

Theory and Practice of Justice: A Comparison of Amartya Sen and Akeel Bilgrami

*Thesis submitted to Jawaharlal Nehru University
for the award of the degree of*

DOCTOR OF PHILOSOPHY

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2018




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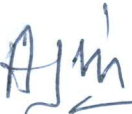
I, Akbar Chawdhary, declare that the thesis entitled "THEORY AND PRACTICE OF JUSTICE: A COMPARISON OF AMARTYA SEN AND AKEEL BILGRAMI" submitted by me to Jawaharlal Nehru University for the award of the degree of Doctor of Philosophy is my own original work. The thesis has not been submitted so far in part or full, for the award of any other degree in this or any other university/institution.

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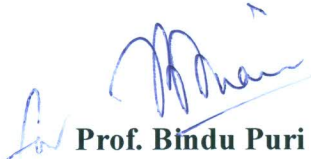
CERTIFICATE

We recommend that this thesis be placed before the external examiners for evaluation.


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Acknowledgements

I express my sincere gratitude and deep respect for my late supervisor Prof. S.P. Gautam who encouraged me to explore the ideas of justice through Amartya Sen and Akeel Bilgrami for a better understanding of the third world perspectives for a just-society. I am equally grateful to my supervisor Dr. Ajay Verma who renewed my confidence that academic pursuits should indeed be inspired by unfolding social queries. His profound scholarship along with his deep affection in dealing with my queries has enriched my experience during the course of this research. While unfolding the field of research he also provoked me to chart new terrains of scholarship. In him I always saw an approachable friend and teacher who understood the reasons of my numerous shortcomings while caring to signal for the corrections on time. I am thankful for his timely interventions, his patience and willingness to offer incisive comments on my drafts and his generosity with time and ideas.

I would also like to thank Prof. Bindu Puri, Prof. R.P. Singh, Prof. Bhagat Oinam, Dr. Manidipa Sen, Dr. Bhaskarjit Neog. Their remarkable individual efforts have cultivated an ambience of academic excellence, fostered inclusiveness where students even from non-Philosophy backgrounds can find their academic engagement in the Centre immensely enriching.

I would also like to thank my parents who always provided the support and much needed freedom to pursue my independent ideas and academic choices and who have been a bedrock of support behind the successful completion of my research work.

Thanks also to my friends Yamini, Tahseen, Geeta, Mohit, Tarushikha, Reshmi and Shehla for patiently helping me to discuss issues and unravel knots in my research. Thanks to Shafak, Abhishek, Rupak, Chandu Ankit, Omprasad, Sandeep, Geeta, Simone, Qasim, , Tabrez, Anant, Ashutosh, Chintu, Vijay, Shashi, Sucheta, Vismay, Balaji, Aditi, Shafi, Mahfooz, Faraz and all my comrades in the organisation whose crucial support at particularly tense junctures allowed me to complete this thesis.

I would also like to thank - Tapas, Prasenjit, Aakash and Shuddhabrata - for their support and cooperation in helping me to understand the discipline better.

Heartfelt thanks to Staff members of our Center Office and the staff of the School, for their co-operation at all times. My gratitude to the library staff for their help in locating critical books at short notices.

I have said this in my Mphil dissertation and I am reiterating again that above all, I am grateful to the progressive traditions of JNU – outside the classroom as within it - which has contributed immensely in transforming my ideas about society and life and encouraged me to be part of an egalitarian social change.

Akbar Chawdhary

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INTRODUCTION

...to 'divine' another possible world:

people shall work for a living instead of living for work; historians shall not believe that countries love to be invaded; politicians shall not believe that the poor love to eat promises; the world shall wage war not on the poor but rather on poverty, and the arms industry shall have no alternative but to declare bankruptcy; food shall not be a commodity nor shall communications be a business, because food and communication are human rights; no one shall die of hunger, because no one shall die from overeating; education shall not be the privilege of those who can pay; the police shall not be the curse of those who cannot pay; justice and liberty, Siamese twins condemned to live apart, shall meet again and be reunited, back to back; the Church shall also proclaim another commandment, the one God forgot: You shall love nature, to which you belong; we shall be compatriots and contemporaries of all who have a yearning for justice and beauty, no matter where they were born or when they lived, because the borders of geography and time shall cease to exist; perfection shall remain the boring privilege of the gods, while in our bungling, messy world every night shall be lived as if it were the last and every day as if it were the first.- Eduardo Galeano¹

This thesis is a critical appraisal of two important contemporary philosophers in normative political philosophy dealing with the theory of justice in search of “divine another possible world”, a just-world, as stated in the words of Eduardo Galeano above. This study attempts to compare the work of two important philosophers, of Indian origin, who have engaged at considerable depth with the philosophy of justice in the contemporary world, bringing a third world’s perspective, it is important to first place the work of both the philosophers in its historicity. The importance of these philosophers,

¹ Eduardo Galeano, *Upside Down: A Primer for the Looking-Glass World*, Picador/USA,2000, P. 334

Akeel Bilgrami² and Amartya Sen, stems from the fact that both of them reopen some of the fundamental questions to check day-to-day injustices but with different methodological frameworks. Also, the classical question of theory and practice or theory vs. idea, or in Sen's framework, transcendental approach versus comparative approach of justice will be a running theme throughout the thesis. Moreover, I will attempt to engage with the very recent contemporary notions of justice, of capability and recognition, beyond traditional distributive framework of understanding just-society. To understand the methodological difference and the difference in the substance of justice for both the thinkers it's important to understand the debates surrounding the philosophy of justice (theory) in everyday life (practice) which I will be dealing in next chapter.

Justice: Mapping the Concept

From Plato, Aristotle, Kant, Avicenna, Rawls, Gandhi to Amartya Sen the central issue in concept of justice is the unequal relationship between people in society in terms of social power, social standing and command over natural resources/ social goods, argued philosopher Aakash Singh Rathore. The theories of justice are widespread, global throughout the human history, differ over different cultures, different places and different periods. The theories of justice are widespread, global throughout the human history in different different forms. An earlier one was presented in Plato's *Republic* where Justice is referred to as *dikaosune* and debated between Socrates and other interlocutors of the dialogue. On the one hand where modern conceptions like those of John Rawls, Amartya Sen are much more egalitarian and liberal components to it. Rawls sees justice as primary

² Note: In order to avoid any misreading of Bilgrami, I have personally communicated with him regarding his views on justice. I am grateful to Akeel Bilgrami for guiding me through his ideas on justice.

virtue of the society, on the other hand in Plato's conception or Aristotle's conception or other Greek conceptions, the primary virtue will be wisdom rather, argues Rathore. Even throughout ancient oriental philosophy the notion keeps changing, for example for Confucius the primary virtue for justice is 'Ren' which is universal benevolence leading to overall societal harmony, Persian philosophers like Avicenna considered justice as part of moral theology, in contemporary times, Gandhi combines the principle of non-violence and concept of not doing harm to others, to formulate the principle of Justice. For Amartya Sen concrete manifestation of justice is capability, for Nancy Fraser it needs an important addition like recognition. For philosopher Prasenjit Biswas interestingly justice is a "matter of geography"³ in post-colonial India, for Ambedkar it is annihilation of caste structure. In short, there are all kinds of different interpretations of the theories of justice, in all different geographical locations and historical eras. Now I will proceed with the most influential name in contemporary times for his theory of justice- John Rawls, with the publication of his book *Theory of Justice* in 1971 the moral and social philosophers came out of their fixation with meta-ethics to the normative issues of distributive justice.

Justice as Fairness

In the chapter 'Fairness through Ignorance'⁴ on John Rawls, Nigel Warburton attempted to explain justice in a simplest possible argument that if there is true justice in the world then no children would starve and some children have enormous amount of money that they don't know what to do with it. Therefore basically Justice is all about treating people

³ Patrick Hoenig, Navsharan Singh, (ed.) *Landscapes of Fear: Understanding Impunity in India*, Zubaan, 2014

⁴ Nigel Warburton, *A Little History of Philosophy*, Yale University Press, 2011, p. 228

fairly. According to Nigel, John Rawls, who fought in the second World War and he was present in the Pacific when the atom bomb was dropped on Hiroshima got deeply affected. When Rawls tried to imagine a better world to live in, he realised that human nature works in a way that people have a tendency to think their own position while articulating the place they wish to live in. These prejudices lead to a biased idea of a peaceful world. Therefore, Rawls came with a thought experiment called original position where you will be behind a veil of ignorance unaware of your position in the world. Through this device Rawls developed his theory of justice which was based on two principles- Liberty principle and Difference principle. Liberty principle suggested that everyone has basic liberties which should not be taken away from them even if restricting them improves the life of majority leading to utilitarian principle of maximum happiness. Rawls second principle, the difference principle is basically about equality. A formula in which the most disadvantaged too will get proportionate benefit. Nigel puts it simply that “no one would earn huge bonuses unless the poorest got more money as a result.”⁵ Nigel concluded that Rawls inspired a range of contemporary philosophers dealing with the philosophical underpinnings of the theory of justice including Michael Sandel, Thomas Pogge, Martha Nussbaum and Will Kymlicka, inspired to believe that the purpose of philosophy is “actually change how we live, not just change how we discuss how we live.”⁶ This emphasis on bringing actual change is an important underlying idea to my thesis as well. Let's have an elaborate discussion on the idea of theory and practice before proceeding further.

⁵ Ibid. p. 229

⁶ Ibid. p.233

Theory and Practice of Justice:

The seemingly simple idea of *actually change how we live* is actually a pretty complex one. Amartya Sen in his book *Idea of Justice* pondered at length on the question of theory and practice. What is significant - the final pristine theory of transcendental justice or the small acts of removing injustice in day to day life. But to get a sense of the debate we need to understand what do we mean when we use the term “theory” and “practice” before we move to post-Rawlsian debates of justice.

James Wiley in his book *Theory and Practice of David Hume* explained that theory implies collection of general ideas to explain something whereas practice means gaining knowledge to improve the society. Theory devoid of its relation with practice is “trivial.”⁷ James argues further that in academics the debate over practice is being taken over by the debates on “methodology” which is actually “theory about theory”. Nicholas Lobkowitz’s in his book *Practice and Theory* points out the historical origin of the two terms- a life of contemplation of a philosopher and another a life of deliberation or action of a statesman or citizen. He argued that for Aristotle theory means contemplation of eternal/divine objects which is the reality. Due to contingency of human life practical knowledge can never be exactly like theory, Aristotle insisted. But this got further improved-

⁷ James Wiley brings the most commonly spelt notions about the divide between theory and practice in our day to day life- “Everyone knows the saying “this may be true in theory, but it does not apply in practice.” Less familiar...is: “In theory, there is no difference between theory and practice. In practice, there is no relationship between theory and practice.” Usually the world and its practices are resistant to theory. Reality is quite complicated and many theories, even “true” theories, usually overlook important details or dimensions of it.”

According to Lobkowitz, rather than considering all these different ways of life (including the inferior ones) as examples of “practice,” and rather than considering the types of knowledge appropriate for understanding or directing each practice as different types of “theory,” the thinkers of the western tradition transformed the philosophical way of life, with its practices of contemplation, into the model of theory; and they transformed the political way of life, with its practice of action, into the model of practice.⁸

With the coming of Descartes this model became scientific and science became the standard of all the knowledge including practice. According to Lobkowitz, Marxism engaged with the idea of theory and practice like no other theory before did, but still there was no clear answer to what is the relationship between the two, even in marxist framework. James Wiley further argues that Lobkowitz ignored the modern accounts of American pragmatists like John Dewey, is basically originating from the “contempt that ancient philosophers had for other ways of life.” Later on these separations become institutionalized in universities. This tradition is still passing on from ancient to medieval to modern academics. John Dewey argues that it is the universities which are still carrying this tradition of division between the theory and practice. Dewey concludes that “theory and practice could and should be reunited in everyday life and used to improve it.” Richard Rorty argued that this exercise is “misbegotten” and should be abandoned the way philosophers abandoned “attempts to prove the existence of God.” Richard Rorty argued in favour of “pragmatic reform”.

Amartya Sen comes very close to Richard Rorty’s idea of “pragmatic reform” or Nigel’s idea of bringing “actual” change not limiting ourselves to mere theoretical changes. The theory should inform the practice instead of just being limiting itself to the arm-chair. On the other hand another important analytical philosopher Akeel Bilgrami on his quest

⁸ Ibid. p. 4

for justice comes up with a entirely different thought experiment at the level of human cognition. When Rawls will be suggesting his two principles which can be broadly summed up as taking care of Liberty and Equality, Akeel Bilgrami asks on a very different tangent that *Why*, since *When* and *How* these two principles which are the product of Enlightenment rationality came at irresolvable tension with each other. Akeel Bilgrami is interesting as he is trying to map the history of these philosophical tensions and rethinking these very concepts of Liberty and Equality. I will be dealing more with these questions in the following chapters but before that let us understand the post-Rawlsian engagements with the theory of justice.

Justice: Post-Rawls

American Philosopher Richard Arneson while trying to define justice in terms of fairness draws on four broad principles⁹ first one is what counts as “fair distribution” and second, how to conceive of benefits and loss. Infact, building largely on first two principles, Arneson argued that the idea of justice have priority over other normative ideas. If there is injustice in the functioning of the society then that is the first thing to be corrected regardless of the fact that how it will affect other functionings in the society. Arneson’s arguments is close to the thought experiment articulated by John Rawls. According to Arneson, John Rawls after the writings of Hobbes provided the most profound substantial alternative to Utilitarianism which was the dominant mode of thinking about social

⁹ Richard Arneson in the book edited by David Estlund, *The Oxford handbook of Political Philosophy* in third chapter on Justice argues that there are four major ideas which are the base of developing any theory of justice - (a) what counts as a “fair” distribution, (b) how to conceive of benefits and burdens, (c) what the necessary and sufficient conditions for being a person (a being whose condition matters for purposes of justice) are, and (d) what the relevant individuation conditions for a society are, or, alternatively put, what the spatial and temporal scope of justice principles is.

justice within the liberal intellectuals. Arneson first of all questions the utilitarian philosophy of justice which remains one of the most sought after explanation of how things should be in the society. Utility principle of justice is that one should follow those moral acts which will bring the most aggregate utility. Maximization of utility is being seen as the standard of justice as law principle, in building institutions, in imagining social practices etc. Rawls asserted that Utilitarianism “at its root”¹⁰ is not a liberal theory as it fails to safeguard the rights of the individual. Utilitarianism ignores the “distinction between the persons”¹¹ argued Arneson. So if we always want to look for the aggregate benefit of the maximum it also opens up the possibility that an individual's interest will be ignored if it leads to the pleasure of many. Therefore Rawls indulged in a thought experiment to identify the “substance of justice” as free and rational person called original position under a veil of ignorance.¹²

According to Arneson the central emphasis of Rawls was on having just institutions since just institutions will distribute social goods fairly. In Rawls scheme of fair distribution means the rich and the poor both get proportionate social goods. Now the important

¹⁰ Ibid. p. 60

¹¹ John Rawls, *Theory of Justice*, 1999, p.24

¹² Amartya Sen contested this understanding with a simple day to day anecdote to contest the theoretical claims made by doyens of justice theory. “Imagine two persons who have equal holdings of primary social goods such as income and wealth. One is legless, and one has fully functioning legs; otherwise they are similar. The former must spend most of her income to gain mobility, which the latter receives naturally and for free. Amartya Sen points out that according to the primary social goods standard, the condition of the two is the same, but for justice purposes, this is not right: The legless person is clearly seriously disadvantaged. More generally, individuals vary widely in the quality of their personal traits that bear on their ability to achieve worthwhile aims, and the relevant measure of a person’s condition for purposes of justice is accordingly not her resource share but what she is enabled to be and do that she has reason to value, given her resources, personal traits, and other circumstances.” Therefore in Sen’s framework of justice the basis for defining justice is an individual’s capability to achieve the functionings. The point is further elaborated in David Estlund edited volume *The Oxford handbook of Political Philosophy* (2012) in third chapter on Justice.

departure in Amartya Sen's scheme is that he is not merely interested in the fair distribution of the social goods but he is equally concerned about the physical and psychological status of the individual. Sen suggested that if an individual is born with different "physical and psychological propensities"¹³ s/he will be generally inefficient in transforming the social goods into what s/he desire.¹⁴

Therefore Sen is bringing a very important change in the way we have imagined justice till Rawls. That it is not just about the institutions it's also about the capability of the individual whether she got the capability to achieve the social good which Rawls is trying to justly distribute.

