A CRITICAL ANALSIS OF AMARTYA SEN'S NOTION OF JUSTICE.

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Abstract:

Questions of social justice on who gets what, how the scarce resources should be distributed in any political community, has been an issue of concern right from the origin of the state to the present. It has signalled the inscrutable philosophers and logicians argumentations about *nyaya* (logic, principle, justice, equity, fairness, and so on) or as in the West, from Plato to Rawls and beyond, a discourse of order and management of inequalities and stations in life. Despite John Rawls contribution is widely acknowledged as seminal in this regard, Amartya Sen's understanding of justice engages with the Rawlsian project and attempts to tease out an alternative conception of justice. Sen's analyses of justice concentrates on social realizations and not on the quest for perfect institutions, as he suggests that there is no universal theory of justice but that different societies will work out their own accounts if they allow deliberative and democratic procedures to flourish. However to what extent, Sen's notion of justice is possible to achieve in a multicultural and multilingual state like India, where religion and superstitious beliefs of the people (like witch hunting, untouchability), determines the lives of the individuals in the society. The paper thus seeks to analyse critically this practical orientation in Sen's understanding of justice.

Keywords: Social Justice, John Rawls, Amartya Sen, Social Realization.

Introduction:

How should we distribute the scarce resources and opportunities among the individuals in a society? What should be the aim of distribution be? How could we begin to make improvements towards creating a globally just world? There has been a vigorous debate and discussions on such questions from Plato to Rawls to provide a more systematic way of managing our collective interest and to define the concept of justice. Ideas of social justice became a common reference point in almost all political discourses and philosophical enquiry. As such, concepts such as rights, liberties, equality, needs and deserts have been accommodated into justice's sphere which has increased its influence in political philosophy over times.

From the publication of Plato's *Republic*, to the emergence of new approaches and theories on analysing the concept of justice, complemented by changes in Europe (due to Renaissance and Industrial Revolution), the concept too got developed and elaborated, becoming a vital exercise in the modern era of political philosophy (Pappas, 2003, pp. 50-62). This practice arguably reached its high point in 1971 with the publication of, *A Theory of Justice*, by John Rawls. Reviving the themes of classical 'social contract' thinking, especially that of Immanuel Kant, Rawls understood

and defined justice not in terms of law of nature or something based on reason, but as a fair distribution of primary goods among the people which consist of the basic rights, liberties, opportunities, and also benefiting the least advantage persons (the marginalised people) thus making the procedure fair and just (Rawls, Justice as Fairness, A Restatement, 2001, pp. 41-42).[i]

However in the present scenario, the demands of justice (in terms of principles of justice) cannot be formulated by focusing only on just institutions or on distributing the primary goods, thereby ignoring the broader outlook of social realizations of the people. Taking the case of India, a multicultural and multilingual state where needs of the diverse sections of the society have to be protected and given adequate representation, a theory of justice has to focus on actual lives in the assessment of justice. Though we cannot ignore the importance of the institutions and rules influencing the part and parcel of the actual world as well, but when the focus is on the actual lives of the masses, while assessing the notion of justice, the implications are very wide ranging in terms of the nature and attainment of the idea of justice. Under such an circumstance, an alternative having a influential and significant analysis of the idea of justice is provided by Amartya Sen, when he formulated the demands of justice not only in terms of principles of justice that were entirely concerned with just institutional arrangements for a society, but also emphasised on the broader outlook of social realizations, the freedoms that people can achieve in reality, thus giving importance to the reasonable behaviour and original lives of the citizens (Sen, Identity and Violence: The Illusion of Destiny, 2007, p. 117).

Unlike, former theories of justice that endeavours to limit the questions of justice, to the nature of perfect justice; the central theme of Sen's theoretical proposal is to eradicate manifest cases of injustices. It can be seen in his book, *Poverty and Famines,* where Sen analyses the causes of starvation in general and famine in particular through various case studies in various parts of the world (the Great Bengal Famine of 1943, Ethiopian famines of 1973-75 etc.) and has come to the conclusion that poverty is a very significant problem and not that simple as is it seen and so the actual causes of deprivations need to be understood and removed (Sen, 1982, pp. 52-87). As we commonly pursue justice in terms of our understanding of the present world, how it is being ordered or controlled and to visualize and analyse the change by becoming a part of it, hence the paper tries to analyse critically the practicality in Sen's notion of justice in the present world especially in Indian context.

