

Beyond the Perfect Justice: Amartya Sen on Justice as Welfare

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Abstract—The main objective of this paper is to critically analyze John Rawls's institutional arrangement on perfect justice and to formulate the notion of justice as welfare with reference to Amartya Sen. I will try to attempt to identify Rawls' position on perfect justice and bring out its shortcomings in two fold manner. Firstly, the way Rawls' two principles of justice are chosen under veil of ignorance is not at all going to give us complete justice. It attains to prevent us from getting the complete information on the subject matter of justice. Secondly, the way Rawls's use of primary goods ignores individual differences in converting social resources with equal efficiency. It can however be argued that perfect justice concentrates primarily on identifying institutional arrangements for an ideal society. Moreover, perfect justice and its fair institutional arrangement has been unable to address society's real problems that manifest injustices in the form of unfreedom, poverty, subjugation of women, lack of education and health facilities etc.

For the critical assessment of perfect justice, I will propound the works of Amartya Sen who has come up with an alternative theory of justice i.e. capability approach to justice where welfare has to be achieved in terms of people's freedom and capabilities. I will argue with Sen that justice has to be achieved in terms people's substantive freedom and capabilities to do things s/he has reason to value. The purpose of basic capabilities is to acknowledge people's right to make their own decisions about matters affecting their well-being that are potentially within their own control. The basic capabilities admit that people's welfare may be affected by matters which individuals have no control and thus they would require extra consideration. For instance someone who is being handicapped or crippled would require extra care and resources to enable them to achieve the same capability in terms of mobility as an able-bodied person.

Keywords: Justice. Injustice. Fairness. Veil of Ignorance. Welfare. Capability. Freedom. Unfreedom.

1. INTRODUCTION

Justice is primarily concerned with the proper ordering of things which includes equitable distribution of resources, goods, opportunities, services and deterrence of crime and punishment within a society. Justice is dynamic in nature and its implication varies from time to time and situation to situation. The diversity of its connotation makes it difficult to lay down the precise meaning of justice. For example, the overall system of society has many dimensions like legal,

political, economic, and social. So the concept of justice can be looked at from all these angles. A number of important questions surrounding justice have been fiercely debated over the course of human history: What is justice? What is a perfectly just society? Is justice has much to do with being treated fairly, etc.? How can the form of injustices relating to the discrimination between rich and poor, caste system, racism and sexism of the present state of affairs be removed?

To minimize various forms of injustice, institutional choice and arrangement focused approaches to justice are not sufficient conditions because society consists of human beings who are outside of the institutions and the latter gets affected by the former. More importantly, the search for perfect justice could distract us from tackling real-life, immediate injustices such as discrimination relating to education, skill, health, environment, etc. for women, tribal people and marginalized community who are deprived of all these. In advocating justice as welfare, Amartya Sen is not looking for 'well-ordered society' rather tries to remove various forms of social injustice to make 'less unjust society'. [1] To remove such type of injustice, the paper will argue justice as welfare with Amartya Sen.

2. PERFECT JUSTICE AND ITS LIMITATION

The vision of perfect justice evolved out of enlightenment tradition of Hobbes, Locke, Rousseau and Kant. They have advocated an insight into the perfect, ideal or absolute justice on the basis of social contract theory. They introduced perfect justice by way of a contract to leave the state of nature and govern themselves by law for mutual advantage to have an ideal society. For Hobbes justice lies in the hands of the Monarch whereas for Locke justice consists in the form of individual rights related to life, freedom and property. For Rousseau, it is the general will or moral collective will of the individuals in the society who will shape the laws of institutions which will deliver justice. However, social contract theory was repudiated by Hume on the ground that there is no historical evidence to any contract, original or otherwise. His account of justice is based on convention and customs. [2]

The philosophical vision for perfect justice in Kant can be elaborated in the context of his critical appreciation of social contract theory as only regulative on the one hand and the concepts of autonomy and dignity formulated in terms of enlightenment rationality and the maxims of categorical imperative on the other. For Kant, “Enlightenment is the coming out of man from his self-imposed immaturity”. [3] For Kant, once humanity reaches at the stage of enlightenment and develops reason to the extent that it becomes autonomous and dignified, it can perform juridical and ethical duties. Enlightened being acts in the conformity of “categorical imperative, realizes an ideal such as universality, end-in-itself and kingdom of ends”. [4] This ideal reaches at the notion of a just society wherein every enlightened being makes a general consent in formulating the principles of justice.

