsibilities and caring. Therefore, if the principles of justice are decided upon by women, they would be more inclusive.</p>
<p><b>Neo-Liberal Critique</b></p>	<p>American Philosopher Robert Nozick criticized Rawls' Theory because Rawls compromised liberty for the sake of equality, which Nozick considers to be against human dignity. From the perspective</p>

	<p>of neo-liberals, progressive taxation in the name of helping disadvantaged sections is a form of bonded labour. It is an aggression on a man's personality. Furthermore, according to him, there can be no justification for state's intervention in man's right to property. The property is not followed from heaven to be distributed, but is a part of one's own personality and therefore one should have complete ownership of it.</p>
<p><b>Social-Liberal Critique</b></p>	<p>They tend to reject the veil of ignorance criteria of Rawls' Theory based on the argument that no theory of justice can be accepted which is arrived at in a state of inconspicuousness such as the veil of ignorance. Dworkin is a proponent of this argument.</p> <p>The example cited in this critique is that if an artist sells his painting at a nominal price because he is ignorant of the outer market price, it would only be just for the artist to demand compensation from the buyer. Nobody would actually follow those principles which would be agreed to behind the veil of ignorance.</p>

Now, however, Rawls' through his theory and experiments put forward the idea of procedural justice to attain social justice at large, critiques like Amartya Sen find this attempt at procedural justice as similar to transcendental institutionalism. Further, we will investigate Sen's critique of Rawls's ideas and his idea of justice and the proposed capability approach. Also, we will closely look into similarities between the work of Sen and Martha Nussbaum's idea of capability.

### **Amartya Sen's Idea of Justice and his Capability Approach**

Amartya Sen is a contemporary moral and economic philosopher, with contributions to economic and social justice, welfare economics and social choice theory in his name. Through his celebrated works like *Idea of Justice* (2009), *Development as Freedom* (1999) and *Commodities and Capabilities*, he strives to answer questions like what is the best way to organize a society, why does a society need to be just at all, why is justice and fairness so important for the proper functioning of a society, to what extent can democracy lead to justice, is democracy the only path to justice etc.

With respect to his quest for unfolding what actually constitutes justice and a just society, Amartya Sen holds that justice is based more so on freedom.

## Understanding the Idea of Justice by Amartya Sen

Sen believes that the theory of justice needs to be concerned with its primary engagement in practice, which is how to remove identifiable injustices prevalent in the world. He resents that the bulk of theories of justice are however deviated from this question, and indeed tend to look for the answer to how an ideally just society would look like, and even in that, they are more limited to what an ideally just institution should be. Further, these theories assume that the behaviour of the society should be compliant with those institutions. Therefore, it narrows down to perfection, instead of comparison between imperfect alternatives.

Secondly, he argues that through these theories the attempt is not to construct a perfect or just society but to build perfect institutions with the assumptions that the societal behaviour would somehow be compliant to those institutions'. It has moved away from the engagement and people whom these theories were initially concerned with, *viz* the removal of slavery, the removal of subjugation of women, etc. Furthermore, Sen argues that when philosophers and thinkers like John Stuart Mill and Mary Wollstonecraft raised their voices against slavery and women subjugation, they were not under the influence that more equity for women or abolition of slavery would produce a perfectly just society. Rather they were concerned with reducing injustice and making comparative choices.

So when Rawls talks about the thought experiment of original position and the need for a veil of ignorance, Amartya Sen attempts to reconsider the influence of John Rawls on himself and rejects this approach as mere *transcendental institutionalism*.

### Transcendental Institutionalism

- Justice is somehow transcendental, it works in the same way with the same principles in any place - dubious about Rawls' idea because of his own practical experience of how injustice plays around in the world in different situations, Sen argues instead that rather than thinking about some ideal theory of justice that functions through a flawless set of rules that can be implemented anywhere at any time, looking around the world we find the need to find a way to prevent the manifest injustice that is everywhere perceivable.
- The manifest injustice forces us to stop dreaming about some ideal theories of justice and come up with very practical ideas of justice that can be employed right away to help remove the manifest injustice.