Understanding Amartya Sen's Notion of Justice:

Amartya Sen in an article written in 2006, *What Do We Want from a Theory of Justice*?, concluded that political philosophers should categorically end chasing, in the style of Rawls, the grand question, what a just society should be (Sen, 2006, pp. 215-238). Sen provides a detailed critique of universal accounts of justice and advances the idea of value pluralism within the design of social justice (Sen, 2009, pp. 5-9).[ii] He promotes the notion that people should have their own perspectives and accounts of justice; thus socially, just outcomes will not be universal across all cultures and societies. However, there is less doubt that the tradition of theories of justice that Sen

has in mind has been positioned and dominated by the spirit of John Rawls from which he has learnt so much, hence Sen endeavours to put forward an alternative to the dominant theory of justice by critically engaging with it in his book, *The Idea of Justice*.[iii] Sen differentiates between the two models of classical Indian philosophy, 'Niti' (strict organizational and behavioural rules of justice) and 'Nyaya' (concerns with what emerges and how such rules affects the lives that people are actually capable to lead), wherefrom he draws the idea of realization perspective on social justice (Sen, 2009, p. 20). Sen criticizes the earlier philosophers like Rawls for neglecting and focusing on 'niti centred' approach and thus underrates the essential combination of just institutions and correspondent actual behaviours that makes a society practically just, from which he formulates his central argument. Sen thus subsequently emphasizes the opposite 'nyaya centred' approach according to which, 'what happens to people', must be the core concern for a theory of justice and thus provides a better understanding for justice. It should also be mentioned that Sen calls into question the fundamentally deontological approach to justice that we find in Rawls and hence puts forward more of an apparent consequentialist approach (though he himself does not refer to it as a strict consequentialist idea of the classical utilitarian era) in order to remove manifest injustices.

Moreover, Rawls argues in the opening pages of his book, *A Theory of Justice*, that his aim is basically to derive principles of justice for a 'well ordered society', that is society of 'strict compliance', where the objective of each and every individual is to act in a fair and just manner to create a perfectly just society (Rawls, 1999, pp. 3-5). Sen considers this as a *transcendental institutionalist* perspective to justice, categorized by the focus on perfect justice, thus overlooking the non-institutional aspects of human relations, which in practice, and would determine how actual societies would function (Sen, 2004, pp. 315-356). Thus what differentiates Amartya Sen from earlier theorists was that his evaluation of justice aimed not at recognizing the nature of just (whether it is just institutions or society) but rather to construct a theory that helps people to realize and make ways how to reduce injustice and advance justice, as well as understanding the factors affecting the degree of justice in any existing society.

Sen vehemently focuses by providing examples of various cases of injustices in society such as slavery, the discrimination of women, the lack of universal healthcare in most countries of the world, the lack of medical facilities in parts of Africa or Asia, the tolerance of chronic hunger, for example in India, and the extreme exploitation of labour can all be recognized, besieged and removed without any need to hypothesize at all as to what would be perfectly just social arrangements or what would be just institutions. Sen in his book, *The Idea of Justice* has emphasized (also being an advocator of Social Choice theory), that we cannot attain justice by making an equal distribution of primary goods or benefiting the least advantage sections by giving them some special privileges, we have to go beyond it as justice cannot be indifferent to the lives that people can actually live.[iv] In an article written way back in 1990, entitled, *Justice: Means versus Freedoms,* Sen articulated a freedom based idea of justice (Sen, 1990, pp. 111-121). Making 'capabilities' as the most appropriate method for assessing wellbeing rather than the utility space

or Rawls's primary goods, Sen in his 1979 Tanner Lectures, and more expansively in his Dewey Lectures, argued that capability can provide more appropriate informational basis for justice (Sen, 1985, pp. 169-221). Sen agrees that an index of primary goods signifies a vector, which is why it comprises more than income or wealth, but cannot act as a useful tool as it is still directed to serve the general purpose, rather than analysing the individual differentiation. Sen alleges that this is incorrect because what really reckons is the way in which different people convert income or primary goods into good living, as poverty is dependent upon the different characteristics of people and of the environment in which they actually live (Sen, 2009, p. 66). In fact the applicability of Sen's capability approach can be seen in the form of evolution of the 'much-awaited' Human Development Report, which is published annually by the United Nations Development Programme (UNDP), since 1990, to consider development problems in both poor and affluent countries (Parr, 2003, pp. 304-305). Besides Sen's contribution to the field of development and welfare of the people can be seen practically through the devices and tools which acts as a measuring index in the global scenario.