For Rawls the theory of justice assumes that all the individual of the society are fully functioning, "fully contributing members" of the society. Rawls responded to it, as per Arneson, by suggesting that once the social primary good is evenly distributed then it is upto the individual to plan it further and theory of justice won't be measuring it. But this response still doesn't answer the ground level problem that there are differences in people's capabilities, talents etc. "among all persons". This point raised by Sen strikes a chord with almost all the contemporary theoreticians on justice. But Arneson contested Sen as well suggesting that there are "enormous numbers of capabilities to function, and

¹³ John S. Dryzek, Bonnie Honig, Anne Phillips, *Handbook Political Theory*, Oxford University Press, USA, 2006, p. 50

¹⁴ Amartya Sen argues- Consider two individuals with the same allotments of primary social goods. One is fit, hardy, and quick-witted; the other is lame, illness-prone, lacking in physical coordination, and slow-witted. In any terms that we care about, the condition of the two persons is unequal, but a primary social goods metric does not register the disparity. Sen proposes that we should look beyond the distribution of opportunities and income and other primary goods and see to what extent individuals are able to be and do with their primary goods allotments given their circumstances.

they vary from the trivial to the momentously important”¹⁵ therefore capabilities need some kind of ranking which was later developed by Martha Nussbaum.

Conclusion: Moving Beyond Contemporary Distributive Theories of Justice

In this thesis I am trying to move beyond the traditional conceptualisation of justice like desert, virtue, fairness and trying to bring into the fold of justice the emerging concepts like capability, functioning and recognition. The contemporary literature around justice since 1971 with the publication of *Theory of Justice* is generally in dialogue or in contrast with John Rawls. Nancy Fraser’s perspective on justice as recognition should be seen as a new attempt in the field without necessarily in conversation with Rawls. But here I am not going to discount one of the finest modern scholars on justice. Therefore I will be dealing with Rawls as well vis-à-vis Amartya Sen and also bringing Akeel Bilgrami and Nancy Fraser for newer perspective on justice discourse. One can safely say that justice post-Rawls is being seen as distribution of primary goods but Akeel Bilgrami, Nancy Fraser, Axel Honneth attempt to see justice at the level of cognition and recognition. Amartya Sen along with Nussbaum not only are interested in the distribution of the primary goods but also focussing on the capability of the individual to actually avail those benefits.

One of the major lack in the justice theorisation post Rawls is on a plank of distributive justice with less focus on distribution of recognition and the capability of the individual

¹⁵ Ibid, p. 51

to avail it in real life. David Schlosberg argues that the link of recognition with contemporary liberal theories of justice is under theorised. The publication of Rawls *Theory of Justice* led to development of “micro-industry” with political theorisation which see justice in terms of fairness, impartiality etc. Schlosberg is trying to see justice in “political practice” as a balance of interlinked elements like distribution, recognition, participation and capability. He argues that empirically this is the case but in academic study there is an imbalance with regard to overemphasis on distribution. He qualifies himself that this linkage doesn’t amount to dismiss distribution but to develop a comprehensive understanding.

In the past nearly four decades of the literature of political theory, justice has been defined almost exclusively as a question of equity in the distribution of social goods. Brian Barry (1999) insists that the concept of justice only applies where some distributive consideration comes into play; other issues are merely questions of right and wrong.¹⁶

Similarly Brighouse claims that the “subject of justice, then, is the very basic structure of a society; it defines how we distribute various rights, goods, and liberties, and how we define and regulate social and economic equality and inequality.”¹⁷ John Rawls emphasised that justice is the assessment of the “distributive aspect of the basic structure of the society”. The basic point of John Rawls notion of ‘justice as fairness’ through his imaginary original position behind veil of ignorance is just-distribution or “the rules that govern a just distribution”. This is a proceduralist approach in contrast to consequentialist

¹⁶ David Schlosberg, *Defining Environmental Justice- Theories, Movements and Nature*, Oxford University Press, 2007, p. 12

¹⁷ Ibid. p.12

theories of justice like utilitarianism. Utilitarianism is interested in the ‘outcome’ of distributive process whereas other theories are more interested in what is to be distributed and what the the rules through which distribution will take place. The overall argument of Schlosberg is that “the distributive approach to justice have been the dominant discourse in justice theory over the past few decades.”¹⁸

Schlosberg under the subheading *Justice as Recognition* that this traditional distributional way got challenged with the emerging scholars like Iris Young and Nancy Fraser. Where we can add more names like Amartya Sen, Martha Nussbaum, Akeel Bilgrami, Ambedkar etc. The important critique by David, of Rawls is that “these critiques of distributional theory are thoroughly influenced by the real world of political injustice, rather than the imagined realm of an original position.” With there day to day experience of practice these theorists start arguing that unfair distribution is not the sole problem for making a just-society. This becomes more clear when we start analysing who all are getting left out in this unfair distribution scheme and why? For David recognition is a central element of justice theorisation. With the emerging scholars like Nancy Fraser, Iris Young, Axel Honneth, B.R. Ambedkar and Charles Taylor the debate around recognition got strengthened. Lack of recognition demonstrated by “insults, degradation, and devaluation at both the individual and cultural level, inflicts damage to oppressed individuals and communities in the political and cultural realms.” David argues that this is a gross injustice not because it is “constraining” but also because it is “foundation” of distributive justice. When Rawls and the following theorists focus on ideal schemes of justice in liberal society scholars like Sen, Fraser etc. are exploring the key impediments

¹⁸ Ibid. p.13

in real life to such schemes. Iris Young in her book *Justice and the Politics of Difference* contested the idea of justice solely based on issue of distribution, ignoring the social context of injustice. She insisted that oppression is the starting point for any theorisation of justice. Young argues that distributive justice outlines procedures for distribution but not serious enough for “social, cultural, symbolic, and institutional conditions underlying poor distributions in the first place.” Young made an important argument that distributive theories take goods as “static” not as a resultant of “social and institutional relations.” David putting it simply suggests that distributional aspect is crucial but justice should not be reduced to distribution. Young claims that injustice is a resultant of “social structures, cultural beliefs, and institutional contexts.”

Similarly, Nancy Fraser argues that both distribution and recognition requires due attention as both are linked in practice. “Examining the context of oppression—rather than simply either existing distributions, better distributions, or ideal procedures to procure just distributions—is central to Fraser’s justice project.”¹⁹ Therefore Fraser’s project is not to discard the distributive framework of justice but to make it more inclusive. Amartya Sen is also attempting to pursue similar venture but by bringing Capability to the the distributive framework.

¹⁹ Ibid. p.15

Amartya Sen’s Capabilitarianism: Beyond Standard Distributional Theory

Amartya Sen on the other hand, tried to develop a justice theory which takes distribution seriously and equally seriously moves beyond to look at capability. The basic argument of the capabilitarianism is justice should not only be about how distribution of goods is taking place but also how people function with it. It is about person’s opportunities “to do and to be”. Amartya Sen successfully shifted the focus of the justice debate from traditional indicators to agency, well-being and functioning.

The point for Sen is to move away from a sole concern with the amount of goods we get, and to examine what those goods do for us; he opens *Development as Freedom* by comparing classic Sanskrit and Greek texts, including Aristotle’s point that ‘wealth is evidently not the good we are seeking; for it is merely useful and for the sake of something else’ (Aristotle 1980: 7).²⁰

David puts it very succinctly that Sen’s approach examines our “specific capabilities” which means those things which assist us to translate basic goods into the functioning of human life. Sen deployed this concept of capability to compare “quality of life” mainly in developing nations. Which he argued should be the indicator for development instead of GNP.²¹ The need for valuation of important functionings can’t be done by looking at

²⁰ Ibid. p. 15

²¹ In contrast to the economic indicators generally used to measure the development of developing nations Sen argues- “The central feature of well-being is the ability to achieve valuable functionings. The need for identification and valuation of the important functionings cannot be avoided by looking at something else, such as happiness, desire fulfillment, opulence, or command over primary good” (Sen 1985: 200). Functionings refer to various doings and beings: these could be activities (like eating or reading or seeing), or states of existence or being (being well nourished, being free from disease) (p. 197). This approach

happiness index or desire fulfilment or proper distribution of primary goods. Now what are these valuable functionings? Functionings as articulated by Sen is various ‘doings and beings’ which can be eating/ reading/being healthy.

Capability approach suggests that people should have the opportunity to be able to have “combination of functionings” and people should have a choice to choose from among those combinations. Capability means that people can or cannot use that combination of functionings. Capability means people can choose from among the combinations any combination. Therefore capability approach asserts that the basic measure of justice is not how much one is having but is that is enough to lead a life we choose to reason. Both Sen and Nussbaum elaborated in details the qualities that “enable individuals to have a fully functioning life.” In the words of David - “Broadly put, the focus of this notion of justice is on what it is that either enables or interrupts a living system in its ability to transform primary goods (if they are available) into functionings. For example, if reading is a functioning, then literacy and being educated are the capabilities necessary for that functioning.” Capabilities may come as a responsibility of state distribution but Sen’s focus is on functioning of citizens. Therefore one can safely claim that Sen is not just focussing on the distribution of material goods only. But the question is what exactly are those capabilities needed for functioning of a citizen? Sen is little unclear on this question.²² Nussbaum chalks out a more detailed capability set.²³ But with this

‘concentrates on the opportunity to be able to have combinations of functionings . . . and the person is free to make use of this opportunity or not. A capability reflects the alternative combinations of functionings from which the person can choose one combination’ (Sen 2005: 154)”

²² “Sen mentions five basic concepts and freedoms that help advance the general capability of people: political freedoms, economic facilities, social opportunities, transparency guarantees, and protective security (1999b: 10). Here, he notes that since ‘political and civil freedoms are constitutive elements of human freedom, their denial is a handicap in itself’ (pp. 16–17)”

elaborately defined list by Sen followed by Nussbaum got criticised of being “paternalistic and perfectionist.”

S  verine Deneulin argues that such listing amounts to objective good. He argues that this list is from the perspective of the theorist. He argues that “The theory is then accused of focusing not on the functionings that people ‘choose’, but rather on those that people have a good reason to do or be.”²⁴ Amartya Sen while responding to such charges refuse to publish any such elaborated list as did by Nussbaum. David argues to this that the development programs happening all around on the basis of capability approach needs and using such elaborated list.

Amartya Sen in his book *Human Rights and Capabilities* argued that he is reluctant to elaborate on any such list because of two reasons mainly. One, it is difficult to determine

²³David elaborates what Nussbaum suggested as capabilities for fully functioning life:

Life: being able to live to the end of a human life of normal length.

Bodily health: including health, nourishment, and shelter.

Bodily integrity: being able to move freely, having sovereign body boundaries, security against assault, opportunity for sexual satisfaction, and reproductive choice.

Senses imagination and thought: basically being able to use human intelligence and creativity; this includes adequate education, freedom of expression, and freedom of religious exercise.

Emotions: ‘in general, to love, to grieve, to experience longing, gratitude, and justified anger’.

Practical reason: the basic liberal right to determine one’s own notion of the good life.

Affiliation: two parts here. It starts with recognition, or ‘being able to live with and toward others, to recognize and show concern for other human beings’ and ‘to be able to imagine the situation of another and to have compassion for that situation. . . .’ Also includes ‘having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others.’ Nussbaum explicitly notes that this requires protecting institutions that constitute and nourish such forms of affiliation. *Other species*: being able to ‘live with concern for and in relation to animals, plants, and the world of nature’.

Play: ‘being able to laugh, to play, to enjoy recreational activities’.

Control over one’s environment: both political, which includes the right of political participation, and material, which includes the real opportunity to own and control property on an equal basis with others. “Importantly, notes Nussbaum, these are separate components, so that having a lot of one capability does not negate the need to attain all of the others. Many of them are what Rawls calls ‘natural goods’, which are determined, in a substantial amount, by the luck of the genetic and social draw. Governments, however, are to ‘deliver the social basis of these capabilities’ (Nussbaum 2000: 81).”

²⁴ David Schlosberg, *Defining Environmental Justice- Theories, Movements and Nature*, Oxford University Press, 2007, p. 32

without the “appropriate specification of the context” that what will be there in the list and with what weightage. Secondly, the “top-down paternalistic approach” would undermine the public reasoning and public deliberation. Without such public discussions no appropriate list can be generated. He argued that problem is not with suggesting important capabilities but a predetermined canonical list which is developed by few theorists without any public discussion. Sen argues that to hold such a list “emanating entirely from pure theory” will amount to negation of public participation.

But the attempt here is to place capabilities in the larger framework of justice discourse. The most important contribution of Sen is that he expanded the “distributional realm” as he is not only limiting himself to the distribution of goods needed for flourishing but also on the “process we depend on for that flourishing to occur.” Injustice for Sen is not limited to denial of certain social primary goods but with the “capability that is limited.” In Sen’s capability approach of justice, the idea of justice is not merely “distribution based” but there is a “linked approach”. Linked to the concepts like recognition, functioning and participation. The only difference between what Fraser or Young and Sen’s capability approach is that Sen’s approach is thoroughly linked to the idea of distribution as well where is Young is critiquing the traditional distributive aspect of justice. For example Nussbaum’s capability approach talks about bodily integrity, health and recognition as necessary capabilities. This methodology links the distributional aspect of justice with “cultural and institutional components” of justice theorisation.

Kevin Olson argues that the central goal of capability is to push agency to simultaneously address both economic inequality and cultural issues.²⁵ Whereas Ingrid Robeyns argues that capability theory accommodates both distributive and recognition aspect of justice theorisation but still goes way beyond both. Now let's get a sense of the notion of justice of the two thinkers of my thesis itself, before we proceed to the next chapter.

Bilgrami and Sen: Radically Stretching the Liberal Paradigm of Justice:

The location of the two thinkers, since they are of Indian origin, a third world nation, possibly made the two thinkers contest the dominant western knowledge paradigm. Akeel Bilgrami's framework of Just-society is not merely a vehement critique of social contractarian understanding²⁶ for its unhistorical trajectory. Bilgrami also contested the need of historical necessity of the European path of modernity for the third world nations like India, snatching away the political agency, which Bilgrami argued is 'uncompulsory'. On the other hand Amartya Sen in his book *Identity and Violence* in the chapter "*Denial of Choice and Responsibility*" criticised the 'Imagined Singularity' as the central classificatory idea of the world. Sen criticised the dominant western narration from Samuel Huntington's book- *The Clash of Civilisations* for a classification based on religion, ignoring other

²⁵ <http://cohering.net/re/Olson2001.pdf>

²⁶ Bilgrami is pointing towards the social framework of understanding in which a highly *individualised* notion of individual liberty attached to possession of private property and *incentivisation of talent* making it structurally incoherent with equality. Which according to Bilgrami are the fundamental source of the shortcoming of the Liberalism that emerged out of the standard political Enlightenment.

divisions like class, languages, occupation, culture etc.²⁷ Moreover, Sen by bringing the concepts of *Niti* and *Nyaya* from Classical Indian philosophy also tried to establish that the tradition of imagining the idea of justice through public reasoning is not an western import. Where *Niti* will be closer to what Rawls tried to insist through his emphasis on institutional correction to deliver justice, *Nyaya* will be seen as what Sen is arguing. Sen by invoking *Nyaya* asserted that merely forming the best principles and getting them implemented through institutions is not going to create a just-order. Society is little more complicated and need assessment and reassessment time to time in a comparative fashion. Both Bilgrami and Sen therefore are contesting the Western gaze on Global South. This should be seen as an important attempt towards developing an organic understanding of the theory of justice for the third world nations and beyond and an attempt towards a more inclusive global theory of justice.

Akeel Bilgrami while contesting the liberal paradigm of post-enlightenment theorisation invokes a distinction made by Ludwig Wittgenstein, distinction of the difference between ‘waving to a friend’ and ‘moving one’s arm’. Wittgenstein criticises those who say that the right way to think of intentional action is, to think first of the idea of the physical movement of one’s own arm and then say that it is transformed to a waving to a friend by the fact of the intention of the agent. He thinks there is nothing else to say but that it is a waving to a friend. That is what is *basic*. Akeel Bilgrami in his book *Marx, Gandhi and Modernity*, elaborates further that, to think that there is something prior and more basic added to arm moving with an “extra non-basic mental element of an intention” is to identify the wrong thing as *Basic*. Bilgrami extends this “individual intentionality” to

²⁷ Amartya Sen, 2006, *Identity and violence*, p. 11

“Individual sociality”²⁸ which is to extend the social aspects of an individual’s mentality. Which means in tragedy of common situation one cannot identify the basic idea as that others will not contribute to the collective even if I am. Bilgrami did this to configure one of the fundamental ideas of liberal notion of justice i.e., Liberty into non-individualistic terms. Therefore Bilgrami provokes to change the very essence of the most fundamental ideals of justice theory and identify what exactly is the *Basic*.