Sen maintains that the transition from an ideal theory of justice to a workable idea of justice is imperative in order to prevent the manifest injustice.



## Consequentialist Approach over Deontological Approach

- Questioning the fundamentally deontological approach of Rawls' Theory, Sen puts forward a rather consequentialist approach.
- However he doesn't specifically mention his approach as consequentialist in the debate between deontology and consequentialism. But he does so by introducing new terms from the classical Indian philosophy - Niti and Nyaya, thereby giving clear indication that his approach is of consequentialism.
- *Deontological approach is concerned fundamentally with principles but the consequentialist approach is concerned with consequences.* We can consider an act just because the act is in perfect accordance with certain principles of justice, or alternatively, or we could consider an act to be just because of the consequences that arise as a result of the act.
- Sen leads us away from this principled approach which blends into the transcendental institutionalism of the Theory of Justice of Rawls, and pushes more towards considering the consequences of our actions and our organisations since these are going to be necessary to remove the manifest injustice.
- He supports that the idea of ideal needs to be translated into a viable practice for injustice to be eliminated.
- Consequently, Sen seems to promote more consequentialism and move away from deontology. (By introducing the terms niti and nyaya)
  - *Niti*: Organizational propriety and behavioural norms
  - *Nyaya*: Actual social realization, going beyond these organizational rules and norms.
- To an extent, though not in entirety, it can be said that niti corresponds to deontological and nyaya corresponds to consequentialist approach. Nyaya is to deliver justice on the ground, it is concerned with what emerges and how it affects the actual lives of people and those lives of people are actually capable of leading, rather than articulating lives in some bookish sense.
- Niti is about rules and institutions and nyaya is about their realization. Sen argues that Niti and Nyaya are equally essential, therefore it is not completely accurate to say that Sen is consequentialist in approach. (Since Niti is deontologically inclined and Nyaya consequentially)
- Niti and Nyaya are in some way parallels but Niti is not purely deontological and Nyaya is not purely consequentialist. These are both necessary. However, unless the principles of Niti are actually translated into Nyaya, or the pragmatic consequences of these principles, then justice is certainly not achieved.
- It is of no use to have an ideal of justice if it cannot be implemented on the ground.

### *Capability Approach* <sup>(7)(8)</sup>

The concept of justice is closely related to liberty and equality. Generally, justice is viewed as one of the tenets of law, however deeper scrutiny puts forward the picture that not all laws are just. Many movements and organisations have, in fact, centred around opposition to these unjust laws, for example the social movement against apartheid in South Africa. Another commonly held belief is that justice is always impartial. Thus, the idea of fairness and impartiality become important attributes to the discussion and aspect of justice.

Amartya Sen maintains that there are many principles that can pass the test of impartiality. This he illustrates by the example of three children who are fighting over a flute, with differing claims. One child claims that they are the best flautist and therefore should get the flute. The second child claims to be the poorest of the lot and therefore should be able to get the flute, the third claims the flute because they have crafted it without anybody else assistance. All these claims can be defended on the basis of utility, economic equity and entitlement to the fruits of one's efforts respectively. These claims can all be defended very strongly based on the principle of impartiality.

Amartya Sen, in his idea of justice talks about freedom over liberty. According to him, Rawls' Theory of Justice primarily focuses on the means to freedom rather than the actual extent of freedom that an individual has. Thus, Sen's approach to justice is centred more around what one has and what one has the right to attain. This is basically the premise of the capability approach. Herein what matters the most is not the access to primary goods but the extent of capability one possesses to convert these primary goods into resources and experiences that they value most in their lives. This would help them to achieve freedom and ultimately uphold justice in their lives.

To quote an example, suppose there are two individuals, with the same set of primary goods. But does this same amount of primary goods also ensure the same sense of liberty? According to Amartya Sen, the answer is no! There could be a plethora of reasons for this, viz physical disability, poverty, etc. These would create a sense of restriction to the individual in access to the same goods. Also, there could be a difference in the capability that the individual has in order to convert these goods into resources and therefore freedom.