At this stage human being can realize his own betterment and for the sake of entire society. Thus, the principle of perfect justice transforms an individual behavior in such a way that everyone can act rationally to transform oneself and society as well. Kant has attempted to re-visit social contract theory not as a historical phenomenon but as a regulative mechanism to be used as the device to explain the origins of the state, the nature of autonomy and dignity of the individuals. It is Kant’s philosophical insight into perfect justice that has been carried forward by John Rawls by modifying social contract theory and by reformulating the principles of justice to be applied to the institutions.

John Rawls’s vision of perfect justice revolves around the idea of a well-ordered society wherein free and equal person seeks to do what justice requires. Rawls argues, “Justice is the first virtue of social institutions, as truth is of system of thought”. [5] Justice as a virtue implies norms that enable us in assessing how societies ought to be fair in terms of distribution of resources, exactly in the way truth is the criteria that assesses the validity of judgments, discourses, arguments, theories etc. “The primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation”. [6] In social cooperation individuals considers as a hypothetical persons who represent the actual people who will live in the society for which they are deciding on the principle of justice.

For Rawls, “the conception of the original position embodies features peculiar to moral theory. Its aim is to characterize this situation so that the principles that would be chosen, whatever they turn out to be, are accepted from a moral point of view. The original position characterized as a status quo in which any agreements reached are fair”. [7] Rawls’s specification of perfect justice emerges out of his constructive idea of the ‘original position’ or ‘hypothetical situation’ under veil of ignorance’. [8] This is achieved through the device called the veil of ignorance which denies all knowledge of person’s social status, moral characters, wealth, talents, life plans. In

original position, the participants are all faced with veil of ignorance about particular facts on the one hand and person conceived with regard to moral capacity for the ‘conception of good’ and the ‘sense of justice’ [9] on the other.

By virtue of moral capacities a “person in original position characterized by the cooperative virtues: those of justice and fairness, fidelity and trust, integrity and impartiality”. [10] It enables the contracting parties to choose principles of justice without prejudice. Rawls argues, “the principles for determining the basic institutions of a society as to what is fair or just are: First: each person is to have an equal right to the most extensive basic liberty compatible with similar liberty for others. Second: Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all”. [11] Rawls argues principle 1 the principle of equal liberty, principle 2(a) the principle of fair equality of opportunity and principle 2(b) the difference principle. Rawls’s first principle of justice underlies the notion of liberty. The first part of the second principle states about the idea of fraternity and its second part along with liberty principle guarantees equality.

Rawls two principle of justice are chosen behind a veil of ignorance which ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance and social circumstances. However, Rawls’s two principle of justice are chosen under veil of ignorance is not at all going to give us justice because it attains to prevent us from getting the complete information on the subject matter of justice. It is a fact that ‘ignorance model’ helps us to reach at fair principle of justice without favor or revenge but it detach us from perpetuating injustices and suffering from the world as well. Rawls himself criticized in his later work *Political Liberalism* in terms of Justice as Fairness through original position, “... is a political conception and it is justified by reference to political values and should not be presented as part of a more comprehensive moral, religious, or philosophical doctrine”. [12] In searching for fair institutional arrangement, justice concentrates primarily on getting the institution just only and not focused on the actual societies that would ultimately emerge. Moreover criticism of his earlier position still amounts to the fairness of the institutions with liberal values. There is still a lack of the realization of the sense of justice not as a matter of judging institutions but to address existing injustices in the form of unfreedom, poverty, subjugation of women, lack of education and health facilities etc.

3. FORMS OF INJUSTICE: UN FREEDOM, POVERTY, LACK OF EDUCATION AND HEALTH

Sen is primarily interested in minimizing forms of injustice form the world and hence he goes to ‘retreat of justice’. There are number of ways where systematic forms of injustice relating to social discrimination between rich and poor, caste,

racism, and gender persist in a society which can be difficult to recognize through institutional approach to justice. Sen argues Rawls's theory of justice concentrate its attention on what identifies as a perfect justice, rather than on relative comparison of justice and injustice. [13] Its enquiry is aimed at identifying the nature of 'the just', rather, than finding some criteria for an alternative being 'less unjust' than another. [14] Moreover institutional approach to justice in one way or another contributes serious injustices relating to social, political and economic sphere.