The traditional political philosophy has been defined by Will Kymlicka in his book *Contemporary Political Philosophy* falling on one single line stretching from left to right or equality to liberty or Socialism to free-market capitalism. In between are the liberals, who are upholding the mixture of equality and freedom therefore argues for welfare state capitalism. But for Akeel Bilgrami to have a better understanding of the contemporary problems one has to come out of such binaries leading to irresolvable tension between liberty and equality. Either there should be new ideas who can better capture the current tension or the very essence of these categories should change, which is not possible in the current liberal paradigm, according to Bilgrami. Therefore for Bilgrami, the two ideals of liberty and equality will lead to justice only when these are in tandem with the pursuit of the unalienated life²⁹. This raises an important philosophical point regarding the adequacy of a dominant assumption- that liberty and equality are enough by themselves for justice. For Bilgrami, the two are connected, because the exercise of liberty for him has embedded in it the concern for equality. Not only this, Bilgrami has questioned the dominant understanding of liberty which attach importance to property and Talent and he

²⁸ Akeel Bilgrami, 2014, *Marx, Gandhi and Modernity*, Tulika Press p. 176

²⁹ Akeel Bilgrami, ed. *Marx, Gandhi and Modernity, Essays Presented to Javeed Alam*, New Delhi, Tulika Books 2014

attempts to remove those components of liberty that produce the tension in the first place. His ideas will be explained at depth in Chapter 4. However the thought of an unalienated individual subjectivity presents itself as an attractive concept in the contemporary world where equality is becoming increasingly elusive and in which the liberty of some threatens equality of all. Alienation is becoming increasingly normalized, and while there is an increasing emphasis on liberty, this ideal is becoming more and more hollow in the absence of equality. The tension between liberty and equality is more stark now than it ever was. This makes Bilgrami's intervention relevant and timely.

But to understand the contemporary relevance and location of their argument it is important to understand the engagement of Amartya Sen to his immediate predecessor John Rawls. Other contemporary political thinkers like Philip Pettit and Will Kymlicka³⁰ have also argued that with the publication of Rawls's Theory of Justice a more lively debate emerged in normative political philosophy. Rawls theory dominates contemporary debates not because everyone accepts it, but because alternative views are often presented as response to it, with which I will deal elaborately in the next chapter itself. But, just as these two alternative views are best understood in terms of their relationship to Rawls, so understanding Rawls requires understanding the theory to which Rawls was responding—namely Utilitarianism, followed with the responses of both Bilgrami and Sen to utilitarian idea of justice. I will be following this dialogic methodology in the coming chapters as well. Utilitarianism is so overpoweringly present in our day to day understanding of justice that it is not just important to engage with it but without engaging with it one cannot proceed further. Both the thinkers in this study elaborately critiqued Utilitarian

³⁰ Will Kymlicka, 2001, Contemporary Political Philosophy, Oxford university press, P. 10

notion of justice. On the one hand, Amartya Sen critiqued utilitarian understanding of valuing life as utilitarianism defined good life in terms of quality of happiness in mental conditions like pleasure, happiness, desire. But Sen asked a very valid question from the lifeworld of the people that it is a very subjectivist understanding which can lead to a very misleading understanding of the just-society. Sen argued that these criteria may not lead you to actual state of being of the people. Sen gave example of a really deprived person living a “very reduced life” may appear fine in the ‘mental metric of utility.’ Many a times people just accept the hardships and learn to live with them without much grumbling. When people are under deprivation for years then they stop complaining. They start seeking pleasure in smaller things, becoming more ‘realistic’ in life. Now the deprivation of such individuals may not get properly reflected in the utilitarian metric of happiness. They may be undernourished, with very little education etc, but may not cry over it and simply learn to live with it. This vulnerability continues due to lack of public protest against it. But this line of argument opens a pandora's box since it's really difficult to judge how much an individual will feel content with. Sen tried to address this ambiguity in the conceptual framework of the capability approach. Sen asserted “In so far as there are genuine ambiguities in the underlying objects of value, these will be reflected in corresponding ambiguities in the characterization of capability...In social investigation and measurement, it is undoubtedly more important to be vaguely right than to be precisely wrong.” Therefore Sen concluded that the format of capability approach which includes ‘doings’ and ‘beings’ actually permits only a real choice. A choice which is possible, missing and should be included. A similar set of ‘doings’ and ‘beings’ can be seen in various ways by different people. With the change of context, functionings may

change. Furthermore, Sen found that the concern to value the quality of life has often been rejected as ‘essentially ad-hoc suggestions’ despite there are extensive writings. The other reasoning is that utilitarian approaches enjoys a traditional standing in the development theory.

And on the other hand, Bilgrami criticised Hume and Adam Smith who argued that values are reducible to our desires and moral sentiments. According to Bilgrami both natural and social world presents a normative demand to which our agency responds. He argues that norms and values are not subjectively generated “howsoever we wish from our individual subjectivities” a position upheld by Hume and Smith, who, as I mentioned earlier, described values as reducible to our desires and moral sentiments. And Utilitarian school of thought pushed their idea with their notion of subjective utilities.

The right view of values puts them *in the world* as properties that make normative demands on us. So the situation is quite the opposite of Hume and Adam Smith’s suggestion that values are projections of our desires and moral sentiments onto the world. Rather, our desires and preferences and moral sentiments are responses to value properties in the world. When one is asked, “Do you desire X?”, we don’t answer by scanning our interiors to see whether we have the desire for X. We consider the desirability (the Value) of X.³¹

Bilgrami further explains this argument by drawing an analogy that if someone asks us - “Do you believe that it is raining?” then we don’t think - let me check if my mind contain the belief that it is raining. We all will just look outside and check whether it is raining or not. Therefore Bilgrami suggests that what is true of our belief is also true for our desires and values. Therefore the normative demands “coming from the world” are equally perceptible as rain.

³¹ Akeel Bilgrami, 2014, Marx, Gandhi and Modernity, Tulika Press, p. 174

The phenomenological point therefore is, that one has to see the world right, to see, to understand what are the exact normative demands coming from the world. Therefore to be unalienated, according to Bilgrami is “for our agency to be in responsive sync with these perceptually presented normative demands coming from the world as we apprehend it”. This is how to be at home in the world. To be sensitive towards the normative demands world make on us, we need to see the demands of the world not just our subjective desires. For Hume and Adam Smith individual interests and desires are primary, whereas Bilgrami is asking us to view normative demands of the world beyond this orientation.

Amartya Sen has devoted a major part of his work to conceptualising justice in such terms as may be actually realisable in real-life situations where justice often involves making a choice, which people themselves reason to value, among the limited options available.

The importance of Sen's work also lies in its practical and immediate implications for the realisation of justice. Amartya Sen has devoted a major part of his work in conceptualising justice in such terms as capability approach where the real deprivation of the individual is analysed not the adaptive preferences.³² The major change in thinking that Sen intends to bring about is a shift from endless pursuits of attaining perfect theoretical standards of justice. The reasons that Sen cites for going beyond the transcendental approach are that these perfect theories do not offer us a practical blueprint for making the choices, among available options, that will result in justice. The

³² “Sen's Capability Approach | Internet Encyclopedia of Philosophy.” <http://www.iep.utm.edu/sen-cap/>. Accessed 2 feb. 2017.

theoretically perfect choice may not actually exist in the world as an available option.³³ Secondly, perfect theory does not allow for conflicts, which form an important part of the process of delivering justice. The point of “perfect” theory is that a standard of justice that is universal and timeless can be developed. However, the very need for philosophizing justice arises because there are conflicts, and that justice is neither a universal, timeless standard nor a non-contentious process³⁴ Having summarised the basic shifts that Sen brings into political philosophy, the next natural question to explore is, how he does it. So what is Sen's approach and how does he work towards developing a blueprint for justice? To explore these questions it's important to first understand the historical development in the next chapter since Greeks till the contemporary debates engaging Sen and Bilgrami.

³³ To cite the actual example used by Sen: “To illustrate, if we are trying to choose between a Picasso and a Dali, it is of no help to invoke a diagnosis (even if such a transcendental diagnosis could be made) that the ideal picture in the world is the Mona Lisa. That may be interesting to hear, but it is neither here nor there in the choice between a Dali and a Picasso.⁶ Indeed, it is not at all necessary to talk about what may be the greatest or most perfect picture in the world, to choose between the two alternatives that we are facing. Nor is it sufficient, or indeed of any particular help, to know that the Mona Lisa is the most perfect picture in the world when the choice is actually between a Dali and a Picasso.”

³⁴ This is illustrated by Sen with the help of the famed example about a flute to which conflicting claims to ownership are laid by three different children, each presenting a unique, yet equally valid claim to use/ownership of the flute. In a situation like this, there is no theoretical position that can deliver justice without allowing for conflict. Any attempt to prejudge such situations, once and forever, through perfect theory will only result in further conflict between the theorists themselves, far from any resolution of the real-life situation.

Chapter 1

Theory of Justice: Tracing the Historical Trajectory

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Chapter 1

Theory of Justice: Tracing the Historical Trajectory

Ancient Roots: Introduction

Socrates and Plato- The Greek Philosophy:

| 497 *Meanwhile the people were gathered in assembly, and there a quarrel [neikos] |*
 |...*One of the two claimed [eukhesthai] that he had the right to pay off the damages in full...of the two was refusing to accept anything... in the presence of an arbitrator [histōr], |*
 |
 502 *and the people took sides...but the heralds kept them back, and the elders |*
 504 *sat on benches of polished stone in a sacred [hieros] circle...they rose and each in his turn gave judgment [dikazein],‡ |*
 507 *and in their midst there were placed on the ground two mea-sures of gold, |*
 508 *to be given to that one among them who spoke a judgment [dikē] in the most straightway [ithuntata]. -Iliad XVIII 497–508†*

In the above translation of Homer's Iliad there is a tension between dikē as 'justice' in the long term and 'judgment' in the short term. But Plato in *The Republic* criticised the poets, including Homer, because they describe Gods as lacking in virtue. But the very initial instances of the idea of Justice can be traced back to Homer or in Thucydide in Melian dialogues:

For you cannot but Know that, according to the common notions of the mankind, Justice is regulated by the equal necessities of the parties; and that those who are invested with a superior power, do all they find possible, while the weak are obliged to submit.
 - Melian Dialogue³⁵

³⁵ Benjamin Straumann, 2015, *Roman Law in the State of Nature*, Trans. Belinda Cooper, Cambridge University Press, P. 61

In 'Melian Dialogue', in 416 B.C., Thucydide debated the question whether Justice is applied to city's relation with other cities. With the emergence of City-states in Greece many questions were raised in front of people like who all can participate in the politics of the city-state, how to see battles etc. and such conflicts were addressed by the idea of justice. An idea which was reflected in the poetry of Homer as well. Inside the country justice is treated as a foundation for eudaimonia.

In Plato's *Republic* Socrates first defined what justice is not? He critiqued Cephalus over his simplification of the definition of the justice as "always telling the truth and repaying one's debts". Than he contested Polemarchus over his definition of justice as treating people as how we feel about them. And finally, rejecting the proposition made by Thrasymachus that justice is what the powerful suggest, justice is to be with the ruler. Thrasymachus claimed that justice is the interest of the person in power. The laws made by rulers are just laws. Plato contested this minimalist understanding of law and asserted that justice will be same for both ruler and subject. The methodology deployed by Plato is to first define the just-state principles and see if they are applicable to the subject as well. For Plato, ideal state is the embodiment of justice. Plato divided the state into three categories- the producer, the auxiliaries and the philosopher King, one who produce, one who protects and one who rules respectively. Plato while debating justice in his book *Republic* through the method of questioning- what justice is not- has Socrates, the protagonist of the book, developed a theory of justice as an essential virtue of good political state and individual, state and soul.

Aristotle- Nicomachean Ethics- Giving People what they Deserve:

Aristotle believed in just state and said that only in just-state human being can flourish. Aristotle talked about proportional equality through his idea of ideal constitution. Therefore the importance of just-state remained the same from plato to modernity. The state took care of just distribution of resources, goods and services. Therefore justice is needed for the just distribution to each and every individual of the society. Therefore the politics of the state revolves around the question of distributive justice. Three methods were being deployed for just distribution- Desert, Merit and Need. Desert can be roughly equated with deserve. Merit- the major difference between merit and desert is that desert is focussed on individual whereas merit is based on social considerations. The third criterion Need suggests that whether someone deserves something or not but if there is need the resource should be provided. Making life of people more just is the aim of the State. Procedural and Social justice are two dimensions through which we try to achieve a just order.

Book V of Nicomachean Ethics deals with moral and political virtue of justice. Aristotle talks about distributive and corrective justice. According to Aristotle distributive justice divides benefits and burden among the people. But if a member of the society is unfairly burdened or gets unfair advantages, it can be rectified with the help of corrective justice.

In short, for Aristotle, there are two conceptions of justice- Narrow and Broad. Narrow justice is equated with equality which is proportional equality. Whereas broad justice is lawfulness. But the important distinction to make is that by lawfulness or obeying the law, Aristotle doesn't want a mere submission to state-law. The term which Aristotle

used for law is 'nomos' which is more than legal laws. 'Nomos' comprises of both law and customs. There is another distinction made by Aristotle that the state is not governed by law but by ruler's decree. It would have been a just state if it has followed the law properly. So we can say Aristotle's method of defining the justice is through means of opposites. He keeps explaining what is injustice and what is left is justice.

According to Aristotle equality means seeking one's fair share. The one who is seeking what she deserves is following equality. Aristotle talks about three types of proportionality. One is corrective proportionality which means punishment should be exactly proportional or equal to the crime. Second is reciprocal proportionality which implies that the price of anything should be proportional or equal to the value of that thing. And third is distributive proportionality, which means everyone should get equal under equal circumstances. Aristotle further contended that justice is the most important virtue. He asserted that all the virtues can be used privately and for an individual herself but only when the same virtue is being used for everybody's good, it becomes justice.

According to Bernard Cullen, the distinctions Aristotle made for different kinds of justice has a subsequent and everlasting on all following discussions on justice. Therefore in fifth book of Nicomachean Ethics, dikaiosune (Justice) is not a mere set of positive laws but a system of rights. According to Cullen, Aristotle made a distinction between "General" Justice and "Particular" justice. Particular justice consists in giving what each deserves. Treating equals equally and unequals unequally in proportion. Aristotle further divides particular justice between- "Rectificatory" justice and "Distributive" justice. Rectificatory stands for "impartial preservation of social order" whereas distributive stands for "Justice in allocation of wealth." This distinction can be seen in contemporary

times as a distinction between procedural justice and distributive or social justice. Now the major next major discourse over justice will come with the coming of enlightenment thinkers.

Social Contractarian:

The concept of justice after protestant reformation and enlightenment saw a sea of change philosophically. On the one hand Plato was trying to represent an alternative to Sophism the English radical empiricists were trying to resurrect the Sophists. Hobbes asserted that one cannot claim to know anything which is not grounded in concrete experience. In his book *Leviathan*, Hobbes argued that body is the only reality taking a position known as materialistic monism. Hobbes asserted that like other animals human beings too are driven by survival instinct and self-interest. Furthermore, Hobbes painted a violent picture of society where there is no such thing as justice or injustice in this state of nature. Quoting Hobbes-

To this war of every man against every man, this also is consequent; that nothing can be unjust. the notions of right and wrong, justice and injustice have there no place. Where there is no common power, there is no law: where no law, no injustice. Force, and fraud, are in war the two cardinal virtues. Justice, and injustice are none of the faculties neither of the body, nor mind. If they were, they might be in a man that were alone in the world, as well as his senses, and passions. They are qualities, that relate to men in society, not in solitude. It is consequent also to the same condition, that there be no propriety, no dominion, no mine and thine distinct; but only that to be every man's, that he can get; and for so long, as he can keep it.³⁶

³⁶ Thomas Hobbes, *Leviathan*, 1968, penguin

The natural passion of fear and desire will lead people to use reason to escape this violent state of the society either through establishing peace or by destroying others who are threat to one's interest. Therefore to maintain peace, everyone reaches to a conclusion that no one will harm each other through a so-called social contract. So to move out from the violent state of nature to state of civil society through social contract rules of justice were articulated, through a covenant. Injustice, therefore, is, breaking a valid covenant- "the definition of I, is no other than the not performance of covenant. And whatsoever is not unjust, is just."³⁷ Once covenant is signed then breaking it is unjust. Therefore justice can be defined as standing with the principles. Now the important question in front of Hobbes was why will people accept this covenant and will not break the law and act unjustly? To avoid such situation he suggested 'the power of sovereign authority is must. Furthermore Hobbes also talks about what if the sovereign becomes autocratic. Hobbes then put it in terms of choice between a autocratic sovereign ruler and chaotic world order where he suggested to prefer an autocratic ruler instead of chaotic world order.

Summarising, we can say, in contrast to Plato or Aristotle, Hobbes, representing a naturalistic approach, is closer to Sophist theories of justice. But at the same time Hobbes's theory of justice is reductionist, reducing it to law and order at the cost of liberty.