Hence, Sen defines capability as the individual's freedom to pursue alternative lives of their own choices. There can be no unanimous way to define what constitutes the most valued way of life and it lies ahead to the subjectivity of different individuals as per their choices, circumstances and capabilities. Therefore, Sen says that capabilities directly represent freedom, whereas in Rawlsian perspective, the concept of primary goods does not represent freedom per se, but they are means to freedom. Amartya Sen further goes on to clarify that equality of freedom to pursue certain ends and objectives in life cannot be guaranteed by Rawls's primary goods.

Thus Sen presents a case for analysis and examination of interpersonal evaluation to the extent of an individual's capability to pursue these objectives freely and actually go on to achieve what they value the most in their lives. According to Sen, people not only value different things as good but they also have differing capabilities to convert these goods/primary resources into actual freedom. Thus, Amartya Sen would want John Rawls to add this concern of variations in different individuals' differing capabilities. These variations could be vivid and diverse ranging from gender, age, genetic endowments, societal position, etc. What matters the most is that these variations influence the individual's capabilities and capacities to build their niche in life.

Conclusively, Sen in his approach lays emphasis on recognising, acknowledging and enhancing the capabilities of individuals rather than making the primary goods available to them.

### Capability Approach - Martha Nussbaum

Martha Nussbaum is of the opinion that there are certain capabilities that are needed by an individual to live a well satisfied life. Her capability approach is regarded to be one of the most systematised and well explained theories of capability approach towards justice.

She has enlisted the following central capabilities:

- **Life:** This refers to living adequately and not dying prematurely.
- **Bodily Health:** Access to good health and sufficient nutrition.
- **Bodily Integrity:** To be able to move freely, be away from any kind of violent assault (domestic/ sexual), have sexual preferences and a say in reproductive issues.
- **Senses, Imagination and Thought:** Cultivated by appropriate education.
- **Emotions:** To be able to have attachments; freedom from fear and anxiety.
- **Practical Reason:** Have a clear conception of good and be able to take decisions with critical reasoning.
- **Affiliation:** This is associated with being able to have proper social interactions, and maintain self-respect and dignity.
- **Other Species:** It means being able to live in cooperation with the other plants, animals and other species and environment.
- **Play:** to enjoy recreational activities.
- **Control over environment:** This includes political environment i.e., political choices to eventually govern one's life as well as material environment *viz*, holding property, etc.

This list of tenets presented by Nussbaum portray an amalgamation of Aristotelian and Rawlsian ideologies in the sense that the list of the components is similar to Aristotle's conception of self-

dignity. However, its politically liberal aspect shows similarities with the Rawlsian theory.

#### **Difference between Nussbaum and Sen's tenets**

- Unlike Sen, who focuses on freedom, Martha focuses on dignity of the self and claims to have derived these points after a multicultural deliberation, especially with reference to India.
- Whereas Sen is more consequentialist in his approach, Nussbaum comes out to be rather utilitarian.
- Sen's approach is normative in comparison to Nussbaum's utopian outlook.
- Along with choice, she lays equal focus on deprivation, by arguing that if an individual chooses not to have either of these facets or is deprived of these, then it would not mean that their life is any less human than someone else's.
- However, she ascertains the sufficientarian principle, arguing that the governments and international organizations must strive to provide these aspects to the individuals to help them lead a life of their choices and capabilities.
- Nussbaum also calls for a deliberation and further provide for guarantees as per her list by various institutions in the global world.
- Furthermore, she argues that since her list consists of tenets and entities which are centrally important to any system, therefore trade-off by any system/ government is eventually rendered limited.