However, Sen was also conscious of the fact that, in diversified and multicultural society citizens will definitely have different voices and interests and will have different choices; hence citizens will apparently differ as to which conception of political justice they think most reasonable. Sen here therefore pursues an approach that is based on open impartiality, favouring Adam Smith's 'impartial spectator' rather than Rawls 'veil of ignorance', which he calls 'closed impartiality', as Rawls account considers only members of the given focal group (Sen, 2009, p. 133). What differentiates the Rawlsian method from the Smithian approach is the 'closed' nature of participatory exercise that Rawls invokes by restricting the 'veil of ignorance' to the members of a polity that are being constructed.[v] Sen on the contrary to Rawls traditional concept of 'primary goods', rebuilds his own capabilities approach as elements of his theory of justice by borrowing from the social choice theory. Sen's while assessing the notion of justice builds its own concept at this time, when he adopted the comparative method (comparing the values and priorities of the people and ranking them after proper scrutiny and public reasoning) in order to make the demands of justice much more possible to achieve. It means that a theory of justice has to be based on partial orderings (through ranking the alternatives based on the connection or commonality of distinct rankings portraying different reasonable positions of justice), that all can endure the scrutiny of public reason seen in any democratic structure. Though Sen also argues that by taking the comparative route while dealing with the cases of justice people will agree on a particular pair wise rankings on how to enhance justice, despite the comparative assessments on the values and priorities of the people involved through discussions and scrutiny remains incomplete (Sen, 2009, pp. 31-51).

Perhaps, Sen's notion of justice, which is pluralistic, multi-dimensional and existential because it is an arrangement of various aspects of what can be called variables of justice, in our own view, has given a new direction in the arena of theorizing social justice. Sen is definitely correct to believe that comparisons of relative justice and injustice should also be a major concern to move

from an ideal theory of justice to a workable idea of justice. Yet it is not wholly acceptable that the existing genuine problems seen in various parts of the globe and their going unaddressed will be solved by some general shift – perhaps moving away from the social contract model while perpetuating justice. Moreover, the definition of social justice is still not and settled one and the principles conflicting but the practical aspect of social justice cannot be ignored, as such David Miller has emphasised that the practical relevance is necessary for a theory of social justice which is right and in order to have universal validity (Miller, 1976, pp. 20-22).

Critically Analysing the Practicality in Sen's Notion of Justice:

Interestingly Sen's notion of justice gives very few concrete examples of how its theory translates into practice. The hypothetical situation of three children quarrelling over the use of a flute is the closest he comes to when discussing the details of a real life dilemma of justice in his book, *The Idea of Justice* (Sen, 2009, pp. 12-15). The issue is about the allocation of a flute to one of three children who have distinctive attributes: one who plays the flute, one who made it, and one who has no toy. So under such a situation how to allocate the flute justly? Sen does not say as to who should be given the flute or what a just allocation would be. It concludes instead that there are competing moral frameworks and that there are disagreements about what constitutes a just distribution of resources. Thus it is the nature of justice to engage in collective reasoning processes and to seek partial agreements on ranking of social arrangements. However such romanticism in Sen's notion of justice has serious limitations while applying it in the real world. Perhaps the most debated aspect of his approach is the difficulty in translating his theory into an operationalised measurement index. As such, how Sen's capabilities can be transformed into something that is reckonable is still a question not discussed by him (Macpherson, 1973, pp. 53-70).[vi] Martha Nussbaum agrees with Sen that the capability approach as a scaffold for examining social justice is far better than the utilitarianism, resource-focused analysis, the social contract tradition, or even some accounts of human rights (Nussbaum, 2003, pp. 33-59). At the same time, she argues that to make the capability approach more useful for exploring social justice, Sen needs to take a more definite stand on which capabilities are important in our ethical judgments and our conceptions of justice. According to her, without endorsing such a list, the capability approach cannot offer reliable prescriptions on gender justice (Nussbaum, 2003, pp. 39-44). Nussbaum also holds that Sen's treatment of freedom needs to be more specific. Freedom, she argues, can have both good and bad dimensions and not all freedoms are of equal value. Nussbaum further proposes a list of ten capabilities which according to her are valuable normative guidance, relevant in any aspect, although she also emphasizes that the list could be modified by context.