Locke in his book *Second Treatise of Government*, talks about justice through his concept of natural rights. Locke asserted that justice conceived through personal property. Therefore justice is being seen as personal possession of property as right. It's important to mention the vehement contemporary criticism which contractualist theorists

³⁷ Ibid p. 108

received from Bilgrami. Bilgrami has vehemently argued against the social theory “contractualist in conception” particularly John Locke.

Bilgrami described the rudiments of such contractualists theory. He argues that all the social contract theory establishes a scenario “described as ‘state of nature’” which is a condition on the people to ‘freely chosen consent’ where they have to give consent to certain principles or arrangements to live in that state. This consent “immediately transforms” these people into citizens and the ‘state of nature’ into polity. But as per Bilgrami this arrangement will work only if the consent to these principles is being demonstrated as ‘rational’- “The principles and arrangements freely consented to must make these people better off as citizens than they hitherto were as mere people, prior to politics, in a state of nature”³⁸ Bilgrami explained that “canonical scenario” in which there is a prior state of nature and someone-leviathan- will come on the common land and ask for people to give consent for the arrangement. Those who consented becomes the citizenry with legitimate claims over the land. This framework will work, as per Bilgrami, only if people are better-off than the prior state of life they were in. Or the only other possibility can be that at least some of them were promised to have a better life conditions in the new arrangement than what they were initially having. The second requirement was fulfilled by promising that “they can hire others at wages” which enable them to live better. Therefore Bilgrami concluded that the social contractarian ideal is roughly an argument from “Pareto-improvement.” Social contractarian claims become the cornerstone of the political arrangement which came to known as “liberalism” in which “free-speech, private property, and wage labour” were seen as progressive

³⁸ Akeel Bilgrami, 2014, Marx, Gandhi and Modernity, p. 165

advances completed on the condition of mutual advantage or advantage of some and disadvantage of none (pareto-improvement).

Going again in the spirit of historical materialism Bilgrami asks a very pertinent question that what is the historical context which lead to articulation of such contractualist theory.

The answer is that

the theory philosophically consolidated the system of enclosures which had been practised by brute force for many decades earlier, and in doing so it prepared the ground for it to become a form of right with law and governance to back it up. The point was to present the political principles and arrangements which justified the system of enclosures as a moral and political achievement since it was based on a form of rational and freely chosen consent, which generated a compact that created a citizenry in its inhabitation of nature and its relation to the sources of livelihood and production, and the polity to sustain it in these relations.³⁹

So Bilgrami placed the contractualist theory in the historical context and tried to understand the reasoning which led to the formulation of such arguments. Bilgrami quoting Marx from the 27th chapter of *Capital* raises the predatory nature of the primitive accumulation, where Marx is talking about primitive accumulation in general and about enclosures in England in particular. Bilgrami constructed a counter-argument against the Lockean contract, who were legitimising enclosure, attributing it to the dissenters during English revolution, as the theoretical source of their protest.

Bilgrami presents a different notion of consent other than the Lockean one. According to Bilgrami whether people consented or not should be seen as contractualist proposes but rather viewed as “what he she would choose in antecedently specified sorts of conditions

³⁹ Ibid. p.166

that do not obtain”. The moment this view is accepted the contractualist tradition than there is no rationally implicit consent. By criticizing Lockean logic of social contract consent argument Bilgrami not only contested the contractarian philosophers at that time rather he nailed the contemporary theoretical framework of liberal theorisation. We will be discussing Bilgrami’s contestation towards social contractarian thinkers, particularly the father of liberalism- John Locke- in more details in chapter 4.

David Hume: An Enquiry Concerning the Principles of Morals

Hume also rejected Social contractarian notion of justice citing it as ahistorical, since there are no historical basis for such government by consent. He also contested Hobbes philosophically. Hobbes asserted even if at some point our ancestors did enter into a pact that doesn’t necessarily applicable to everyone else. He said he will rather accept the contract on the basis of its utility in his own times instead out of any obligation coming from the forefathers. Hume is a skeptic and doesn’t believe in absolute notion of justice. In his book ‘Enquiry concerning the Principles of Morals’ Hume wrote- “public utility is the sole origin of justice.” which mean justice is a virtue only if the members of the society can utilise it. Hume’s book ‘A Treatise of Human Nature’ deals with the concept of justice at length. Hume contested Plato’s idea of Justice. Plato suggested that Justice is to give each what is due to her. Hume problematizes the definition by suggesting that this definition implies that if we keep going back to return everyone’s due it will lead to a situation where property has a ‘prior objective reality.’ This conception of justice when applied on international relations achieves the status of “laws of Nation.” This made every government to develop a sense of respect for other nations. These principles of

international justice take control of likelihood of war and maintaining peace. This made a nation to respect the territory and resources of other nation. So in the end we can say for Hume justice is associated with human passion rather than reason; public utility is the basis of justice. But this very basis is tilted on its head by Bilgrami. Bilgrami criticised Hume and Adam Smith who argued that values are reducible to our desires and moral sentiments. According to Bilgrami both natural and social world presents a normative demand to which our agency responds. He argues that norms and values are not subjectively generated “howsoever we wish from our individual subjectivities” a position upheld by Hume and Smith. Hume and Adam Smith described values as reducible to our desires and moral sentiments. And Utilitarian school of thought pushed their idea with their notion of subjective utilities.

The right view of values puts them *in the world* as properties that make normative demands on us. So the situation is quite the opposite of Hume and Adam Smith’s suggestion that values are projections of our desires and moral sentiments onto the world. Rather, our desires and preferences and moral sentiments are responses to value properties in the world. When one is asked, “Do you desire X?”, we don’t answer by scanning our interiors to see whether we have the desire for X. We consider the desirability (the Value) of X.⁴⁰

Bilgrami further explains this argument by drawing an analogy that if someone asks us - “Do you believe that it is raining?” then we don’t think like - let me check if my mind contain the belief that it is raining. We all will just look outside and check whether it is raining or not. Therefore Bilgrami suggests that what is true of our belief is also true for our desires and values. Therefore the normative demands “coming from the world” are equally perceptible as rain. The phenomenological point therefore is, that one has to see the world right, to see, to understand what are the exact normative demands coming from

⁴⁰ Ibid p. 174

the world. Therefore to be unalienated, according to Bilgrami is 'for our agency to be in responsive sync with these perceptually presented normative demands coming from the world as we apprehend it'. This is how to be at home in world. To be sensitive towards the normative demands world make on us. We need to see the demands of the world not just our subjective desires. For Hume and Adam Smith individual interests and desires are primary, whereas Bilgrami is asking to view normative demands of the world beyond this orientation. We will be discussing the contestations raised by Bilgrami in more details in chapter 4. After Hume another important philosopher who contested Utilitarian idea of justice and proposed his own is Immanuel Kant for whom justice is not defined by an end or consequence solely, justice is all about respecting certain categories like human rights, a categorical Imperative.

Immanuel Kant : Justice as Categorical Imperative

On the one hand where Utilitarians were emphasising on the maximum happiness of maximum number, Immanuel Kant contested it suggesting that it will lead to an idea of justice where the end result is solely the defining feature. He asserted about the worth of the person itself without considering the consequence. If majority want something to abolish of minority, which as per utilitarian will maximise pleasure then for Kant it is still unjustified because minority too have their own rights regardless of the fact that they are minority. Kant in his book *Grounding for the Metaphysics of Morals* argued that one must proceed with 'pure practical reason' (*reine praktische Vernunft*) which is purified of everything empirical. It is in contrast to impure practical reason, it is reasonable without any dependency on senses. We must choose pure practical reason because it is good in

itself without any justification because it is derivative of transcendental law. Which means rights will be applicable to everyone without any bias on the basis of religion, race, caste, class or gender. But the next major question is what are those universal principles which are beyond utilitarian calculus. Now to establish such a principle which is free from empirical interests Kant developed a concept called “categorical imperative”⁴¹. He gave three proposals under its ambit- One, whatever we will do, it should be applicable universally. It is a formula of universalizability. Secondly, respect everyone as intrinsically valuable. Which means, means is equally valuable as end. Third is ‘principle of autonomy.’ In the end of his book he also mentions about divine justice where God punishes those who violates principle of justice.

In the said book Kant’s major argument, also employed by Sen, that there is a necessity of seeing human beings as ends in themselves, rather than as means to some utilitarian calculus. Kant said “So act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as means only” This also led to assertion of much of the human rights debate of our times. This debate remains a major source of contention in developing a plausible theory of justice as human beings are treated as both ends and means. Because human beings are the adjudicators of the progress and also the primary means of all production. Now let's move to another important thinker who established a new paradigm to look at the society.

⁴¹ An imperative is a command. But most of the imperatives are “hypothetical imperative” which means these commands hold only if certain conditions are met. Since these imperative are conditioned they cannot serve as principles that determine an unconditional good will. Therefore hypothetical imperative is - ‘I need x therefore do y’ whereas categorical imperative is ‘do x’. Since this is unconditional it is universal.

Marx and Marxism : Equality and Needs

Marx sought, he says, not a balance between interests but a harmony of interests. Thus, according to Tucker, Marx rejected the view that capitalism is unjust because "justice" and similar notions connote "a rightful balance in a situation where two or more parties or principles conflict." Marx believed, however, that the antagonism between capital and labor should not be compromised or turned into a harmony, but rather abolished through the revolutionary destruction of capital as a social force.⁴²

There is a debate whether there is a any concept like justice in marxism at all. This has been also read as a debate between normative marxism and classical marxism. According to normative marxism, marx's condemnation of capitalist exploitation provides a space for the conceptualisation of justice. On the other hand classical marxists asserts that neither marx's condemnation of capitalism is based on any principle of justice nor his theory of communism suggests any conception of distributive justice. In german Ideology or Communist Manifesto he is not talking about concepts like justice or rights. He argued that concepts like justice and rights are ideological construction who only led to perpetuation of the current system. There is no communist principle of justice because communism will form a society beyond justice.

Marx asserted that the objective conditions are primary for anything to took place. The historical development is not an outcome of merely the action of humans but it is an outcome of the material conditions formed at that time. If we stick to this principle then it leads us to a conclusion that capitalism is an outcome of its material conditions. Capitalism in itself can't be criticised as unjust by this logic. The unjustness will go

⁴² Allen W. Wood, *The Marxian Critique of Justice*, *Philosophy & Public Affairs*, Vol. 1, No. 3 (Spring, 1972), pp. 244-282, 272.

away when the objective material conditions will change. Therefore communism will come only when there is a change and preparation for it in the material conditions.

In his book *Critique of the Gotha Program* Marx outlined the principle of distribution- to each according to his/her ability to each according to his/her need.

In a higher phase of communist society, after the enslaving subordination of the individual to the division of labor, and therewith also the antithesis between mental and physical labor, has vanished; after labor has become not only a means of life but life's prime want; after the productive forces have also increased with the all-around development of the individual, and all the springs of co-operative wealth flow more abundantly -- only then then can the narrow horizon of bourgeois right be crossed in its entirety and society inscribe on its banners: *From each according to his ability, to each according to his needs!*⁴³ (stress is mine)

Jon Elster, a normative marxist, argued that Marx's theory of exploitation in *Capital* and his theory of communism in the *Critique of the Gotha Program* is basically outlining the theory of justice. Capitalism is unjust because Marx treated capitalist extraction of surplus value as "theft, embezzlement and robbery." The usage of the term 'exploitation' connotes injustice in Marxists writings. Elster argued that Marx's critique of appropriation of the surplus value will fall under the category of distributive justice. Elster argued that Marx had an hierarchical theory of justice. The contribution principle provides a "second best criterion" because the need principle is not "historically ripe."

Husami argued that there are two principles of distributive justice- distribution according to labour contribution and distribution according to needs.

⁴³ <https://www.marxists.org/archive/marx/works/1875/gotha/ch01.htm> retrived on 9-06-2017 at 11 pm

On the other hand Allen Wood argues that there is no such explicit theory of justice in marxism. He asserted that neither Marx proposed any theory of justice nor he criticised capitalist exploitation with any framework of justice.

Steven lukes in his book 'Rights and Justice' argued that capitalist extraction of surplus value is not an injustice with workers. His argument is that if the transactions are going along with the prevailing mode of transactions then the transactions are fine, they are not unjust. He further asserted that when we claim something to be unjust than it implies that we are not making reference with some abstract principles. The judgement we will make will not be independent of the material conditions which here means independent of the existing mode of production. When we make assessment of the injustices of any act or any institution than we are making such assessment on the basis of institutions based on the prevailing mode of production. He further argued on the similar lines that current mode of production is capitalist mode of production. Therefore the exploitation of the workers is based on the capitalist mode of production. Hence there is nothing unjust about this exploitation though one should definitely speak against the very mode of production.

John Stuart Mill: On the Connection between Justice and Utility

Mill advocated a liberal reform of political evolution in the tradition of utilitarianism. He proposed 'principle of utility' later known as 'principle of greatest happiness.' "By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish

the happiness of the party whose interest is in question.”⁴⁴ Mill interpreted human happiness and unhappiness in terms of pleasure and pain.

“CHAPTER IV: Value of a lot of Pleasure or Pain, How to be Measured.

Pleasures then, and the avoidance of pains, are the ends which the legislator has in view: it behoves him therefore to understand their value (...) To a number of persons, with reference to each of whom the value of pleasure or a pain is considered, it will be greater or less, according to seven circumstances: to wit, the six preceding ones; viz. 1. Its intensity. 2. Its duration. 3. Its certainty or uncertainty. 4. Its propinquity or remoteness. 5. Its fecundity. 6. Its purity....⁴⁵

Here, Bentham is trying to say that an action is just if it produces pleasure and contribute to human happiness. But the problem with this argument is it will lead us to predict the future consequence of our decisions. The other major problem in this argument is that it will lead to a state where the rights of minority will be subsided always. Since majority is happy that means it's not necessary to consider the minority rights. Mill replied to this problem by asserting a five dimensions of justice and the relation between justice and utility.

In all ages of speculation, one of the strongest obstacles to the reception of the doctrine that Utility or Happiness is the criterion of right and wrong, has been drawn from the idea of Justice ... Let us therefore advert successively to the various modes of action... as Just or as Unjust... In the *First* place...it is just to respect, unjust to violate, the legal rights of any one.... *Secondly*; ...second case of injustice consists in taking or withholding from any person that to which he has a moral right. *Thirdly*, it is universally considered just that each person should obtain that (whether good or evil) which he deserves; and unjust that he should obtain a good, or be made to undergo an evil, which he does not deserve...

⁴⁴ Jeremy Bentham, 1789, An Introduction to the Principles of Morals and Legislation, chapter 1: On the Principle of Utility

⁴⁵ Ibid

Fourthly, it is confessedly unjust to break faith with anyone: to violate an engagement, either express or implied, or disappoint expectations raised by our own conduct, at least if we have raised those expectations knowingly and voluntarily... *Fifthly*, it is, by universal admission, inconsistent with justice to be partial; to show favour or preference to one person over another, in matters to which favour and preference do not properly apply.

So, here Mill is describing various dimensions of justice. He made an argument that justice stands higher on the scale of social utility. But this is open to the interpretation that justice is equivalent to social utility in Mill.

Robert Nozick: Justice as Entitlement

Procedural justice is about the fair process of fulfilment of demand. According to Procedural theory of justice procedure is more important than the end-result. This theory is mainly propounded by Robert Nozick in his book *Anarchy, State and Utopia*. His main argument is theory of individual entitlement.

Nozick gave a thought- example to prove his point called Wilt Chamberlain example. He suggests to imagine a society where distribution of wealth follow a non-entitlement conception-say D1. There is a member of the society called Wilt Chamberlain, a basketball player, who is very popular and draws a lot of fans. He put a condition to his contract that he will only play if each person coming to see the match puts twenty-five cents into a special box, the money in the box will go to chamberlain. This will lead to a new distribution pattern called D2. Now whether D2 is just? Is Chamberlain entitled to his money? For Nozick- an emphatic Yes. For Rawls and Marx, the answer is No. Rawls will ask this huge sum to be used for the least well-off. According to Nozick- no one is doing anything against their will. People are coming by their choice and spending money.

Contractors are happy with the proposal since they too are getting more money anyway. Therefore, these voluntary exchanges led to a perfectly valid situation of liberty. Now under Veil of ignorance we all agree to think about the best possible situations for the person at the lowest rung. Nozick is asking a different question from there and asking whether he is entitled to his personal wealth? He found it unjust that state will take the money in the name of equal distribution of the wealth.