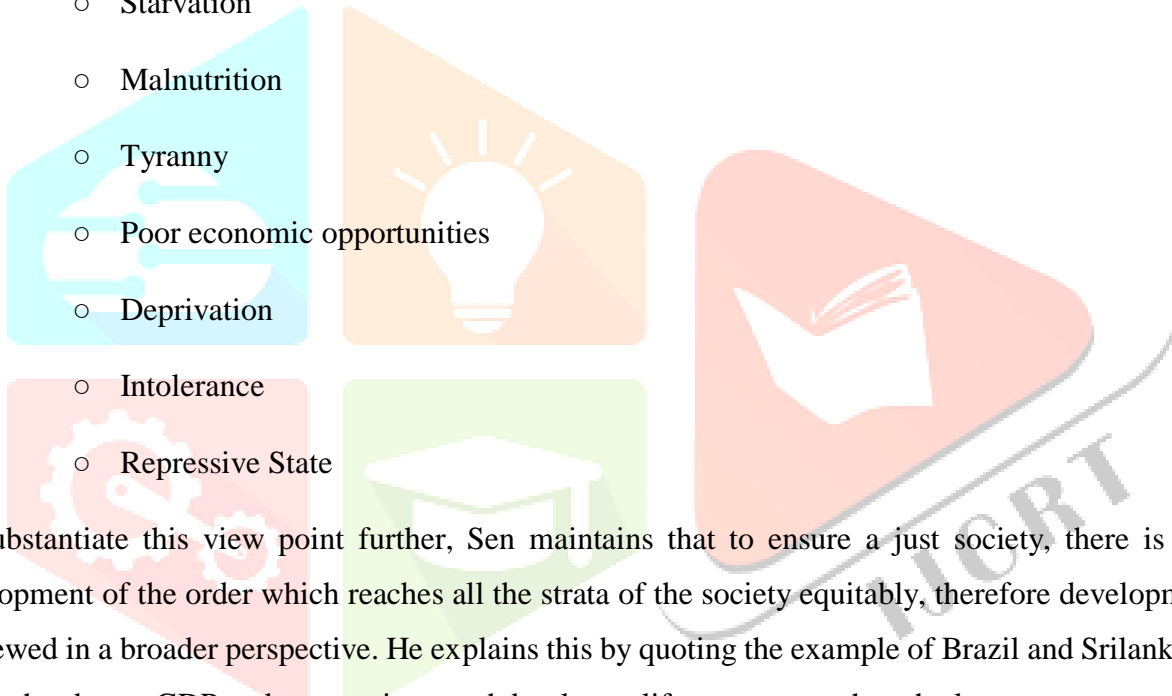
#### **Critique of Nussbaum's Theory**

- Nussbaum's theory is criticised for its Aristotelian similarities despite the long time of global and multicultural deliberations.
- Her work is also criticised for being more associated with the American value system of the 21<sup>st</sup> Century rather than being associated with contemporary world elsewhere, and for not being universal.

#### **Development Oriented Freedom as a Necessity for Capability Approach**

- Development should not be viewed in terms of economic oriented measures. These include measures like Gross Domestic Product, Per Capital income, growth and annual income; but these should rather be measured in terms of economic facilities and social opportunities.
- According to Sen, human freedom is both the end as well as the means of development. Herein, he defines the means as the economic measures employed to achieve the goals which actually translates into human freedom.

- Furthermore, Sen argues for the interdependence of rationality and freedom. He contends that rationality refers to subjugating one's choices, values and priorities to reasoned scrutiny over other intended self-interests. It is from this rational attitude that one attains freedom, which means that one is able to practice their rational choices, on the basis of their personal preferences and values.
- Thereby Sen concludes that it is this rationalization of freedom which is known as development.
- Human capabilities can be achieved to their ultimate potential by abolishing unfreedom. The tenets which constitute unfreedom are:
  - Poverty
  - Famine
  - Starvation
  - Malnutrition
  - Tyranny
  - Poor economic opportunities
  - Deprivation
  - Intolerance
  - Repressive State



To substantiate this view point further, Sen maintains that to ensure a just society, there is a need for development of the order which reaches all the strata of the society equitably, therefore development should be viewed in a broader perspective. He explains this by quoting the example of Brazil and Srilanka where the former has better GDP and economic growth but lower life expectancy than the latter.

Hence, Sen presents a case for expanding the definition of development by ensuring real human freedom which includes political freedom, economic facilities, social opportunities, transparency and guaranteed protective security.