However there is no fair agreement on the nature of a 'just society' on the one and how would we actually recognize a just society if we depended on only institutional arrangement on the other. For instance, utilitarian, egalitarian and libertarian approach to justice argues for their own institutional principle and their logical ground for their claim to be just. In the *Idea of Justice*, he provides a practical illustration- which he calls Three Children and a Flute, where he says that which of the three children Anne, Bob and Carla should get a flute about which they are quarrelling. Anne says that the flute should be given to her because she is the only one who knows how to play it. Bob, on the other hand claims that, the flute should be handed to him as he is so poor that he has no toys to play with. Carla then intervenes and says that it was she who made the flute. [15] The question that now arises is how do we decide between these three legitimate claims? In order to decide who gets the flute depends on institutional arrangement. For instance, the utilitarian will argue for Anne because she can actually play and she will get maximum pleasure. Bob on the other hand who is the poorest, will have the support of the egalitarian. The libertarian would opt for Carla. However, their position would not arrive at mutual agreement and therefore does not solve the problem of arriving on a perfectly transcendental solution to minimize injustice. Without some framework of comparison it is not possible to identify the ideal we need to pursue.

In the search for 'less unjust society', Sen has propounded "realization focused approach to justice which tries to seek social outcomes through a comparative evaluation of social injustice". [16] It concentrates on the desirability of particular 'social realizations' where justice cannot be indifferent to the lives of people. Sen has rightly says, "There is no law against dying of hunger". [17] It can be argued that, there are varieties of unfreedom which restricts people's substantive freedom to enjoy hunger free life. It is important to focus on the removal of major sources of unfreedom. Many people across the world suffer from varieties of unfreedom. According to Sen, "Unfreedom sometimes closely link to the lack of public facilities and social care, such as the absence of epidemiological programs, or of the organized arrangements for healthcare or educational facilities, or effective institutions for the maintenance of local peace and order". [18]

There are lack of nutritional food, health care, basic education and other social and economic security etc. restricts people's

substantive freedom to survive a good life. Besides, lack of basic freedom, people are even deprived of important freedom i.e. civil and political freedoms to take part in crucial decisions making in public affairs. These unfreedom has been depriving the basic freedom which makes them people to survive a good life. In this way, people's substantive freedom plays an important role in terms of intrinsic and instrumental for welfare mechanism. "The substantive freedom includes elementary capabilities like being able to avoid such deprivations as starvation, undernourishment, escapable morbidity and premature mortality, as well as the freedom being associated with being literate and enjoying political participation and uncensored speech and so on". [19] Such type of freedom ensures people's welfare in terms well-nourished, gets provisions for health care, enjoys good education and also given the chance to participate in governance.

There are varieties of injustices which restricts people's freedom to survive a good life. For instance, poverty, poor economic opportunities, lack of public facilities and social care like lack of nutritional food, health care, basic education and other social and economic security etc. deprives person's basic freedom to survive a good life. History bears that severe famines continue to occur in various regions, denying to millions the basic freedom to survive hunger free life. These social injustices have been dominated since a long time and the only way to confront this menace is through people's capabilities "that a person actually has to do this or be that-things that he or she may value doing or being". [20] It is fact that that social realization approach in terms of people's capabilities is very necessary while dealing with institutional arrangement. In this way, people's substantive freedom plays an important role which focuses on people's welfare in terms of their capabilities.

4. CAPABILITY APPROACH TO JUSTICE AS WELFARE

Amartya Sen's notion of justice as welfare is a dynamic departure in the debate on justice which concentrates on the 'well being' of each and every individual. It tries to improve the quality of human life in terms of set of 'doings and beings'. It does not focus on people's mental satisfaction and income and wealth rather on people's substantive freedom i.e. on their capabilities. In assessing the quality of life, utility-based assessment is unsatisfactory because it overlooks people's substantive freedom includes both processes and opportunities on the one and recognition of the heterogeneity of distinct components of freedom in terms of functionings and the capability to function.

Capability approaches to justice does not concentrate on the means of 'primary goods' and just institutions but minimizing injustices by removing obstacles in actual opportunities in day to day life. For Sen, people's capabilities and their well-being is on top priority which ensures that people, instead of

resources, are the utmost important and real wealth. It is distinct from Rawls theory where justice is to be seen in terms of fair distribution of social benefits and opportunities or primary goods. It is important to focus directly on people's beings and doing, i.e. on their capabilities to function rather than on accessibility of primary goods. For instance, we should start from a conception of what makes a good life for a human being, and build up from this to an index of primary goods. That it is the opportunity to live a good life rather than the accumulation of resources that matters most for well-being, and that opportunities result from the capabilities that people have.