Nozick argued that each individual is responsible for her/his entitlement without any interference from the state. For Nozick to form a just society is not the goal of justice theory. One needs to start from just situation, a just outcome will follow. For Nozick justice is procedural, meaning if you start from just situation and apply just step on every step than the outcome will be automatically just. With the help of the thought experiment of Wilt Chamberlain Nozick asserted that State has a minimum role to play in individual's contract. Therefore individual in Nozick's theorisation is autonomous and right-based. The most common critique of Nozick is that despite fair procedure, unjust conditions might crept-in. In short, Rawls added distributive aspect in his procedural justice theory whereas in Nozick's theory of procedural justice idea of equality is absent. Nozick is liberal conservative and Rawls is Welfarist.

John Rawls: A Theory of Justice

According to Rawls a society based on theory of justice will be stable. He provided moral basis to a democratic society. The fundamental idea of Rawls is to see justice in terms of fairness. Fairness would mean to avoid any kind of bias in evaluations, focusing on others concerns as well, not being influenced by anyone and not having prejudices. This fairness

has to be exercised while forming the principles of justice in his constructive; original position', where people would be unaware of their specificities, but they have an idea of primary goods that is important for all. Under the veil of ignorance the principle would be unanimously chosen. Quoting Rawls, describing Veil of ignorance-

...parties are situated behind a veil of ignorance. They do not know how the various alternatives will affect their own particular case and they are obliged to evaluate principles solely on the basis of general considerations. It is assumed, then, that the parties do not know certain kinds of particular facts. First of all, no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like. Nor, again, does anyone know his conception of the good, the particulars of his rational plan of life, or even the special features of his psychology such as his aversion to risk or liability to optimism or pessimism. More than this, I assume that the parties do not know the particular circumstances of their own society (...) They must choose principles the consequences of which they are prepared to live with whatever generation they turn out to belong to. As far as possible, then, the only particular facts which the parties know is that their society is subject to the circumstances of justice and whatever this implies.⁴⁶

Rawls assumes a thought experiment where individuals are unaware of their social and economic status, wishes and desires, called veil of ignorance, where people are not supposed to take their personal interests into consideration and remain unbiased. People under veil of ignorance are at a hypothetical position of primordial equality called 'original position' where parties choosing the right conception of justice are unaware of personal identities. The principle would determine the basic institutions that would govern the society. People cooperate with each other even after having deeply opposed comprehensive doctrines, when they share reasonable conception of justice which gives them a basis on which public discussion of fundamental questions can take place, not in

⁴⁶ Rawls, John (1999). A Theory of Justice. Harvard University Press. p. 118

all matters but in constitutional essentials and matters of justices. People have a capacity for a sense of justice. The two principles will unanimously emerge in original position- 1. Each person has an equal right to a fully adequate equal basic liberty which is compatible with a similar scheme of liberties for all 2. Socio economic inequalities have to satisfy two conditions; they must be attached to offices and positions open to all under fair equality and they must be to the great benefit of least disadvantaged members of society.

Sen's differences with Rawls

Sen argues philosophers have reasoned about justice in two ways. *First* concentrates on identifying perfectly just social arrangement and institutions that they require to be principal. This way constructs a hypothetical social contract to determine principles of justice and ideally social institutions (transcendental institutionalism). Rawls work comes under this perception. *Second* focuses on how we can make to fix things better without knowing about any perfectly just social arrangement (realization focused analysis). This approach uses Adam Smithian idea of impartial spectator, it focuses that there are plurality of adequately just values and we need to remedy the identifiable injustice, this perspective is championed by Sen.

Sen appreciates Rawls for the following aspects of his theory- *First*, Approach to fairness- since it takes us ahead from the understanding developed by previous work on justice. *Secondly*, Rawls focus on nature of objectivity in practical reason. *Thirdly*, Rawls takes into account the moral powers of people and capacity to the sense of justice, it's a departure from the celebrated rational choice theory. *Fourth*, is procedural fairness, because most of the social science neglects unfair process of operation. *Fifth*, is the

openness to allow people to compete equally and the difference principles takes into account the most disadvantaged people. *Lastly* by focusing on primary goods Rawls gives importance to human freedom.

The major problems Sen cites in the *Idea of justice* is that Rawls prioritization of liberty is extreme. For Sen there are problems like hunger starvation, health which are not less important than breach of personal liberty. But in Rawls later work he makes this priority less extreme so I believe he answers Sen's Questions there and then. Secondly the difference principle, Rawls only focuses on the opportunity that people have got through the primary goods they have, but for Sen there is a wide variation when it comes to converting those means into good living. He suggests a departure from primary goods to assessment of freedom and capabilities. Sen argues that there are some intrinsic issues with Rawlsian scheme of justice. It neglects the relevance of actual behaviour there is focus on 'just institution; not on just societies' and he proposes that the social choice theory. Sen thinks that social choice theory can be a better measure when it comes to justice. "it helps in arriving at aggregate assessments of individual priorities and focus on outcomes with social choice procedure which means taking different state of affairs from a social point of view in the light of assessment of people involved". It gives recognition to competing principle. He calls Rawlsian theory as 'something like the grand revolutionary's, one shot handbook'⁴⁷ it doesn't tell us about comparative merits of different social arrangement.

⁴⁷ Amartya Sen, *Idea of Justice*, p. 100

According to Valerian Rodrigues, Rawls may employ the theory as a tool to aggregate and rank social priorities but in a democratic community rather than by the technical specialist.⁴⁸ Also as Sebastiano Maffetone argues, Sen has not demonstrated here how well social choice and democratic deliberation go well together. Next Sen accuses Rawls of transcendental institutionalist parochialism and being “niti” centric which stand for organizational principles, and behavioural correctness. Sen favours “nyaya” centric approach of comprehensive concept of realized justice which helps in preventing severe manifested injustices. In supporting ‘nyaya’ based approach, he argues that the process involved is important as well and gives the example of famous Bhagavad-Gita debate between Krishna and arjuna “deontology versus consequentialist debate”. If the process involved is important than, without having the principles of forming those processes what is the guarantee that processes are fair without any bias and majoritarian will. To summarise these arguments to one, Sen’s disagreement is Rawls principle of fairness applies to institutions but should also properly apply to persons. This is exactly why he provides his capability thesis. Now Rawls principles suggest inequalities are permissible if they benefit least disadvantaged. Because, even if initial equality is provided equality of opportunity would make the talented to get more benefits. For Rawls socio economic resources and talents do not qualify as moral claims. Sen has a different take on it, he favours “basic capability equality. He accused Rawls “resourceist approach” for neglecting the different capability of people in converting the primary goods in good living, capabilities are linked to actual abilities to do different things that a person values, so Rawls primary means for Sen are ‘feticist’ they consider wrongly primary means

⁴⁸ "Indian Journal of Human Development - Institute for Human"
<http://www.ihdindia.org/ihdjournal/display.aspx?issue=January-June%202011>. Accessed 5 jan. 2017.

whereas they should consider ends, he considers happiness and its relationship with well being and capabilities, and here we see a utilitarian (which he himself criticizes) turn in Sen if one is in search of ends than happiness is the ultimate goal by definition. Also, Sen doesn't give an alternative to the unequal productivity of different capabilities. Sen, next argues we should approach justice through public reason or deliberation. And thus he has placed democracy at the centre of his account of justice but commentators have accused him for "facile treatment of democracy, because it is institution free and does not discuss who should participate, how his procedure produce outcomes. Sen thinks of deliberation in terms of public reasoning and emphasizes too much on logics and reasoning. Keith Dowding⁴⁹ argued, any form of practical deliberation can be subjected to strategic manipulations and talents of most persuasive. Moreover, as simply to say that there are disagreements over fundamental principles is just another dismissal of taking any initiative. If there are no agreements over the sorts of items that are discussed under social justice the conflicts would be only resolved in terms that are not socially just. Therefore possibility of agreement must be necessary, and of course if we agree to imposition of some principles to govern human relationships than question of social justice may not arise, since social justice has to do with resource distribution and management of human relationships.

Another justification Sen gives for his theory being better is that, Rawls theory of justice talks about universal solutions whereas Sen's theory allows plurality of adequately just social arrangements but then in political liberalism Rawls does allows people to have multiple reasonable comprehensive views provided they can come together on political

⁴⁹ "Indian Journal of Human Development."
<http://www.ihdindia.org/ihdjournal/display.aspx?issue=January-June%202011>. Accessed 5 jan. 2017.

conception of justice they are willing to enforce plus Rawls also argues different conception can be justified and enforced to different societies long as some basic rights are enforced. Sen in order to problematize Rawlsian theory it's difficult to incorporate diverse requirement in a society governed by Rawlsian approach he gives example of three children claiming a flute. Anne says he only knows how to play it and thus should have it, Clara claims she made it and thus she is entitled to it, Bob claims she is poor and have no other toy so he should have it, Sen says there is no way to rank these claims. James P. Sterba argues though egalitarian, libertarian and utilitarian will give priority to only one of kind of claim which is close to their justification. We can have a way out, if we interpret economic equity in each case. We need to know is Clara who made it also needs it or not? Otherwise if her basic needs are already met then bob's claim of need should come before Clara's entitlement. Therefore it is simple that basic need should triumph luxury in cases of conflict. Next Sen maintains that an ideal of impartial spectator which he derived from Adam Smith is better device for arriving at accurate judgements than Rawls's original position. Since it takes note of comparative judgements and not only gives transcendental solution, secondly it considers social realization not only rules and institutions and also takes voices from outside the membership of contractarian group. He argue Smith approach is of open impartiality and Rawlsian approach is closed impartiality since formulations in the original position are arrived at in isolation. Now Rawls would argue that impartial spectator would be extraordinarily sympathetic and identify with everyone as their desires are spectator's own. Thus spectator favours maximizing the satisfaction of everyone's desires overall, just as a single person. Rawls claims impartial spectator would fail to take seriously the distinction

between people which the original position does. Does the impartial spectator take interest of possible people into account? Sen believes Rawlsian approach cannot address questions of global justice. For Sen, Rawls idea of sovereign nation state is needed to apply principles of justice through choice of perfect just institutions, now in the absence of a sovereign global state issue of justice cannot be addressed. Rawls doesn't go into wanting a globally just society he cites some general principles of "minimal humanitarianism". But it is important to keep in mind, as Valerian Rodrigues, argues that, the whole world cannot be the domain of thick social cooperation as the life of people are caught in dense associations between communities and nation. Therefore the thick principles of justice cannot be invoked in the global arena. Rawls was aware of the fact at global level decisions would be made by experts than by democratic community. Rawls would see Sen's shift towards society as a whole, as giving space to competing conflicting conceptions of justice, not ensuring a stable political order but making the order fragmented.

On a conclusionary note, we can say that Sen saw the importance of procedure or particular outcome, yet does not want to be too hard on any particular procedure or outcome. He wants to maintain that idea of justice is for people to decide how they want to live, yet he feels some ways are better than the other. The title of his book is idea of justice not "ideas" of justice this signifies that he does probably believe that there is a universal idea of justice despite his claims of value pluralism it implies there is something we have an idea about, rather than a chaotic conflicting ideas. The whole idea of justice is about agreement, accordance, or concurrence about a process by which demands are decided and resolved or agreed upon. Conflicts can be settled but settlement does not

entail justice in itself. Therefore the idea of discussing justice is to see if we can decide or agree upon principles of just settlement. Moreover, Sen talks about removal of injustice but when you are making up for an injustice it demands more than the removal of it. Rawls talks of compensatory justice which falls under non ideal theory, partial compliance theory and therefore not a part of ideal theory that he gives. Whereas if we see the subject index of Sen's "justice" the subdivisions are- "arrangement focused analysis", realization focused analyses, justice as fairness. Rectificatory justice is not even a subject that he investigates. His theoretical emphasis is upon ending clear cut injustice involved.

Rawlsian approach focused on liberal democracies committed to reasonable comprehensive visions of life, for him these societies can be stable through a conception of fairness compiled with overlapping censuses among the groups. Sen on the other hand believes liberal democracies diverse or homogeneous cannot agree on a set of principles to plan their public life and institutions. For him deliberation through public reasoning is important. I believe after assessing the difference between Rawls and Sen we can conclude that with the best interpretation of their theories we can have a model based on nyaya the social realizations at hand, but "niti" which helps organizing the institutional framework is of special importance too. The "just" governing principles of the society gradually start reflecting in the actual behaviour of people. As far as Sen's claim is concerned that transcendental institutionalism is problematic and incomplete because it doesn't focus on social realizations, then incompleteness is the price probably we have to somewhere pay for neutrality.

Michael Sandel: Communitarianism

Michael Sandel known for his critique of John Rawls' A Theory of Justice in his first book, Liberalism and the Limits of Justice (1982) is being labelled as communitarian which he claims he is uncomfortable with. For Michael Sandel simplest understanding of justice is “giving people what they deserve”⁵⁰. But he himself complicates the idea by asking “who deserves what and why?”⁵¹ Sandel offer three main divisions to the possible definition to the term justice. The answer offered by Aristotle who said justice is “giving people what they deserve”, another by Kant for whom justice is respecting certain categories, human dignity and human rights and the third by Utilitarian school of thought for whom maximising happiness is justice.

According to Utilitarians we all are governed by two sovereign masters: Pleasure and Pain, for them morality and legislation is all about minimising pain and maximising pleasure. Michael Sandel elaborates it further by invoking an example, say supposedly majority has a very intense dislike of a minority religion and want that minority religion get disbanded. So, if we are going with the happiness principle of Jeremy Bentham then we should ban the minority religion as the majority decision is this and it is leading to maximising happiness. Or banning wearing burqas. If majority believes that wearing burqa is not right then according to Utilitarians it is justified to ban the burqa. Therefore

⁵⁰ <https://www.prospectmagazine.co.uk/magazine/interview-michael-sandel-on-justice-bbc4-justice-citizens-guide> accessed on 20 jan. 2018 at 2:45 pm

⁵¹ Ibid. p.1

according to Sandel, the utilitarian calculus, is problematic. Because utilitarian calculus cannot “judge the quality and moral significance of the preferences.”⁵²

Immanuel Kant rejected this utilitarian idea that morality is a matter of maximising happiness or seeking “any particular set of consequences.” For Kant morality means respecting persons as ends in themselves, not just means. Therefore in Kant’s opinion Jeremy Bentham treats persons as means to happiness of the majority. For Kant there are certain categorical duties, certain categorical rights, which cannot be surpassed for the pleasure or happiness of the majority. Therefore one can safely assume that in Kantian morality human rights are inviolable. Whatever the majority believes the basic human rights cannot be overridden. This assertion is largely responsible for much of the human rights discourse of the contemporary times. Respecting human rights lead us to fulfill certain human right duties. Kantian conception of duties towards human rights is that we must treat human beings with respect regardless of their situatedness. Kantian ethics remained a powerful critique of the utilitarian notion of justice but the problem with Kantian morality is in “identifying what universal rights we have and what it means to respect them.”⁵³ According to Michael Sandel, or Kant reason, duties and rights are categorical and universal values. How to arrive to them is a little complex. Kant suggested that we can get these values by “abstracting” from our particular interest, values and purposes. Which means if we minus our particular interests we will be left with more general principles which everybody will be sharing. Since they are shared with everybody therefore they are universal in nature.

⁵² Ibid. p.1

⁵³ Ibid. p.1

Michael Sandel gives a concrete example to explain this point further that in today's Germany there is a widespread guilt and therefore a need for correction on the present generation to correct the past misdeeds of Nazis. People feel that the onus to correct what their grandparents did is on the present generation. But Sandel further complicates this idea by asking how one generation can be responsible for the misdeeds of the other generation if they themselves were not involved in the crime. But for Kant we are morally responsible for our own choices only. We are responsible for what we are choosing to do freely. In other words that my moral responsibility is the product of my will as per Kantian morality. If that is the case, then no one will feel the need to correct the wrongdoings of past generations. Which means all the attempts to providing compensations, correcting the past injustices will be impossible. This idea will throttle the "notion of solidarity and responsibility for the past"⁵⁴ across time which people do have. And if people do have this idea, this sense of injustices which their grandparents committed then it's very difficult for them to accept this aspect of Kantian morality. One possible argument against this line of thought is that people expect compensation from those who got benefited by the misdeeds of their forefathers. They are surely responsible or answerable to the descendants of the victims of that generation. Sandel contested it. According to him, holding people responsible, who got benefited by the misdeed of their grandparents, is limiting the idea of collective responsibility. If we all can take collective pride in the good deeds of past then why can't we take collective responsibility of the misdeeds of the past. But this argument is further contested with an subjective and objective link with events of the past. To which Sandel argues that it is important to see the connection between individual identity and community. Those who think that

⁵⁴ Ibid. p.1

individual identity is all a matter of choice is “too narrow an idea of identity” there are many moral obligations which we follow and respect despite the fact that we haven’t choose them or renounce them. Here Sandel is critiquing the idea of ‘unencumbered self’ proposed by Rawls which suggests that we are morally responsible for only those acts which are an outcome of the acts which we ourselves choose. This is the same critique which is offered by Hegel against Kant. Hegel critiques Kant’s notion of justice due to it's abstractness and not embedded in the everyday life. The answer offered by Hegel, as put down by Sandel is, goes back to Aristotle. According to Sandel Aristotle’s famous maxim is that man is a political animal. Which means we can’t lead a life other than except with and among the people or community.