- **Poverty as Capability Deprivation:** Poverty limits an individual's realm of achievements. Here, he talks about both economic poverty and capability poverty, which pose a hindrance to development. Whereas economic poverty is subsistence earning, capability poverty translates into high Infant Mortality Rates.
- **Key Role of Women in Development:** Women have harder grit and bodies and will survive better than men. For example, in developed countries, the male-female ratio is skewed more towards women as women tend to outlive men. Therefore, the world is missing out on a major chunk of women in the third world countries due to female infanticide, maternal mortality and poor female health care.

- **Strong Linkage between Women's Inequality and High Mortality Rates:** Women's enhanced economic participation would lead to a betterment of their status in the society, thereby promoting political and social change. This will lead to better health conditions, higher survival of children at birth and decreased fertility rates.
- **Issue of Population:** Women's empowerment would lead to slowed down exponential population growth. Moreover, Sen also criticizes China's one child policy on the grounds that it is a form of 'unfreedom' and would thus lead to violence and chaos in the society. In response to this, he rather supports voluntary programmes as are already prevalent in India.
- **Interconnection of Humans and Humanity:** Human freedom depends upon personal, social and environmental conditions.

### On the Social Contract Approach to Justice

Sen explains that intellectually there are two trends in the European Enlightenment Tradition, and they are similar elsewhere as well. The first trend which is really reflected by Thomas Hobbes, John Locke, Immanuel Kant, Jean-Jacques Rousseau is the trend of looking for social contract for ideal institutions, which are necessary for ideal society and ideal behaviour. This means, there exists a perfect idea and you are required to act upon it. However, the limitation of the approach is that though there is a perfect understanding for scenarios when everything would go perfectly well or what a perfectly just society would look like, yet there is a very slight possibility of the just society to come into being suddenly and on its own.

In addition to the above mentioned facts, this system does not indicate any direct path to remove injustice because there are many injustices in the world like slavery, women's subjugation, unequal pay, unequal access to resources, etc. And along with these manifest injustices, there are many other issues which may not look like injustice in the first instance, but with the removal of which or enhancement of something else would enhance justice. For instance, the criminal-politician-bureaucracy nexus may not appear to be a sort of injustice prima facie but delving deeper or removing this evil will certainly enhance the judicial and executive process for people at large.

Secondly, social contract fails to be a viable method because there is no mathematical dimension or clear cut indication as to how long would one take to reach the perfect society interface. Moreover, there are many dimensions in which one could depart from a perfect society and the dimensionalities do not preclude a simple index whereby one could say how long would be required to reach the ideal situation etc. For example, anyhow, one has to judge which would be the right thing to do with a limited amount of money, viz having a healthcare of a really perfect time, or some basic health care for all and spend some more money in income support and other kinds of non health care etc. These choices cannot be made merely by having perfect



institutions or by having a clear thought of a perfect state/ society, since these are rather utopian and therefore impractical concepts.

### **On Ideas of Social Choice**

In its core, Sen argues that we need a theory of justice which is concerned with comparison and further talks about the discipline of social choice theory. He quotes the major figures in the social choice discipline like French mathematician Marquis de Condorcet and other revolutionary figures in the French Academy of Sciences. Their major concern was how to take different people's ordering of society and combine them to arrive at some kind of a social position that gives an appropriate way of judging how well a society is doing.

Adam Smith pursues the same in his Theory of Moral Sentiments and The Wealth of Nations; Mary Wollstonescraft takes the similar approach in talking about slavery, women subjugation etc, in talking not so much as about a perfect society but about removing the pertinent injustices from the prevailing world. Sen opines that John Stuart Mill and Karl Marx also followed the same criteria in their theories and ideas in a big way. Furthermore, he considers himself to be a proponent of the same thought through his works on justice and development at large. This approach, he maintains, gives a better hand at better understanding the challenges of justice, not in the nature of advancing or constructing a perfectly just society, but in better judgement of ways to remove existing injustices from the world, and the role particularly of public reasoning that might be involved in the process.