Moreover, resource approach to welfare does not acknowledge genuine information concerning individual differences in converting it with equal efficiency. For instance someone who is being handicapped or crippled would require extra care and concern to enable them to achieve the same functioning and capability in terms of mobility as an able-bodied person. "The primary goods approach seems to take little note of the diversity of human beings. If people were basically very similar, then an index or primary goods might be quite a good way of judging advantage. But, in fact, people seem to have very different needs varying with health, longevity, climatic conditions, locations, work conditions, temperament, and even body size. So what is being involved is not merely ignoring a few hard cases, but overlooking very widespread and real differences". [21] It is a fact that person's life plan is not only determined by the 'primary goods' that he/she has at his/ her disposal, but there are various factors that determine to what extent he/ she can utilize these primary goods into valuable states of being and doing. This is so-called 'capability' approach thus focuses more on people and less on goods.

In Capability approach to welfare resources do not have an intrinsic value; instead their value derives from the opportunity that they give to people to access social benefits and opportunities. That's why Sen distinguishes between the idea of *well-being* from *being well-off* and the former is not based on the concept of opulence while the latter is based on material pursuits. According to Sen, "well-being is not something outside her that she commands, but something in her that she achieves. What kind of a life is she leading? What does she succeeds in doing and in being?" [22] Further, the concept of '*being well-off*' is "really a concept of opulence - how rich is she? What goods and services can she buy? and what offices are open to her? and so on. This refers to a person's command over things outside". [23]

Carrying further Sen argues, "Opulence in the form of commodity possession is undoubtedly important in enhancing the standard of living, but is the standard of living best seen as opulence itself". [24] In other way, having well- off refers to a people's command over things. Moreover, an opulent person can command over things but unable to pursue his/her well-being. Take for example, 'Mr. A' and 'Mr. B' both are quite poor in terms of opulence. In comparison to 'Mr. B' 'Mr. A' is

better-off in terms of higher income and able to buy more food and consumes more of it. However, 'Mr. A' is suffering from some parasitic disease so that despite of his higher food consumption, unable to pursue higher standard of living because he is more undernourished in comparison to 'Mr. B'. 'Mr. A' may be more opulent but it is not justified that he has higher standard of living since he quite clearly more undernourished because of parasitic disease.

In other way, having well- off refers to a people's command over things outside of person's capabilities. So person's well-being is consistent with Sen's capability approach which focuses on various functioning and capabilities. A functioning is roughly anything that a person succeeds in doing or being. For example, working as a rickshaw puller and being well nourished; a capability is an opportunity to achieve a particular functioning, the opportunity to work as a rickshaw puller if one so chooses. Sen argues, "The primary feature of a person's well-being is the functioning vector that he or she achieves". [25] People's capabilities ensure welfare in terms of various activities that people can undertake in their day to day life. In other words, individual's functioning is the subject of the capabilities which assess their opportunities in terms of what and how people are capable in various acts of doing and being. It reflects how efficient a person can succeeds in converting bare resources into its valuable characteristics according to their purposes. For instance, a person has raw materials for food such as rice, millet and vegetable etc. and he knows (functioning) to convert these resources into its characteristics i.e. nutritional meal. So with the help of functioning, for instance, a carpenter with his skill can convert bare wood into valuable item such as chair, table and other wooden items.

By focusing on people's welfare, justice can be seen in terms of human welfare where life can only be lived well when people have substantive freedom and they can make real choices. In assessing the quality of lives, it can be argue that, life can only be lived well when people are free, and can make real choices. For Sen, human welfare can be defined, "as the process of expanding the real freedoms that people enjoy". [26] Here the question is- what does imply by real choice? Real choice is something that possesses a transformative effect in the quality of human life, for instance, person's quality of life is grounded on his/her freedom to choose that he/she finds truly worth living. Lack of people's substantive freedom creates injustices at individual and social level because they are deprived of their substantive freedom to transform their lives.