Therefore the idea of justice offered by Michael Sandel goes back to Aristotle. Since for Aristotle to have any idea of justice we need to think about the meaning of good life and of virtue. But as Sandel suggested in the very beginning that Aristotelian idea of justice is “giving people what they deserve”. Aristotle gave the example of flute to make his point clear. According to Aristotle the best musicians should get the flutes. Sandel also points out the minor distinction here between the utilitarians and Aristotelian logic of justice. One can always argue that this is utilitarian logic as if the best musician will get the best flutes they will play the best music which will lead to the happiness of the maximum people. But that’s not from where Aristotle stands. For Aristotle, the logic is not who is getting what but in the flutes. He will argue that what is the purpose of the flutes? To be played best. Aristotle’s logic is “teleological” and “connected to the idea of honour”. Which means also recognising the deserving lot not just the production of better end

result, which is, good music, here. So Aristotelian notion of justice is those who have the relevant virtues should get what they best deserve.

Towards the end one can safely map Michael Sandel's notion of Justice. One can safely say Sandel dismissed the utilitarian idea of justice of maximising the happiness. Also, contesting the Kantian morality where people have absolute rights, inviolable rights, appears close to Aristotelian notion of justice. Which suggests that to do justice with anything it is important to understand what they are best suited for in the community? The best realisation of the things or ideas in the society is doing justice with them. For Michael Sandel, Aristotelian idea of justice is missing in much of the discussions surrounding justice today and it need to be considered equally well. According to Sandel much of the debates today surround these two ideas of justice- The utilitarian school and the Kantian Right based justice. For example debate surrounding the act of torture. Utilitarian school for the benefit of majority, for the security of the majority will argue in favour of torturing a terrorist to know the location of a bomb. Whereas following Kant's logic of human rights one will argue that there are universal human rights and whatever be the consequence one cannot torture anyone. Torture is bad regardless of the consequence. This is classical debate between utilitarian and rights based position. Michael Sandel will bring Aristotelian position in the debate. Sandel suggest that if we add one more character in this example and then reframe the same question- the question that it is fine to torture the terrorist to get the information of time-bomb. But let's imagine if the only way to get that information is not through torturing the terrorist but torturing his teenage daughter. Then there will be a hesitation that will creep in. The fact that still many lives are at stake but the dilemma will occur to torture an innocent teenage girl

because the support to torture is not coming merely from the fact that so many lives are at stake but also from the fact that people's perception of the terrorist is any way bad. They won't mind him getting tortured because he is a virtueless person. Therefore Sandel concludes that the Aristotelian idea of who deserve what and why and its relationship with the virtue of the person is important. And it is present there most of the time without we realising the fact that we are considering it as well. Therefore while defining the idea of justice it's not the question of debate between utility and rights but also the questions related to desert, virtue and common good.

Michael Sandel through his debates on justice is attempting to the "reinvigoration of citizenship" itself whereas his colleague Amartya Sen is attempting at "alleviation of global immiseration" but both have a striking similarity that both are attempting to find the theory of justice in the everyday life. Where Sen with his idea of Capability theory of justice seems more concretely intervening in the everyday life of people globally, which we will be discussing at length in the 2nd chapter.

Ambedkar: Social Justice Precedes Political

Ambedkar's philosophy as well as his practice mainly revolves around justice as social justice. Ambedkar was well versed in western liberal and socialist thought and in favour of giving state an important role in bringing forward the agenda of social justice. He largely focussed on group based inequality. Along with Rawls, Amartya Sen, Ambedkar too was strong critic of utilitarianism but he also holds a unique position different from the both the thinkers on the question of constitution of self and morality.

Utilitarian Critique: transforming human into object of policy

The major issue with Utilitarianism is that it treat human beings as mere ‘instrumentalities’ as long as it serve the maximum good of maximum number. Therefore Rawls formulated justice as fairness which implies that equal rights has been extended to everyone. The foregrounding principle of Rawls is “right is prior to good” which implies: “our choice makes the good that we strive for rather than a pre-existing good marking our choice. No individual in such a society can barter the liberties of others, without their consent, for the enhancement of his own pleasures or in the name of certain valued ends.”⁵⁵

Valerian Rodrigues argued that Rawls brought our attention towards the entrenchment of utilitarianism in our modern institutions. That utilitarianism has become the working philosophy not just for all the public institutions but for social institutions as well (like family.) “Its capacity to transform the ‘human’ into an object of policy had become infectious across societies.”

The overarching presence of utilitarianism made Rawls to think justice in terms of fairness. This kind of engagement with utilitarian justice in almost all institutions made Rawls “focus on social institutions, rather than ‘actual lives’.” According to Rodrigues, Rawls in his theory of justice largely remained occupied with justice in public institutions. Amartya Sen criticised Rawls position suggesting that there are many more ways of conceiving justice. Sen suggested that justice is expressed not only through institutions but also through people’s day to day behaviour or interactions. As against

⁵⁵ <http://www.ihdindia.org/ihdjournal/Abstract1.aspx?id=169>, *Indian Journal of Human Development*, Jan.-June 2011, Vol.5 no.1, p.155

Transcendental Institutionalism Sen will prefer ‘realisation-focused comparison.’ Valerian Rodrigues criticises Amartya Sen suggesting that Sen is mixing principles and policies. Valerian suggests that there are “plurality of policies” and mixing them in various order is needed to lead us to different set of justice principles. But no institution will be able to function properly unless it has some guiding principles. Rodrigues further asserts that even day to day practical consideration of justice is being taken care of since “the Rawlsian second principle interjects the first principle and introduces substantive indeterminacy to its actual working in practice!”⁵⁶ Amartya Sen draws a parallel between his and Rawls approach by bringing concepts from classical Indian philosophy of *niti* and *nyaya*. Where *niti* stands for “organizational propriety and behavioural correctness” *nyaya* stands for the “world that actually exists and not just the institutions.” Valerian critiques Sen that this distinction between *niti* and *nyaya* is “overstated.” He suggests that there are evidences when both the terms had been used interchangeably. Therefore this comparison is not entirely valid. For Rodrigues, Sen does not “morally deflate” utilitarianism. Sen’s idea of capability puts no moral critique to utilitarian thought. Sen makes a distinction between “utility maximising approach” and capability approach. Where capability approach means freedom to do what we reason to value, what we like, what we choose. “The concept of capability is thus linked closely with the opportunity aspect of freedom, seen in terms of comprehensive opportunities, and not just focusing on what happens at culmination”⁵⁷ Thus Sen makes a clear departure from the dominant utilitarian perspective.

⁵⁶ Ibid. p. 157

⁵⁷ Amartya Sen, *Idea of Justice*, p. 232

Ambedkar rejected utilitarianism on the charges of it being majority oriented but he was a strong advocate of state intervention to put the things straight. Ambedkar asserted that utilitarianism in Indian context will strengthen the majority. As an alternative Ambedkar suggested “political order based on based on rights” for which he advocated provisions in constitution and administration favouring minorities.⁵⁸

Utilitarian Reductionism and Denial of Personhood

Valerian Rodrigues further argued- Rawls believe, despite utilitarian presence almost as a virtue in modern institutions, human beings after certain age develops a moral capacity of right and wrong. Sen agrees with Rawls on this.

Sen appreciates Rawls for pointing out at ‘the moral powers’ that people have and their ‘capacity for a sense of justice’ and ‘for a conception of the good’. He endorses Rawls’ rejection of a hedonistic conception of the human being...However, while Sen endorses several ideas of Rawls with regard to the moral nature of the self, there is a basic difference in their fundamental assumptions in this regard. For Sen, all human beings are endowed with a dignity unique to them and accordingly there need to be certain basic threshold opportunities that all of them need to access to. Institutions and practices need to work towards such an end. Processes and functionings are much more important in this regard than principles foregrounding public institutions...Sen agrees with Rawls that hedonism cannot be a tool for policy. But the moral pluralism that his position lends itself to cannot effectively counter utilitarianism.⁵⁹

Ambedkar has a different position in comparison to both Rawls and Sen. Though Ambedkar too agrees with Rawls that humans do have a capacity to reason and moral but he also asserted that there are modes of dominance which can suppress such capacity. If

⁵⁸ <http://www.ihdindia.org/ihdjournal/Abstract1.aspx?id=169>, *Indian Journal of Human Development*, p. 158

⁵⁹ *Ibid.* p. 159

there is an absence of “enabling conditions” the capacity of reasoning and moral may get hamper. Therefore Ambedkar criticised Rawls and Sen that they are assuming that self is already present. There is no “already constituted self” as per Ambedkar. For him reason and moral self will be made in a process. That’s why Ambedkar will contest Rawls that to assume that there will be a moral self who will not agree with utilitarian principle due to his experience and prudence after a certain age may not stand. We need to work towards making such social conditions where such moral beings will be constituted in the process.

Rawls, in a naive way, thinks that social institutions and relations can be re-crafted by a democratic community that is committed to justice as fairness. Sen, at the other end, thinks that if we can muster adequate civil society appeal, then institutions can be revamped through the existing processes (see, for instance, Sen, 1999, *Development as Freedom*, pp.xiii-xiv). For Ambedkar, both Rawls and Sen confine themselves to persons as already constituted and do not probe further into the denial of personhood itself.⁶⁰

Fairness Principle

Rawls in his formulation of justice as fairness gave a lexical priority to liberty principle. Sen also endorses this prioritization but Sen argued that it is important to shift the emphasis of Rawlsian justice from just institutions to just societies. But Valerian Rodrigues argues that Sen is not making a very sharp critique of Rawls. Much of the Sen’s formulation is overstated and inherent in the principles of Rawls only. He summarises Sen’s formulation of justice as :

3. Certain capabilities are basic to the pursuit of a life of value and constitute measures of justice. Justice is, therefore, not a virtue so much of institutions but social outcomes.

What actually happens to people is important. The focus, therefore, should be on

⁶⁰ Ibid. p. 160

avoidance of injustice rather than on the pursuit of justice. The capabilities that justice cherishes are not fixed but are an outcome of deliberative reasoning.⁶¹

Therefore Sen is concentrating on a problem solving approach by focussing on injustice instead of perfect principles of justice. For Sen there is no fix, predetermined set of rules which can best govern the society. It's an ever evolving organism. Public reasoning is the oil which makes the justice machine runs. But then the obvious question is how to judge among the different reasonings in the public opinion itself? To which Sen's possible reply will be:

4. If social outcomes constitute the yardstick of measuring justice, then such an exercise can be undertaken not by laying down a formal, transcendental criterion, but by comparing one set of outcomes with others.⁶²

When on the one hand both Rawls is prioritising liberty and Sen endorsing it, Ambedkar vehemently asserted human equality. For Ambedkar equality is not just a 'political notion' but "It is a value that denotes the kind of consideration that we need to extend to another person and, in turn, demand the same for ourselves."

Reconciling the empirical and the normative

Ambedkar's tilt towards the value of equality and his understanding that humans are a social beings pushed him to elaborate the concept of fraternity. Ambedkar suggested that

fraternity is a sense of common brotherhood, the principle which gives unity and solidarity to social life. Sympathy and fellow feeling, therefore, are integral to a conception of fraternity. There is a great deal of kinship between Ambedkar and Rawls on the idea of justice as fairness grounded in human equality. Rawls associates

⁶¹ Ibid. p. 162

⁶² Ibid. p. 163

considerations on fraternity much more strongly with his second or difference principle. Ambedkar, however, lays stress on human agency as compared to Rawls' emphasis on discrete liberties, though liberty remained for him as one of the archetypal values alongside equality and Fraternity. Further, he seems to closely associate fraternity as a priority consideration, rather than a second order consideration.⁶³

On a conclusionary note we can easily say that when Sen is attempting to “shift in attention from public institutions to a civic ethics” to enhance capability while critiquing Rawls that nation-states and public institutions are not ready for the kind of change Rawls is envisaging. Sen also asserts that “public reasoning as a mode of constituting public policy” is not a western discovery, rather many other non-western thoughts had the same traditions. Whereas Ambedkar is mainly stretching the discourse on human equality. He argued that people under the categories like slavery and untouchability don't have the luxury to develop a moral self. It's only in the social process their self gets constituted therefore thinkers like Rawls cannot simply assume people equal in the initial stage and attempt to develop a theory.

Ambedkar therefore argued that by only providing equality at the initial stage of development will not do justice. People need help based on the nature of disadvantages at every level to create a just-society.

⁶³ Ibid. p. 164

Chapter 2

Sen's Capability Theory of Justice

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⁶⁴ Capabilitarianism is a term coined by Ingrid Robeyns not by Sen. 8 Jan. 2016, Retrieved from https://www.ris.uu.nl/ws/files/18205164/Capabilitarianism_final.pdf

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Chapter 2

Sen's Capability Theory of Justice

Introduction:

What do we want from a theory of justice?

Amartya Sen in article *What do we want from a theory of justice?* published in journal of philosophy, 2006 begins with the “general Rawlsian position” that formulation of justice is linked with “Public Reasoning.” Sen suggests that the focus while thinking for a theory of justice should be on “a public framework of thought” with reasonable agents. Sen quoting Rawls suggests that we should avoid “personal slant”. Rawls suggested that one should make judgement about social order not from personal slant but a point of view which everyone can adopt equally. Sen suggests that if we attach centrality to public reasoning it will give rise to two linked questions- One, *What is the relevant public?* and Two, *On what questions should the reasoning concentrate?*⁶⁵ For Sen these two questions are inextricably linked and will together can answer the question - What do we want from a theory of justice?

⁶⁵ Amartya Sen, *What do we want from a theory of Justice?*, The journal of philosophy, Volume CIII,no.5, May 2006, p. 215

Transcendental approach to justice versus the comparative approach to justice:

Sen argues that Rawls while building a theory of justice based on fairness took the primary question as - *What is a just society?* One can argue that this had always been the central question among all the theories of justice. Sen argues that this approach is called “transcendental” approach to justice because the theorist is trying to first look for a perfectly just society to reach to a perfectly just theory or theory of justice. This approach is in direct contrast to the comparative approach where one will try to compare one society with another and suggest that which one is better. Sen argues that transcendental approach is not new, as one can easily trace it to Thomas Hobbes. Rawls while developing a theory of justice as fairness tries to build a just society first through a thought experiment in the background of “contractarian fairness”. Rawls imagined an Original position behind the veil of ignorance where people are unaware of their “comprehensive preferences”. These principles coming out of this thought experiment were impartial because they were coming out of a situation where people were unaware of their vested interests.

Sen argues further that though the transcendental approach is really useful but the practical relevance of comparative questions about justice are equally important. To address the manifested injustices in the society it is important to hold comparative judgements about justice for which the construction of a just society is neither “necessary nor sufficient.” For example, in a comparative perspective it may seem important to “abolish slavery, or eliminate widespread hunger, or remove rampant

illiteracy” and it will be seen as advancement of just society. But application of such regulations will fall short of an arrangement of just-society needed by transcendental requirements of justice. Transcendental justice attempt to have a completely just-society can leave the society on “nonjust” side as the changes which were important in a comparative perspective are insignificant now. Therefore Sen concludes that some non-transcendental attempt to justice is needed as well for a proper formulation of justice theory. For ex. “instituting a system of public health insurance in the United States that does not leave tens of millions of Americans without any guarantee of medical attention at all may be judged to be an advancement of justice, but such an institutional change would not turn the United States into a "just society" (since there would remain a hundred other transgressions still to remedy)”⁶⁶ Therefore a transcendental approach on its own cannot address both of these questions simultaneously because comparative justice proposals though important for espousing the cause of justice are falling short of the imagination of completely just-society. Sen accepts that Transcendental theorisation is not concerned with the immediate injustices in the world like hunger, illiteracy, torture etc. But the question raised by Sen is isn't solving these day to day injustices will help in espousing the cause of justice only instead of simply waiting for a perfectly just societal arrangement to come and finally rescue the world from all the injustices as suggested by transcendental theorisation of justice.

In defence of transcendental approach Sen argues that certain day to day practical concerns which are not getting addressed by the transcendental approach doesn't make it irrelevant entirely. If transcendental approach is the right approach then there are two

⁶⁶ Ibid. p. 217

questions which need answer. One, that transcendental approach is sufficient in itself and Two, there is a necessity of this approach for even to make comparative judgements. Meaning by while addressing the questions invoked by transcendental theory we will indirectly go to comparative assessment only. Secondly, the transcendental question of what is a just society is the primary condition for a good comparative theorisation of justice, without which it will be “foundationally disjunctive and frail.”