### **On the Universality of Ideas of Justice**

The debates over the universality of the idea of justice have been omnipresent in different parts of the world at different times, taken from the Greeks to Italians to the Enlightenment era, including in India and China. Despite that, it is necessary to recognize that when we talk about universality of justice, we are not dealing with a culturally bound or limited approach to justice. However, it is equally important to mention that the situation of, say, the Western world or Europe and India is similar at many points in the debate of quest for justice, and dissimilar at others.

For instance, there are theories and philosophical discussions in Ancient India, and of other important phenomena, these talk extensively about Neeti (ideal behaviour, rules and institutions), and Nyaya (realization of the kind of society in function).

Sen tends to focus more on the Nyaya perspective, discussing what kind of life people need, what kind of capabilities and freedoms they have, what kind of opportunities they are provided with, and how can those be utilized to judge the justice procedure and procurement in one social arrangement as compared to the other.



## On Democracy

The idea of democracy stands central to the idea of justice. This is so because if one thinks of democracy as merely associated with institutions, then it would be merely about buildings and papers. However, when one associates it with the root of democratic processes that is government and governance by discussions and deliberations, one would conclude that elections play a vital role in the process. It is imperative that these elections be free and fair. Also history is filled up with instances of how dangerous and vile the procedures could become, if the public is excluded from such deliberations or the media is censored, etc.

Therefore, insofar as justice is concerned with public reasoning is crucial in combining evaluation from different perspectives and different ways of judging. Government by discussion is a part of the same process, namely how people can compare each other's reasoning and try to persuade each other. Quite similarly, a political speech is a reasoning in the public domain and acts as a channel of ensuring and enhancing a just way to arrive at decisions. Therefore, in his work, Sen maintains that democracy (and thus the media, channels, forums, political parties and other means of discussion) is a centrally important virtue to ensure justice in the society.

## Amartya Sen's Critique of the Rawls' Theory of Justice

Amartya Sen is a social liberal and a disciple of John Rawls, yet he has criticized Rawls for a variety of reasons, some of which are mentioned below.

### Rawls' Methodology

Amartya Sen does not approve of the approach of rationale of choice followed by John Rawls and refers to it as a social choice. (The idea of rational and social choice is based on abstract individuals making rational choices in abstract situations.)

### Universal Idea of Justice

Apart from this, Sen does not either support a one-size-fits-all approach of Rawls where he tries to formulate a universal idea of justice which is acceptable to all. Amartya Sen, on the other hand, firmly believes that there can not be any one formula which can appear to be just for all. In his book, Idea of Justice, Amartya Sen cites an example of three kids Ann, Bob and Carla who are fighting over a flute. Through the example of these kids, Amartya Sen puts forward the following ideas:

- Ann gives the argument that she has made it and therefore she deserves to have it. This is primarily the libertarian perspective.
- Bob contends that he has nothing else to play and should therefore be given the flute to play with. This is essentially the Marxist argument.

- Carla, on the other hand, says that since she knows how to play the flute, therefore she should be the one to have the flute. Through this example, Amartya Sen successfully demonstrates that justice can not be meted out without doing injustice to someone. And hence, there can be no formula to satisfy all, thereby rendering Rawls' universal approach towards justice futile.

### **Extreme Focus on Procedure**

Amartya Sen further adds to his criticism of Rawls that Rawls focussed too much on procedural aspects. According to Sen, procedure is not as important as justice. To explain this, he brings in the Indian concept of Niti and Nyaya (where Niti is procedure and rules; Nyaya is substantive justice). To substantiate this, he also gives reference of Krishna and Arjun from Geeta, where Krishna told Arjun that to attain "nyaya", one needs to ignore "niti" at times.

### **Buddha's Influence**

Sen is also influenced by Buddha. Buddha emphasised on minimizing human suffering. Likewise, Sen contends that we may not be able to do justice in entirety but our approach should be to minimize human sufferings (deprivation). Thus Sen favours 'realized focus approach' rather than formula based approach.

However, it cannot be said that Amartya Sen's approach or thought is devoid of any criticism. Pratap Bhanu Mehta believes that Sen's theory suffers from under-theorization and it would not be appropriate to argue that there is no need for some basic institutions and procedures.