This takes us to another point of limitation which concerns, Sen's emphasis on the importance of public discourse and reasoning in scrutinising capabilities. Sen argues that in order for a society to decide on which freedoms and capabilities should be prioritised, there need to have public discussion. Although in principle it is very much useful as it promotes peoples participation beyond cultures thus strengthening democracy. However, the problem lies in how this can be actually translated into action (especially in a country like India), and if it is exercised how effective it will

be in giving a voice to the most vulnerable is still a question (Agarwal, Humphries, & Robeyns, 2003, pp. 3-12). Besides, Sen's prescriptions to justice (or a wider range of normative concerns) should also address issues like the differences between sound and unsound public reasoning in order to function properly (O'Neill, 2010, pp. 384-388). Evidently, as public reasoning speaks on behalf of the entire mankind therefore Sen accepts that it needs the support of 'free, energetic and efficient media' (Sen, 2009, p. 337). Yet what is to be done if the media is working contrary to it? Where as in the present scenario it is seen that, media power is driven by partisan agendas, and news are often made and paid for deliberation, under such a situation the so called free press can further corrupt the public discourse and can confuse the public, even if no voices or considerations are excluded. Further, Sen emphasizes the importance of 'unobstructed discussion and scrutiny', but gives limited information on measuring this reasoning to set standards in discussion and scrutiny or about which publicly offered deliberations have normative force (Sen, 2009, pp. 386-387).

Moreover, Sen seems to believe too much on the institution of state as a neutral actor, with the propaganda of achieving national interest. The reality at present is that states often seek to realise the interests of the 'dominant social classes'. Consequently, if the most vulnerable are not engaged in the discussion, it is unlikely that their voices will be heard, resulting in the continuation of the status quo. However, while evaluating the history of India it can be concluded that religion is still a very powerful force in the social and individual life of the people. In fact, despite constitution granting women equality and equal right to worship, it is seen that most of the temples in India have strict taboo on women worshipping gods and goddesses. As Neera Chandoke has rightly argued that communities that have suffered from multiple historical injustices is not because they are economically deprived, but also socially backward, politically insignificant in terms of the politics of 'voice' (Chandoke, 2015, pp. 30-36). Besides only by incorporating certain constitutional provisions (like reservations) for the marginalised groups, and in practicality robbing Dalits and tribals of their basic source of living (the precious land) by the government in the name of development and selling poor farmers' land to corporate houses in the name of Special Economic Zones (SEZs), uprooting them from their customary way of life and pursuing the culture of liberalization of criminalization, definitely is not the journey towards a social justice (Mane, 2008, p. 224). Despite caste system being one of the major social problems in India, however, the most alarming feature of Sen's work is its complete silence on the subject of caste- based discrimination in India, and the depleting conditions of the untouchables[vii]. Further problem has also arise as how to measure the capability correctly or adequately of the individual, when peoples' choices are determined by the social traditions and practices (like the Khap Panchayats in Haryana, where few people decides the future of the entire people living in those villages and can in fact take the life of an individual in the name of honour killing), the means and ends of freedom of an individual remains a far cry (Rathore, 2011, pp. 175-184).

The recent democratic uprisings in various parts of the world against terrorist atrocities and fight for their basic human rights is a sign of Sen's rightful assessment of the idea of justice where

people are agreed and protesting to remove the injustices from the society which will ultimately enhance global justice. However the problem that has arisen is that the world in where we live has so much of deprivation of one kind or another (like about 30% of the population of India live below poverty line), can the actual lives of the people be realized while articulating Sen's notion of justice. It is also seen that the forces of globalization like the, Multinational Corporations (MNCs) and financial donors, has created new forms of disparities and has widened the gap between rich and poor, while exploiting the deprived sections (Stiglitz, 2005, pp. 228-241). Justice has not been ensured to significant sections of population in underdeveloped societies and indeed we found new forms of injustices haunting the plebs. Further, the Indian State has applied all coercive laws in the region like Armed Forces Special Powers Act (AFSPA), National Security Act (NSA), etc., to ensure state imposed security (Dutta, 2009, pp. 28-29). These laws have intimidated and left deep negative impact on the minds of the people in the region through alienation and violation of the basic human rights. As Sen talks about the human resource, but the reality is that in the Human Development Index measured globally, the position of India is very deplorable. Thus in practice, Sen's understanding of justice and its explicit critic of the Rawlsian theory, limiting it to nation states and his emphasis on public reasoning that should accommodate voices from different societies and cultures puts justice within the domain of the liberal marketplace of ideas now vehemently spread through internet and the other social networking mediums, and hence does not go beyond the structure of liberalism.