Sen suggests that there must be a very strong “implicit belief” that even for comparative approach towards justice transcendental approach is absolutely necessary that’s why to develop a complete theory on justice, theoreticians keep referring to transcendental approach to justice. Sen further argues that even social choice theory which is firmly grounded in “pairwise comparison” relentlessly move towards transcendental justice. The important question raised by Sen here is whether the comparative conclusions flows from transcendental approach? Are there any relational conclusions or by-product of transcendental approach which entails comparative gradings too? Sen replies in an emphatic No. Because there are at least three difficulties involved:

main difficulty lies in the fact that there are different features involved in identifying distance, related, among other distinctions, to (1) different fields of departure, (2) varying dimensionalities of transgressions within the same general field, and (3) diverse ways of weighing separate infractions. The identification of transcendence does not yield any means of addressing these problems to arrive at a relational ranking of departures from transcendence.⁶⁷

Sen asserts that in Rawlsian formulation of just-society or in other transcendental theories of justice departure can occur. Rawlsian “primary goods” in the difference principle can

⁶⁷ Ibid. p. 219

get replaced by concentration on capabilities or opportunities instead. Sen further elaborates his point by pointing out that pure transcendentalist may argue that a 'right' social arrangement is not equivalent to 'best' social arrangement which will lead us to choose in between, better or worse. Sen argues that the transcendental right may seem reasonable against "relativities" of better and best but it is not at all helpful in comparative judgement making. "To consider an analogy, the fact that a person regards the Mona Lisa as the best picture in the world, does not reveal how she would rank a Gauguin against a Van Gogh." Therefore Sen suggests that the search for transcendental justice doesn't necessarily lead to comparative judgements.

After responding that Transcendental theory is not "sufficient" now Sen attempts to answer the second question which he invoked initially that whether Transcendental theory is "necessary" for comparisons of justice? Sen gives a simple example that we accept the fact that Everest is world's tallest mountain but we don't deploy this argument while making a comparison of two another high peaks like Kanchenjunga and Mont Blanc. Therefore to make a comparison of two alternatives it is not at all necessary to identify first the best, supreme alternative.

Sen give an example of three children quarrelling over ownership of a flute. Where child A knows how to play the flute, Child B don't have any other toy to play whereas others do have. Child C worked hard to get the flute. Sen argues that a utilitarian or an egalitarian or a libertarian will give different answers to the problem with equally serious arguments. The point which Sen is trying to make through this example is that it is extremely difficult to invoke one single argument which none of the three views can reject. Therefore there is no one argument possible but only a partial ranking. Which

means that it is difficult to reach to one single consensus but a comparative ranking is possible. Therefore Sen suggests that “A partial ordering can be very useful without being able to lead to any transcendental identification of a fully just society.” Therefore Sen concludes that the very question *what is a good society?* Is not a good start for a useful theory of justice. And adding to that neither it is a “plausible end point.”

Transcendentalism: Institutional unpreparedness and the (im)possibility of the global justice

Sen further brings another major aspect of transcendental justice- “institutional requirements of accomplishing pristine justice”. Sen argues that a just-society will require numerous institutions under a sovereign state. In many countries in the world these institutions are absent or defective or it's not easy to develop them quickly. Without actually establishing all such institutions in such a short span of time it is perfectly possible to reduce injustice in the society. This approach is in sync with the comparative approach but it won't do justice with the transcendental approach. A transcendental, spotless, pristine justice is the central idea of a theory of justice then this “institutional lacking” will act as a barrier. It will remain a barrier if the institutions can't get corrected in near future as well. This institutional correctness will become more prominent when some one will talk about global justice. Sen quotes Thomas Nagel that Nagel dismisses the idea of global justice that the kind of institutions required for global justice is not possible at the international level at this point in the world. Therefore Nagel rather invoked other demands like “minimal humanitarian morality” and “radical change in institutional possibility”. Sen further asserts that even in Rawlsian scheme of justice there

is an extensive requirement of institutions for the formation of basic structure of a just-society. Further Rawls “abandons his own principles of justice when it comes to the assessment of how to go about thinking about global justice.”⁶⁸ Therefore Sen concludes that “making the world less unjust” is a difficult goal within the framework of transcendental approach.

The challenge of making the world less unjust, thus, remains unaddressed within the transcendental approach. Now will it be a prudent position to stay idle if the institutions are not prepared yet for a transcendental revolution? To which Sen responds through Rawlsian framework- “a public framework of thought”. The endeavour to reduce the global injustice can be a subject matter of “deliberative framework of thought.” In between the two choices of making world less unjust through Rawlsian general argument of public deliberation and remaining idle till the institutional conditions get fulfilled for a transcendental justice to be achieved, there is a “serious loss”. Therefore public deliberation is very important to correct the institutional fallacies and onwards to reducing the injustices in the society.

Rawls's Negotiational Justification or Adam Smithian Impartial Spectator

Sen keeps underlining the importance of public deliberation, public reasoning at all places. In fact, Rawls too acknowledged that fact. But Rawls was also skeptical about use of public reasoning at the global level for two reasons. One, since there are institutional barriers it's not possible to apply transcendental approach at the global level. Second

⁶⁸ Ibid. p.227

reason is “his insistence on linking public reasoning with the contractarian format of the "original position." Which turns the deliberation into “fair negotiation” where the basis of fairness is that the reasoning is happening behind the veil of ignorance. The problem which Sen finds in this kind of set-up is that the parties involved in deliberation behind the veil of ignorance are the same parties who are stakeholder in the social contract for the society. “A person's voice counts because he or she is directly involved in the social contract, which will "regulate the institutions" of the society of which he is a member.” But in contrast to what Rawls is proposing (negotiation justification) Sen presented Adam Smith’s idea of Impartial spectators. Sen suggests that Impartial spectators are “imagined observers” but their impartiality is not dependent on the thought experiment of veil of ignorance. It rather comes from a Smithian system of fair arbitration who are members of that society only. In the Rawlsian model people take decision under ignorance whereas in Smithian model of fair arbitration people should themselves examine their own practices.

Conclusion: Coming out of Intellectual Parochialism

On a conclusionary note Sen reasserts the main points which he is arguing to establish what do we want from a theory of justice. First, Sen rejected the very question “what is a just society?” as Transcendental framework can’t answer it and even if there is a possible answer it won’t lead to satisfactory answers for both long term and immediate injustices in the society. On the other hand comparative theory of justice is more useful without even attempting to answer the classical question of what is a just society. Secondly, the elaborated “institutional paraphernalia” for Rawlsian model instead of

advancing, hinders the justice project. Sen puts it in this way that good patent laws on pharmaceutical will help lot of AIDS patients but not to Rawlsian transcendental justice. Third, there is an implicit understanding in philosophy that identifying full just society is important to understand the nature of justice. Sen argues that this is “entirely mistaken” as transcendental approach is neither necessary nor sufficient for advancement of justice in comparison to “robust comparative approach.”

Finally, admitting the incompleteness will make the distant voices heard which in turn will increase the reach of public reasoning. Non-local voices will help in checking the dominance of parochial reasoning in pursuit of global notions of justice. Sen concludes with the thought that in an “extraordinarily unjust” world merely developing a totalist, transcendental, contractarian framework is injustice in itself.

Capabilities: accomplishment-based justice

For Sen the idea of justice is inextricably linked to the day to day life of people which they are living or they can live. Institutions and institutional rules are important but “realized actuality” include much more. The important part of human lives is not merely in the things which they are doing but in freedom to choose their lives as they reason to value.

We do not have to be a Gandhi, or a Martin Luther King Jr., or a Nelson Mandela, or a Desmond Tutu, to recognize that we can have aims or priorities that differ from the single-minded pursuit of our own well-being only.⁶⁹

⁶⁹ Amartya Sen, *Idea of Justice*, Belknap press, 2009. P. 19

Sen argues that if we measure social utilities in terms of capabilities which we really have instead in terms of happiness which will come in consequence than it will fix the accountability as well. The freedom to choose also brings responsibility for the choices we are making. Capability is the choice or ability to do something, with choice comes demand for duty or responsibility, which Sen calls deontological demand. Bringing capability in centre of analysis of justice leads to further issues which we will look in details next.

Sen's Capability Theory of Justice: The Theoretical Framework

Basic Capability Equality

Amartya Sen for the first time presented his idea of Capability in his oft-quoted lecture 'Equality of What?' where he concentrated on three types of equality- Utilitarian equality, Total-utility equality and Rawlsian equality. Sen asserted that all the three combined cannot resolve the need for adequate theory of equality. Sen presented the idea of capability as an alternative to the above three.

Sen quoting Kant "so act as to treat humanity, whether in thine own person or in that of any other, in every case as an end withal, never as means only"⁷⁰ argues, that human

⁷⁰ Immanuel Kant in his book *Fundamental Principles of the Metaphysics of Morals*, p.47, 1785 argues that Utilitarian idea of moral values is that the consequence should always be maximising happiness. Kant contested it and suggested that this formulation treats human beings as means to something else. Kant's famous idea of categorical imperative suggests that certain categorical rights of human beings can't be surpassed come what may.

beings should be seen as ends in themselves not as a means to achieve something else. Sen further complicates this by arguing that human beings are the beneficiaries of the progress and also the “primary means of all production” thereby playing both the roles of ends and means. This ‘dual role’ often leads to focussing on economic prosperity as the essence of progress rather than seeing lives of people as ultimate concern. Sen suggests this is the problem against which Kant was warning. Sen argues by providing data that countries rich in conventional terms have low quality of life in general. Sen tried to interrogate this argument by evaluating the quality of life of the people through capability approach. Capability approach sees human life as set of ‘doings and beings.’ Sen further argues if life is seen as set of ‘doings and beings’ then evaluating the quality of life will mean evaluating these ‘doings and beings.’ This cannot be done by simply analysing commodities or income that helps those doings and beings. Sen argues on the line of Aristotle that money is merely useful for another good which we all are seeking.

Therefore functionings can be defined as - constitutive elements of living. From the elementary functionings, constituting “escaping morbidity and mortality, being adequately nourished” to complex functionings like self-respect they are constitutive of person’s being. Therefore a functioning is an achievement of a person, what s/he manages to do. Capability of a person is derived from it. Capability reflects the various beings and doings one can achieve. Capability is a framework where one can see the possible doings and beings one can have. Sen suggests that the underlying motivation behind the capability is, in the words of Marx- “replacing the domination of circumstances and chance over individuals by the domination of individuals over chance and circumstances”.

The Broad Framework

While defining Capability approach Sen defined poverty as deprivation in capability and development as capability expansion. This approach caught attention due to appeal to moral evaluation to the social arrangement beyond the usual economic metrics to judge development. Normatively theorised, Capability approach actually asked the governments to bring specific changes in the life of people which they reason to value and specify how to distribute them. Articulated first in his Tanner Lectures in 1979 on 'Equality of What?' Sen comprehensively dealt with capability theory in his book 'Development as Freedom'.

Sen questioned the contemporary theorising where many a times 'Happiness' is being seen as the foremost criteria to judge the well-being of the state. For Sen, this to be the foremost criteria, is insufficient to judge the complex nature of our society. Sen mainly critiqued the method of evaluation which focuses only on means without taking note of the fact that do people have ability to actually utilise it. He asserted that people have varied abilities and it's not necessary that all can use the same resource similarly. For example having a bicycle means nothing to a differently abled person who doesn't have legs or the same food available to each member of the family is not sufficient when the female member of the family is pregnant.

Sen goes to the extent of recognising the fact that many a times people are so used to of a particular lifestyle that they won't see the problems inherent in it.⁷¹ Therefore they will never even imagine the need for such capability to overcome it.

Within the moral and political philosophy, the major normative claim made by Sen in his theoretical framework of capability theory is that freedom to achieve well-being by people in any society should be measured by people's capability to do what they reason to value. The capability approach popularised by Sen⁷² can be traced back to Aristotle⁷³, Adam Smith and Karl Marx.⁷⁴ Capabilitarianism is an approach pioneered by Sen is further developed by Martha Nussbaum and others as a new philosophical framework to understand well-being and justice. According to capability approach justice in real terms should be assessed by the kind of life people are effectively able to lead. This approach shifts the focus on the 'quality of life' which people find valuable in contrast to Utilitarian and Neo-liberal approach of policy making.

Amartya Sen's framework of Capability theory has emerged as an alternative which is going beyond the boundaries of economic growth to the model which people themselves have reason to value. This approach is a method of rethinking issues like poverty and

⁷¹ Such conditions known as Adaptive Preferences is a phenomenon where victims become accustomed to their circumstances. Their normalisation with the oppressive conditions makes it difficult, both practically and morally, to change the conditions. The oppressed get normalised with the conditions and its cruel to take away what they consider as their preference.

⁷² Mozaffar Qizilbash, (2016) "Capability, objectivity and "false consciousness": on Sen, Marx and J.S. Mill", International Journal of Social Economics, Vol. 43 Issue: 12, pp.1207-1218, doi: 10.1108/IJSE-04-2016-0127

⁷³ Qizilbash while drawing the deeper affinities between the work of Sen, Marx and Mill argued that Marx explicitly argued on "a totalities of capacities" while discussing the transformation from capitalism to communism. He also argues that Sen's emphasis on public discussion is closely related to John Stuart Mill's idea of "competent judges" and his defence of liberty of thought and discussion.

⁷⁴ Sen often cites this quote by Marx- "replacing the domination of circumstances and chance over individuals by the domination of individuals over chance and circumstances" to emphasise the underlying philosophy of capability approach

inequality from the usual mode of economic conceptualisation. Therefore capability approach is a normative framework to assess social arrangement, quality of life and the policies. Since this framework is trying to reduce social exclusion and inequalities this is also termed as theory of social justice. Capability theory framework led to creation of Human Development Index by UNDP to assess the human development in different countries.

Capabilitarianism while assessing development treat people as end instead of treating them as means for the same. Sen while debating justice in theory also recognises the differences in individuals in real life. He recognised that people's abilities are affected by numerous external factors like social arrangements, access to infrastructure and public services, freedom to speak etc. expanding the definition of development qualitatively. Therefore Sen increased the framework of looking at the real time problems manifold times by considering factors like – personal, economic, political and environmental, which have a real impact on the well being of the people. So the question which is being fundamental to Sen is how rich countries doing good in conventional economic terms, say per capita income, have a poor human life? Sen asserts that human well being is a multidimensional phenomenon not limited to pure economic indicators. Such indicators fails to indicate the quality of life and the distribution of social goods among different social groups.

Sen emphasises on conversion of resources in functionality. He gives an example of someone buying a bicycle do have the resource but that doesn't automatically insures his mobility. For example a differently abled person will find it difficult to convert bicycle into mobility.

if a person has a parasitic disease that makes the absorption of nutrients difficult, then that person may suffer from undernourishment even though he may consume the same amount of food as another person for whom that food is more than adequate.. A bicycle is treated as having the characteristic of 'transportation', and this is the case whether or not the particular person happening to possess the bike is able-bodied or crippled... For example we must take note that a disabled person may not be able to do many things an able-bodied individual can, with the same bundle of commodities.⁷⁵

So overall what Sen is asserting is that economic growth often ignores the inequalities and social exclusion. This exclusion is based on not just their present position but also with past association and future contribution in the economy. That's why Sen emphatically asserts democracy as "government by discussion" through "public reasoning".

Utility-Based Evaluation

As I have briefly discussed in the first chapter as well that Sen criticised the utilitarian understanding of value which sees value in individual utility defined in mental conditions like pleasure, happiness, desire. Sen suggested that the subjectivist perspective which is used so extensively can be very misleading. The criteria deployed may not reflect an individual's real deprivation. For example a really deprived person living a "very reduced life" may appear fine in the 'mental metric of utility.' Because it has been noticed that sometimes people just accept the hardships and learn to live with them without much grumbling. If this state of affairs continues for years then they even stop complaining. They start seeking pleasure in day to day things and the justification to all this is that they are becoming more 'realistic' in life. Now it is difficult to capture the deprivation of such

⁷⁵ Amartya Sen. 1985. *Commodities and Capabilities*, Oxford India Paperback, P. 6-7

individuals in the utilitarian metric of happiness. For example they may be undernourished, with very little education etc, but may not cry over it and simply learn to live with it. This vulnerability continues due to lack of public protest against it because it becomes normalised.

But this proposal is even more difficult to sustain as it is difficult to judge how much an individual will stay content with. Sen tried to address this ambiguity in the conceptual framework of the capability approach. Sen argued that in social sciences while doing a social investigation it is more important to be roughly correct instead of precisely wrong. This should be the guiding principle while answering the above difficulty. Therefore suggested two terms ‘doings’ and ‘beings’ where ‘being’ is the choice what an individual actually want, the idea with which individual will stay content. ‘Doing’ represent the choice which an individual has reasoned to value. Furthermore, Sen found that the concern to value the quality of life has often been rejected as ‘essentially ad-hoc suggestions’ despite there are extensive writings. The ther reasoning is that utilitarian approaches enjoys a traditional standing in the development theory.