Having stated which, one must keep in mind that Sen's approach is one of the pioneer relevant approaches in contemporary times, owing to its practicality.

### **Critique of Sen's Idea of Justice**

Though Sen's view on justice is quite appealing, it cannot be neglected that basic minimum working principles for public policy reflect broad consensus in the society. The issue of 'right procedure' cannot be subjugated altogether. His views are relevant to the extent that policy makers waste a lot of time in arriving at a formula that is acceptable to all in determining the right procedures, and thus sacrifice the objective of human sufferings.

Part of the reason why Sen proposed his theory over Rawls's is because he suggested that fundamental agreement about the ideal principles of justice are much more difficult to achieve, as opposed to certain compromises that can be reached in respect to the implementation of the removal of manifest injustice. It is much easier for us to agree on how to get rid of manifest injustice than to agree on the ideal of justice. Critics point out that why is it so? The rational process that is taken into consideration to agree upon processes to get rid of manifest injustice, why can't they be further oriented towards the discovery of the ideal of justice?

More common and transient critique is against his apparent consequentialism. This is so because when in 1971 Rawls came up with his theory of justice, it was approached/ oriented much against the then prevalent utilitarian theory, which was consequentialist in approach. Therefore, Sen's critique in this regard is to reinforce the Rawlsian principled conception as against the consequentialist, or in certain aspects the utilitarian conception that Sen seems to be putting forward. However this is not entirely clear that Sen has any such account for the same since he is fundamentally concerned with maintaining Niti within his approach.

## Conclusion

Moving ahead of the Social Contract Theory and paving way for the enhanced debate, Rawls has provided for a more elaborate discussion on justice. Despite his criticism, there also exists a school of thought which holds that Rawls' Theory of Justice is rather an amalgamation of the major belief systems, which include libertarianism, egalitarianism, and communitarianism.

It is stated that Rawls was libertarian because in his thought experiment of the original position, he gave the men in the original position an opportunity to reach their maximum self and thus attain their maximum self-interest. In addition to this, as per his lexical order principle, he placed liberty over everything, which could not be compromised for anything else. Advocates of this thought also recommend that Rawls was egalitarian in the aspect that he proposes 'equal' liberty for all. His "*chain connection*" idea is further evoked to justify the same. Through this principle, Rawls ascertains that in a society, everyone is linked with everyone else in the form of a chain and the strength of the chain depends upon the strength of the strongest link in as much as it depends upon the weakest. Therefore, he says that the more talented and gifted ones enjoy the reward of their talent and merit closely with the lesser meritorious/ gifted ones. This idea brings the perspective of Rawls closer to that of the Communitarian belief pattern.

Therefore, it is undeniably true that Rawls will continue to have a crucial role in the quest for justice. With respect to Sen, it is remarkable that he talks about the more relevant truths of the society as it exists today rather than the establishment of a utopian world. His quest for a welfare state and ensuring removal of injustices is a practical step for the establishments to do away with misery without actually waiting for a magic wand of the perfect society to construct a sense of justice. Sen's idea of justice and his capability approach presents a perfectly well-manured path to seek lives that one could lead happily, and which one does not only value but has quantifiable reason to value. Since time immemorial, people have strived for freedom, whether it be the Indian struggle for its independence, or the struggle of women to be able to go out and lead the kinds of life they wish to, uninterruptedly; or whether it be the rights of Blacks, poor, deprived, differently-abled, elderly, children, refugees, etc., freedom is the basic criteria which forms the bedrock principle of their quest to lead their happy lives. What Amartya Sen suggests through his capability approach is a perfect depiction of how these lives could be attained. To make the concept of freedom, which is somewhat abstract in its core,

concrete in realization, it is necessary that a proper approach be followed through. Sen successfully depicts this approach.

Having stated all of which, it is equally necessary that the debate be taken forward and deliberations organized to fill up the lacunae which swarm Sen's approach. For example, Sen's idea of capabilities is perfectly suited to the case of poverty and destitution, but it does not suit as well in the case of minimally higher level of capability to function. Along with that, though mere institutionalisation is not sufficient, it would be anyway more appropriate to remove manifest injustices and ensure smooth functioning of the institutions and establishments to prevent any sense of chaotic scenario in the society.

