

Critically Assessing the Practical Orientation in 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. 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: Amartya Sen, John Rawls, Perfect Institution, Social Justice, Social Realization.

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I. INTRODUCTION

No other question has been discussed so passionately, and no other question has been the subject of so much rigorous thinking by the most illustrious thinkers from Plato to Rawls; making the concept of justice a common reference point in almost all political discourses and philosophical enquiry. However, justice-specifically social justice- has come to dominate political thought over the past few decades. Moreover, the concept of justice and injustice always centres the discussion when the question of distribution of wealth or resources comes within a society or a community. As such, concepts such as rights, liberties, equalities, needs and deserts have been accommodated into justice's sphere which has increased its influence in political philosophy.

Though the theories on justice (social contract theory, utilitarianism), which have provided different but respectively important insights into the demands of a 'just society', share the common aim of identifying just rules and institutions, even though their identification of these arrangements come in very different forms. In fact the social contracts that were primarily discussed by the philosophers, dealt exclusively with the choice of institutions. Thus the modern theories of justice focused on establishing perfectly just institutions. The philosophers gave importance on individual liberty and the constraints needed in enjoying their freedom, besides state given the responsibility to create conditions for the individual to enjoy their rights. This practice arguably reached its high point in 1971 with the publication of, *A Theory of Justice*, by John Rawls.¹ 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, 2001). However, it should also be realised that justice cannot be indifferent to the lives that people can actually live, hence the importance of human lives, experiences and realizations cannot be replaced by institutions, laws and rules that operate in any given state (Sen, 2009). Institutions and rules are of course very important in influencing what happens, and they are very much a part and parcel of the actual world as well, but when we talk about peoples' realization, than it goes beyond the strict organizational principles and includes the lives that people actually live. 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

¹ Rawls main concern were social and economic inequalities and he tries to deal with 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.

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, 2007).

Sen while defining inequality as a relative term argues that, inequality can, therefore, be viewed not merely as a measure of dispersion but also as a measure of the distinction between the actual distribution of income on the one hand and distribution according to needs and desert, on the other hand (Sen, 2002). As such the actual freedom and capability turn out to be quite central to the analyses of justice in the world. 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.

II. AMARTYA SEN'S NOTION OF JUSTICE

Amartya 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. 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. As, 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). 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). 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. While focusing on the Sanskrit literature on ethics and jurisprudence, Sen in his book, *The Idea of Justice* 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). 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.

In an article written way back in 1990, entitled, *Justice: Means versus Freedoms*, Sen articulated a freedom based idea of justice (Sen, 1990). 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). 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). Sen in his book, *The Idea of Justice* has also 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.² 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). 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

² 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.

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). 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.³ 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).

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 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).

III. CRITICALLY ANALYSING THE PRACTICAL ORIENTATION IN AMARTYA SEN'S IDEA 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). 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 should we 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. As such the most debated aspect of his approach is the difficulty in translating his theory into an operationalised measurement index. How Sen's capabilities can be transformed into something that is reckonable is still a question not discussed by him. Moreover, there is a tendency to measure functioning instead of capabilities. Martha Nussbaum is undoubtedly the most notable among feminist scholars who have engaged with, critiqued, and extended Sen's capability approach. She 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). Its implementation can be seen in the recent constitutional amendments in India that guarantee women one-third representation in the local panchayats, or village councils, directing the governments to undertake measures for full and effective empowerment of this neglected sections in order to uplift them and make them capable to face the obstacles (Nussbaum, 2003). However, she argues that Sen's capability approach has given a rather ambiguous picture while dealing with the aspect of social justice, as he does not provide any definite direction 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.

³ 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.

The argument that we need a definite 'list of capabilities', is extended further by Ingrid Robeyns in her paper, Sen's Capability Approach and Gender Inequality. Like Nussbaum, Robeyns while admiring Sen's work and use of his capability approach for gender analysis, but goes on to argue that the approach also has the drawback of being 'underspecified' (Robeyns, 2003). For implementing the approach to concrete questions, some additional theoretical specifications are needed. Robeyns too proposes a process of measuring the relevant capabilities, and practically exercised it while evaluating gender inequality in affluent societies.

Perhaps, one major limitation in Sen's idea can be seen by his 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. 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. 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). 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.