To bring this discussion as an end, the paper will argue Sen's welfare approach in terms of people's capabilities is paradigm shift in the notion of welfare. It can be argued that capability approach to justice has been the foundational elements in the assessment of people's welfare in the following way. Firstly, Sen's capabilities approach to justice concern for human beings and their quality of life to be the central focus of

welfare mechanism. Its concern is not to focus on material welfare (people's well off) rather on human welfare (people's well being). Secondly, it conceives human freedom and the ability to make decisions that affect one's life as central to human agency and their dignity. Sen has given a very fascinating example, where he often distinguishes between a starving child and fasting monk. Since both of them are kept away from food so they have the same level of functioning. However, the starving child does not have freedom (freedom can be seen in terms of choices and opportunities) to eat while monk has, but does not choose to eat. In such case the starving child does not have freedom of opportunity as well as agency freedom to choose what he has reason to value. Thirdly, capability approach to justice evolved out of ethical consideration of human welfare in terms of human functioning and capabilities that highlights human being has a dignity with their ability to pursue their own ends. Finally, capability approach to welfare mechanism fosters an enabling environment and allows for flexibility in way of reframing many of the social issues concerning injustices.

Thus, instead of institutional arrangement to welfare which governs collective choices, capability approach to justice as welfare capable each and every individual to act on his/her own choices or value. It promotes an enabling society wherein each individual becomes capable to make decision about issues that affect their lives and minimize injustice to that extent. Last but not least justice as welfare does not concern for people's happiness, desire fulfillment, and commodity but what can they do or achieve in terms of various functioning. It can be argue that, human welfare occurs in their opportunities and capabilities to achieve a certain level of functionings by virtue of the alternative combination of functionings relating to their nourishment, safety, security, health, longevity, literacy, recreation, comfort, housing, transportation and social relationship etc. For instance, being happy, being well-dressed, being well-nourished, being educated, being employed, being safe, being calm, having dignity and other activities that inculcates various aspects of functioning of person's wellbeing.

REFERENCES

- [1] Sen, Amartya. *The Idea of Justice*. London: Penguin Books. 2009. P.5.
- [2] Hume, David. *Political Essays*. New York: The Liberal Arts Press. 1953. P. 21.
- [3] Kant, Immanuel. 1784. "What is Enlightenment"? *On History*. Edited & translated by Lewis White Beck. New York: Macmillan, 1963. P. 55
- [4] Kant, Immanuel. *The Moral Law: Groundwork of the Metaphysic of Morals*. Edited by Edited by H. J Paton. London: Hutchinson University Library. 1959. P.29.
- [5] Rawls, John. *A Theory of Justice*. Cambridge: Harvard University Press. 1971. P.3.
- [6] Ibid, P.7.
- [7] Ibid. p.119.
- [8] Ibid, p.119.
- [9] Ibid, p.142.
- [10] Ibid, p.472.
- [11] Ibid, p.160.
- [12] Rawls, John. *Political Liberalism*. New York: Columbia University Press. 1996. P.20.
- [13] Sen, Amartya. *The Idea of Justice*. London: Penguin Books. 2009. pp.5-6.
- [14] Ibid, p.6.
- [15] Ibid, p.12.
- [16] Ibid, p.5.
- [17] Sen, Amartya and Dreze, Jean.. *Hunger and Public Action*. Oxford: Clarendon Press. 1989. P.20.
- [18] Sen, Amartya. *Development as Freedom*. Oxford: Oxford University Press. 1999. P.4.
- [19] Ibid,P.36.
- [20] Sen, Amartya. *The Idea of Justice*. London: Penguin Books. 2009. P.233..
- [21] Sen, Amartya. "Equality of What?" in. *Tanner Lecture on Human Values, Volume1*. S. Edited by McMurrin. Cambridge: Cambridge University Press. 1980. pp.215-216.
- [22] Sen, Amartya. "Well-Being, Agency and Freedom: The Dewey Lectures 1984". *The Journal of Philosophy* 82, no. 4. 1985. pp. 169-221
- [23] Ibid, pp. 169-221
- [24] Sen, Amartya. "Standard of Living". *The Tanner Lectures on Human Values*, Delivered at Clare Hall, Cambridge University. March 11 and 12, 1785. P.15.
- [25] Sen, Amartya. "Well-Being, Agency and Freedom: The Dewey Lectures 1984". *The Journal of Philosophy* 82, no. 4. 1985. P.198.
- [26] Sen, Amartya. "Equality of What?" in. *Tanner Lecture on Human Values, Volume1*. S. Edited by McMurrin. Cambridge: Cambridge University Press. 1980. pp.215-216.