Attaining justice is a never ending quest, and Sen has laid a strong foundation to bring together ideals and practice on the same platform. The debate must go on further to ensure that best practices evolve with time, injustices are removed and justice prevails.

## Reference

1. <https://www.voicetube.com/videos/48646>
2. <https://www.voicetube.com/videos/48646>
3. Shuster, Kenneth. "Because of History, Philosophy, the Constitution, Fairness & Need: Why Americans Have a Right to National Health Care." *Ind. Health L. Rev.* 10 (2012): 75.
  1. Gauba, O. P. *An introduction to political theory*. Macmillan, 2011,427-454.
  2. Dutta, Sampurnaa. *Rawls' Theory Of Justice: An Analysis*. IOSR Journal Of Humanities And Social Science (IOSR-JHSS) Vol. 22, Issue 4.
  3. Pollock, Joycelyn M. *Ethical dilemmas and decisions in criminal justice*. Nelson Education, 2014,59.
  4. Van Ness, Daniel W., and Karen Heetderks Strong. *Restoring justice: An introduction to restorative justice*. Routledge, 2014.
  5. Wenar, Leif, "John Rawls", *The Stanford Encyclopedia of Philosophy*, Spring 2017 Edition. <https://plato.stanford.edu/entries/rawls/>
  6. Rawls, John. *Justice as fairness: A restatement*. Harvard University Press, 2001.
  7. Gauba, O. P. *An introduction to political theory*. Macmillan, 2003.
  8. Sen, Amartya Kumar. *The idea of justice*. Harvard University Press, 2009.
  9. Sen, Amartya. "Development as freedom (1999)." *The globalization and development reader: Perspectives on development and global change* 525 (2014).

10. Srivastav, Dhawal Shankar. "Rawls's Theory Of Justice Through Amartya Sen's Idea." *ILI Law Review* (2016): 151-160.
11. Deneulin, Séverine. "Development and the limits of Amartya Sen's The Idea of Justice." *Third World Quarterly* 32, no. 4 (2011): 787-797.
12. Alexander, John M. *Capabilities and social justice: The political philosophy of Amartya Sen and Martha Nussbaum*. Ashgate Publishing, Ltd., 2008.
13. Nussbaum, Martha C. *Creating capabilities*. Harvard University Press, 2011.
14. Nussbaum, Martha C. *Women and human development: The capabilities approach*. Vol. 3. Cambridge University Press, 2001.
15. Nussbaum, Martha C. *Women and human development: The capabilities approach*. Vol. 3. Cambridge University Press, 2001.
16. Nussbaum, Martha. "Human rights and human capabilities." *Harv. Hum. Rts. J.* 20 (2007): 21.
17. Nussbaum, Martha C. "Education and democratic citizenship: Capabilities and quality education." *Journal of human development* 7, no. 3 (2006): 385-395.
18. Smith, William, and Robert Fine. "Kantian Cosmopolitanism Today: John Rawls and Jürgen Habermas on Immanuel Kant's Foedus Pacificum." *King's Law Journal* 15, no. 1 (2004): 5-22.
19. Hill Jr, Thomas E. "Rawls' Legacy: An Ideal and a Project." In *Proceedings of the Eighth International Kant Congress*, vol. 1, no. Part 3, pp. 1157-1163. 1995.
20. Lerner, Melvin J. "The justice motive in social behavior: Introduction." *Journal of social issues* 31, no. 3 (1975): 1-19.
21. Ross, Loretta, and Rickie Solinger. *Reproductive justice: An introduction*. Vol. 1. Univ of California Press, 2017.

## **Bibliography**

1. Internet Encyclopedia of Philosophy
2. An introduction to political theory by OP Gauba
3. Idea of Justice by Amartya Sen
4. Problems with Rawl's Theory (Queensborough Community College)
5. Amartya Sen's Development as Freedom: Ten Years Later
6. Amartya Sen and the Idea of Justice
7. Plato Stanford Encyclopedia