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. As Sen seems to believe too much on the institution of state as a neutral actor, with the propaganda of achieving national interest, but the reality at present is that states often seek to realise the interests of the 'dominant social classes'. 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. 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). Despite framing multitude of constitutional provisions, laws, and policies, (in fact institutions are also established) to repair historical injustices, all such efforts went in vein as the ideology of discrimination continues to be there in the mindset of the people, strengthened further by the religious prescriptions making political upliftment and mobilisation difficult in independent India. Caste in India is not simply a law and order problem but a social problem. 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.⁴ However, in his book, *The Argumentative Indian*, Sen has recognised that class in India has played a very significant role in establishing social inequality, but is not the only source of inequality (Sen, 2005). Though he argues that other divisive factors like, gender, caste, region, community and so on plays a dramatic role in perpetuating inequality, but does not give any suitable remedy to solve the problem of inequality. Moreover, Dalits in India continue to be oppressed and discriminated not only in the social structure but also in the educational institutions, in public places and on the political battlefield, giving them a very little scope to earn and maintain their lives (Rao, 2008). Moreover, 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. All these reflects how little India has progressed and under such a situation, Amartya Sen's notion of justice which believes in public discourse and reasoning in fostering justice to what extent be practically implemented remains doubtful.

Keeping in view the above perception, in India the notion of social justice has been enshrined in the Constitution of India through various provisions (through Fundamental Rights and Directive Principles of State Policy) with the aim of destroying the hierarchical social order of socio economic privileges. However in the recent times, with the onslaught of Globalization in India, a complete blind eye has been given to this notion of social justice. As it is seen that the economic liberalization has benefitted persons like the Ambani's and Tata's, that control almost half of India's total wealth. As Sen talks about the human resource, but the reality is that India is placed in the 131st position in the Human Development Index among 188 countries measured globally (Jahan, 2016). Akash Singh Rathore has argued that the developed Western countries may indeed suffer from the adverse impact of globalization or neo-liberalization policies in the form of inequality, unemployment, but are free from the historical hindrances and problems which manifest injustices like, untouchability, caste system, witch hunting, religious bindings etc (Rathore, 2011). As such only by incorporating certain constitutional

⁴ 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.

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 liberalization of criminalization, definitely is not the journey towards a social justice (Mane, 2008).

Thomas Nagel has argued that, 'the idea of global justice without a world government is a chimera' (Nagel, 2005). Despite several works being published worldwide on the issue of global justice, the contemporary debate on global justice is still parochial as it is largely confined to Western Intellectuals. Therefore in order to universalise the idea of global justice, it has to be recontextualised and formulated through its local conditions, besides pluralizing the uniform character of the Western intellectuals who control the discourse. Sen in his work, *The Idea of Justice*, has tried to deal with this recent parochial approach of global justice by taking Adam Smith's impartial spectator approach, rather than Rawls' veil of ignorance, as Rawls' account considers only members of the polity that are being constructed (Sen, 2009). Though, romanticizing the issue of Global Justice was the major drawback of institution focused approach in the Rawlsian tradition, which Sen vehemently criticized and hence de-romanticized it by giving an alternative realization-focused capability approach, based on moral considerations. However, the only problem is that Sen has continued to present his own alternative so romantically, remaining silent on the major issues of social injustices practiced in India, which has also made Sen's global notion of justice a chimera.

IV. DISCUSSION AND CONCLUDING REMARKS

Amartya Sen himself has said in his recent work, *The Country of First Boys*, that, 'Justice, it has been argued, should not only be done, it must also be seen to be done' (Sen, 2015). Thus the most basic thought that lies behind all these discussions is that the productive work in ethics or politics must be practical in its objective and therefore should bring into attention the interest of the agents involved in the working process, rather than the interest of those who are appreciating and making false promises and comments (being mere audience) that has already been done. The paper thus analyzed that by 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'. 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. Besides, the state in this current era of globalization has abandoned its distributive functions and has transferred its power to the capitalists. The glorious promise of infinite growth, fulfilling interests of the multinational corporate have perpetuated inequality on a global scale, 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. For this realization in its full dimension, it is necessary to have an appropriate approach towards the understanding of social reality. As such in order to remove such cases of injustices (like illiteracy, women's exploitation, malnutrition, racism, etc.), we do not need a theory, as earlier theories has also emphasized on eradication of such evil practises. Thus we have to set the limits to what extent possible between theory and practice and make the discourse of social justice really feasible and achievable for all.

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