Sen by limiting his notion of justice to comparative judgements about individual lives, fails to give due attention to the structural nature that effects the human life. While formulating the notion of justice, the character of the structures like, whether they are 'just' or 'good', whether they provide the environment for people to live a decent life, should be taken into consideration, in order to have effective implementation. Injustice is not only related to the freedom, resources or rights that people enjoy or achieves whether it is more or less in quantity and quality but also about the structures being corrupted and deviated from the good they serve (Deneulin & McGregor, 2010, pp. 501-519). For instance, it was nearly impossible for a white person living in South African, following apartheid system to have relations with black people, as it was against the system of racialism practised under the system. Hannah Arendt while identifying three fundamental kinds of structure (cultural, economic and political) argues that if any of this structure becomes unjust or perverted, the life of the common people will be severely affected (Arendt, 1958). Structural injustice carries with it a sense of dismal; hampering the mental state of an individual, with a risk of isolation. As common people might not be able to perceive such injustices (for example, it was very difficult for the people within the untouchability system to define untouchability as unjust). Therefore, in order to have a full scale implementation of the idea of justice, a prior judgement of the nature of structures, whether they are 'just' or 'good', whether they provide the conditions for people to live flourishing human lives, should be studied and analysed. Thus a reasoning approach to justice (which Sen emphasises) will remain incomplete if the questions of the good life and the extent to which structures have relation with the aim of the good life are not taken under consideration (Sandel, 2009, pp. 124-126). Moreover, the present alarming event of environmental

degradation and human misery calls, Sen's notion of justice towards a more structural and all-inclusive destination, as freedom and reasoning are certainly excellent starting points to formulate an idea or approach to justice, however the journey does not end here and hence needs to continue.

Conclusion:

It is and should be the objective of each and every justice oriented theory to move towards a world of shared responsibilities and shared benefits of a 'fair globalization', and to an ethics of 'global justice', and it is only possible, by actually serving the interests of all of the world's people specially the marginalised and deprived ones. Formulating an alternative approach to justice, differentiating it from the traditional notions, Sen's idea of justice has been heralded as a theory of justice 'for an imperfect world', as 'dedicated to the reduction of injustices on earth practically rather than to the creation of ideally just castles in the air' (Osmani, 2010, pp. 599-607). But despite the dual ambition of practically implementing political philosophy to the actual lives of the people, with the intention of limiting the gap between the institutions and people's realisation through the instrument of public reasoning and of centering justice to the heart of development thinking, Sen's notion of justice however, in practice does not do much in the real world, beyond generic references to famines, gender injustice or malnutrition. As an individual in Indian society plays his/her social role according to his/her social standing, as such it is seen that the distributive justice (being the dynamic force behind social justice) fails to achieve the desired objective within the prevailing caste hierarchies, deeply entrenched caste relations and religious affiliations practised in various parts of India. Besides, the state in this current era of globalization has abandoned its distributive functions and has transferred its power to the capitalists, making social justice dismal, despite legislating welfare laws and adjudicating measures to deliver social justice. In this changed world, the concept of social justice at a new dimension needs to be explored. The question therefore, is how to formulate the principles of social justice. Even after 70 years of getting independence, are the provisions of Indian constitution appropriate and able to create the ladder of equity and deliver social justice? In fact the caste system is getting itself adopted with new changing society. The problem for us is now to find out whether the new world has forced to revisit and redefine Sen's notion of social justice in order to make it practically more feasible.

Notes:

i   Rawls main concern were social and economic inequalities and he tries to deal with them by looking at the firmest convictions about basic rights and liberties, the fair value of the political liberties as well as fair equality of opportunity.

ii   Amartya Sen argues that the various theoretical arguments advanced by libertarians, utilitarians, egalitarians and the like have real significance in the sense that they contribute to our understanding

of justice. None of those set of values, however, overrides the others. Furthermore, each of the theories provides important insights but cannot club into a simple or indeed complex, calculative function. Hence there is no universal system of justice that provides a set of principles or weighted calculations such that for any given question.

iii One of the many pleasures of *The Idea of Justice*, is Sen's vast analysis of India's culture and literature, which helps him to emphasise and formulate the public reasoning aspect of justice seen in many societies across the nation.

iv It should be noted that social choice theory should not be confused with rational choice theory, as the latter defines rationality as the pursuit of self-interest. However, Sen assumes that fairness involves a reasonable concern for the interests of others and his depiction of social choice theory reflects this thinking.

V The impartial spectator approach that Sen applies, does not seek unanimity. It may not even reach an agreement that is clearly just. Perhaps, it will yield an outcome that is plausibly just or at least not manifestly unjust.

vi According to Macpherson any democratic theory must treat and measure an individual power in terms of (quantity) developing his capacities and measuring hindrances in using his capacities, that is impediments to the maximum attainable in principle at any given level of social productivity and knowledge (1973, p. 70).

vii Surprisingly, Sen's major works such as *Development as Freedom* or even *Inequality Reexamined*, also fails to mention the genuine and common problems associated with untouchability and the chronic poverty of that sizable community.

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