Primary goods and Capability

Primary goods according to Rawls arise from the conception of the citizen as equal and rational. Rawls conception of primary good is partly commodity based since it do include income and wealth. “Primary goods are: the basic rights and liberties; Freedom of movement, and free choice among a wide range of occupations; The powers of offices

and positions of responsibility; Income and wealth.”⁷⁶ Sen suggests that the underlying motivation in the Rawlsian conception of the primary goods and capability approach is similar but the accountings are different:

problem with the Rawlsian accounting lies in the fact that, even for the same ends, people’s ability to convert primary goods into achievements differs, so that an interpersonal comparison based on the holdings of primary goods cannot, in general, also reflect the ranking of their respective real freedoms to pursue any given—or variable—ends. The variability in the conversion rates between persons for given ends is a problem that is embedded in the wider problem of variability of primary goods needed for different persons pursuing their respective ends.²⁵ Hence, a similar criticism applies to Rawlsian accounting procedure as applies to parts of the basic needs literature for their concentration on means (such as commodities) as opposed to achievements or the freedom to achieve.⁷⁷

Intrinsic vs Instrumental

Capability represents a person’s freedom to achieve various functionings or combinations of functionings. According to Sen “if freedom is intrinsically important” then all the possible functionalities are relevant. which means, to have a choice itself is a valuable feature.

But if freedom is seen as only instrumentally important the relevance of capability is that it offers a person opportunities to achieve valuable states. In the instrumental perspective achieved states are important, not the opportunities.

In practical scenario, intrinsic view is harder to achieve than instrumental since what is chosen and what is achieved can be directly chosen.

⁷⁶ "Stanford encyclopedia - Documents." 9 Sep. 2015, <http://documentslide.com/documents/rawls-stanford-enciclopedia.html>. Accessed 4 march. 2017.

⁷⁷ "Amartya Sen: Development as Capability Expansion." http://morgana.unimore.it/Picchio_Antonella/Sviluppo%20umano/sviluppo%20umano/Sen%20development.pdf. Accessed 4 march 2017.

Distinction between “Capability Approach” and “Capability Theory”:

The term frequently used in philosophical literature is capability approach not capability theory signifying the open-ended nature of the concept. Moreover, Sen described capability approach as a set ‘doings’ and ‘functionings’. Since functionings are constitutive of person’s being therefore to judge capability one always need to focus on the well-being of an individual. It will vary greatly every time since it will be dependent on the context and situation a person is placed in. A similar distinction can be seen while Sen is making an argument in his book Idea of Justice, That he is more interested in “addressing the questions of enhancing justice” instead to “offer resolutions of questions about the nature of perfect justice.”

Moreover, the capability approach is being called as approach as it is more interested in resolving the practical problems of injustice instead of characterisation of perfectly valid capable society “an exercise that is such a dominant feature of many theories of justice.”

Moreover, Sen makes another argument in terms of idea of justice which is completely applicable in the capability theory that the institutions which will help to fulfil the capabilities of people may be fine but the people around may have “behavioural transgression.”

According to Ingrid Robeyns capability approach distinction is -

...a broad normative framework for the evaluation of individual well-being and social arrangements, and the development of policies and social change. The central claim of the capability approach is that these evaluations and proposals should rely on an analysis of the (expected) changes in the capabilities of individuals or groups. Although the precise

terminology has changed a little over time, the most widely used description of capability is the real opportunity or freedom to be the person one wants to be and do the things one wants to do. These beings and doings are called functionings.⁷⁸

Robeyns contrasts the capability approach suggested by Sen with the capability at ontological level “at the ontological level: the concept of capability refers to human power. In ordinary language, capability refers to an undeveloped or unused faculty of a human being, without reference to his or her environment. In this sense, capability is a human power.”⁷⁹ But she clearly demarcates between the two and explains that capability approach conceptualised by Sen and Nussbaum has “three components: (1) the innate capabilities such as the capability for speech and language, (2) the internal capabilities that are the developed states of the person himself or herself, and (3) the external conditions that are needed for the exercise of the functioning.” Robeyns suggests that notion of capability corresponds with notion of ableness “because it is not just about our abilities to do what we can do and be the person we can be, but also about the right external conditions that enable us to function. Therefore to sum up the major distinction between the two is the idea that practical concerns not theoretical reasoning is the most important criteria in the making of a just society.

Capabilitarianism and Functionality

Sen makes an important distinction between Capability and Functionality. He argues that simply having a resource is not the complete picture, people’s well being will depend whether they are actually able to utilise it or not. The practical example given by Sen is of

⁷⁸ Robeyns, Ingrid (2011), "Capability (definition)", in Dowding, Keith, *Encyclopedia of Power*, Thousand Oaks, California: SAGE, pp. 83–84

⁷⁹ Ibid. p 83

the bicycle where merely having a cycle doesn't mean it brings the capability of transportation or mobility. So, on one hand capability is important but equally important is to provide an atmosphere where they can freely use their capability.

Functioning:

Functionings are the constitutive elements of living. It constitutes the most elementary functionings like morbidity to complex functionings like self-respect. Simply put, functioning is an achievement of a person, what s/he manages to do whereas capability reflects the various being and doings one can achieve. Quoting Sen:

A functioning is an achievement of a person: what he or she manages to do or to be. It reflects, as it were, a part of the 'state' of that person. It has to be distinguished from the commodities which are used to achieve those functionings. For example, bicycling has to be distinguished from possessing a bike. It has to be distinguished also from the happiness generated by the functioning, for example, actually cycling around must not be identified with the pleasure obtained from that act. A functioning is thus different both from (1) having goods (and the corresponding characteristics), to which it is posterior, and (2) having utility (in the form of happiness resulting from that functioning), to which it is, in an important way, prior.⁸⁰

Functioning is what people really "do and are". Their 'doing' and 'being'. These two together gives value to life. For example, functionings include being well-nourished, having a place to stay, ability to work, being literate, being respected, being healthy etc. But one can distinguish them from the commodities employed to achieve them. In sen's word- "cycling" is distinguished from "possessing a cycle". Another example is to to achieve a functioning of being nourished with a given bundle of commodities say good

⁸⁰ Amartya Sen. 1985. Commodities and Capabilities, Oxford India Paperback, P. 7

food will depend on range of personal and social factors like age, health, active lifestyle etc. Therefore functioning is the use of what a person will make whatever is at her command.

Capability

Capabilities are different combination of functionings that a person has freedom to choose. Capability is an opportunity what a person may like or have or to be. Therefore the differentiation one can make between functionings and capabilities is that functioning refer to what people really “do and are” whereas capabilities denotes what people “can do and can be”. Functionings are the direct description of the life of people whereas capabilities are notions of freedom. To make the two clear the example Sen gives is to consider two persons who have not eaten enough, one because she is on a hunger strike against authorities and the other person is in a famine in a poor country. Therefore both lack the functioning of being well-fed but they have different freedoms/ choice/ reasons to do so. The first person is constrained in freedom to achieve the functioning of being well-fed, second person doesn't even have this capability.

David Crocker summarised capability discourse as “Sen's theory as the capability approach, Nussbaum's perspective as the capabilities approach, and the family of approaches as the capability orientation”⁸¹ Capability approach is developing against three important questions raised by Crocker -

...most development ethicists would repudiate three models: (1) the maximization of economic growth in a society without paying any direct attention to converting greater

⁸¹ Crocker, David (2008). Ethics of global development: agency, capability, and deliberative democracy. Cambridge New York: Cambridge University Press, P. 2

opulence into better human living conditions for its members, what Amartya Sen and Jean Drèze call “unaimed opulence”; 27 (2) a society unconcerned with the (growing) gap between the haves and the have-nots; and (3) an authoritarian egalitarianism in which physical needs are satisfied at the expense of political liberties.⁸²

Capability and Agency:

In his book *Development as Freedom* Amartya Sen argued that in development theory the freedom centred understanding of the process of the development is very much “an agent oriented view.” If there are opportunities available individuals do have the capability to shape their lives better and in fact to help others as well. Then they won’t be just passive recipients. Sen argues in favour of individual agency calling it “constructive impatience.”

An Alternative to Utilitarian, Resourcism and Rawlsian Justice:

On Utilitarianism:

According to Utilitarianism any action should be judged by the end result of its consequence- good or bad. This approach excludes the ‘process’ through which we are reaching to those consequences. Which lead to the exclusion of the questions like ‘morality of the process’, what about ‘principle of fairness’, what was the role of ‘individual agency’. Sen argues for “comprehensive consequentialism” which will take care of both ends and means or consequences or principles.

⁸² Ibid, P. 43

In his most technically elaborated book-‘Commodities and Capabilities’ Sen makes the following argument-

...the utility approach (involving both happiness and desire-fulfilment) suffers from the twin defects of 'physical-condition neglect' and 'valuation neglect'. The rival claims of functionings and utility as reflecting well-being can be assessed in the light of that earlier argument. The conflict between the utility view and the functioning view can be considered by taking a case in which person 1 is happier (or has desires more fulfilled) than person 2, despite being more deprived in terms of functionings (e.g., being underfed, undernourished, or ill)-functionings that are seen by both to be valuable. The question of valuation is a central one in this contrast. If 'being happy with' or 'desiring' were the same things as valuing, then the contrast would have been an unreal one. Being 'happier' or having 'more desire fulfilment' would have then been indistinguishable from being in a more valued state of being. But valuation is a reflective activity in a way that 'being happy' or 'desiring' need not be.⁸³

Sen further elaborates the above theorisation with practical examples- Imagine an undernourished person in poverty may have learn to eat less and stay empty stomach. S/he no longer feel or expect that anything will change and learned to take the things as it is. It's completely fine to stay half fed with no more desire for other comforts as this seems to be more pragmatic. It's more practical to learn to take things the way they are and be “realistic”. But according to Sen this state of learning to stay content with whatever is there, does not change the real deprivation. And the corollary is also true that this doesn't mean, if the deprivation is removed, the person will be sad or unaffected with it. Therefore “the 'valuation neglect', reinforcing 'physical-condition neglect', makes the utility-view of well-being fundamentally deficient.”

⁸³ Amartya Sen. 1985. Commodities and Capabilities, Oxford India Paperback, P. 19-20

So in the above quote Sen criticises the utility approach, involving both happiness and desire-fulfilment, known as Welfarism that it neglects ‘Valuational Neglect’ and ‘Physical Condition Neglect’. Welfarism is concerned with the ‘feel’ or ‘psychological states’ of the people not with reflective valuations. This approach is more bothered about how one feels about one’s health instead of the actual condition of her health which as a neutral observer may not be healthy. Since welfarism is not bothered with the actual needs or concerns of the people they are vulnerable to fall in the trap of ‘Adaptive Preferences’.

Our mental reactions to what we actually get and what we can sensibly expect to get may frequently involve compromises with a harsh reality. The destitute thrown into beggary, the vulnerable landless labourer precariously surviving at the edge of subsistence, the overworked domestic servant working round the clock, the subdued and subjugated housewife reconciled to her role and her fate, all tend to come to terms with their respective predicaments. The deprivations are suppressed and muffled in the scale of utilities (reflected by desire-fulfilment and happiness) by the necessity of endurance in uneventful survival.⁸⁴

The most important criticism by Sen of Classical Utilitarianism is, that aggregating principle called Sum-Ranking⁸⁵ doesn’t take individual distinctions seriously. “This principle has been accused of (1) caring about total well-being and not about individual well-being, (2) ignoring the distinction between persons, (3) treating persons as mere containers of well-being, and (4) disregarding inequality of well-being.”⁸⁶ Therefore we

⁸⁴ Ibid, P. 15

⁸⁵ Sum-ranking is defined by Krister Bykvist as “One outcome is better than other if and only if it contains a greater total sum of well-being” in his book- Utilitarianism: A guide for the perplexed, P.17.

⁸⁶ Ibid.

can safely say that capability approach provided an alternative to the utilitarian views that rely on mental states in their evaluation of well-being of the society.

Capability Metric : An alternative to Rawls

Sen's capability metric is more accommodating when it comes to "more extreme cases" say differently-abled people. I quote Rawls:

The more extreme cases I have not considered, but this is not to deny their importance. I take it as obvious, and accepted by common sense, that we have a duty towards all human beings, however severely handicapped. The question concerns the weight of these duties when they conflict with other basic claims. At some point, then, we must see whether justice as fairness can be extended to provide guidelines for these cases; and if not, whether it must be rejected rather than supplemented by some other conception. It is premature to consider these matters here.⁸⁷

Rawls further mentions Sen looking for any methodology which can cater to the extreme cases as well:

A method enabling us to discuss this question in a manageable way is surely worth looking for. I don't know how far justice as fairness can be successfully extended to cover the more extreme kinds of cases. If Sen can work out a plausible view for these, it would be an important question whether, with certain adjustments, it could be included in justice as fairness when suitably extended, or else adapted to it as an essential complementary part. - John Rawls⁸⁸

Sen replied to Rawls by way of contesting him. Sen argued that Utilitarians will give him less and Difference Principle will give him neither less nor more because he is crippled. Sen contested Rawls that he may ignore such disabilities but disabilities do exist. And

⁸⁷ John Rawls, 2001, Justice as Fairness: A Restatement, Cambridge, MA: Harvard University Press P. 178

⁸⁸ John Rawls, 2001, Justice as Fairness: A Restatement, Cambridge, MA: Harvard University Press P. 178

this is not about few exceptional cases but this is case of people with different needs “varying longevity, climatic conditions, location, work conditions, temperament and even body size”. So this is not about ignoring few exceptions but very widespread and “real differences.”⁸⁹

The above two quotes by Rawls and Sen shows that they have a difference of opinion over “extreme cases”. Sen argued that Rawls's difference principle is not really concerned over the redistribution for a disabled person. In Rawlsian framework a disabled person wouldn't have right over additional resources. Whereas Rawls claimed that he doesn't want to exclude them but right now he is more bothered for “normal” cases. But Sen's disagreement with Rawls is not over the question of disabled person but over a general inflexibility of primary goods as metric of justice. He believed that to focus on primary goods as basic metric will snatch away the sight from the human diversity. Therefore Sen's central argument is that for a fairness based theory resources should not be the exclusive focus, because this approach excludes the variability in individual abilities in converting resources. In simple words two people with similar vision of life and similar resources may not be able to achieve that life, therefore the neutrality over resources is not that fair a parametre.⁹⁰

⁸⁹ Sen, A., 1980, “Equality of What?” in McMurrin (ed.), *Tanner Lectures on Human Values*, Cambridge: Cambridge University Press. P. 215

⁹⁰ Though this debate is going on between Rawls and Sen, there are no. of scholars like Pogge, Robeyns, Brighthouse and Robeyns who problematized Sen's argument further. Anderson asserted that unit of assessment should be a theory not a part of it like interpersonal relations. Furthermore, the claims were made that Rawls justice theory is limited in scope which are well defined like basic structure of the society, for liberal democratic societies etc. Rawlsians also objected to the fact that capability approach functions on public criterion, given the diverse conceptions of good life in public, this makes capabilities hard to measure and handle. Therefore this is unworkable as a theory of Justice.

Criticisms of Capability theory of Justice:

John Rawls:

Sen defined capability theory as - “the ability to achieve the kind of lives we have reason to value”. This approach respects the right of an individual to have her own conception of good life. Whereas Rawls focused on a fair allocation of general purpose resources. In Rawls idea justice should be neutral for all in their conception of good. Sen is in complete disagreement with this formulation because he is concerned about the variability of individual’s capability to convert the same resource into a valuable functionings. The logic of fair distribution of resource doesn’t consider the fact that due to many social inequalities there is huge variation in people’s ability therefore in their ability to use the resources. So even if all the people have same conception of good and same set of resources even then they won’t be able to reach to the same result.

But the more important criticism against Sen’s capability theory is what are the basis or principles of the theory? Rawls theory of justice is being justified on the basis of thought-experiment of the original position⁹¹. But capability theory is not clear what are the basis on whom it will be developed further.

⁹¹ The original position is a social contract mechanism used by Rawls to establish the hypothetical conditions of fairness within which hypothetical participants will select the principles of justice. In original position the stress is on the fact that what a group of people will choose as principles if they are unaware of their situation in the world. These set of people will be aware about the minimum knowledge of the world but are not sure of their own position, whether they are male or female, rich or poor etc. This state is produced through ‘Veil of ignorance’. Rawls claimed that in such a situation these people will choose two things: all people should have equal claim to the basic liberties. Second, position of power and wealth is open to all. He further said that inequality of wealth is justified if that benefits the least advantageous in the society called ‘difference principle’.

Thomas Pogge:

Sen's approach is also been charged as unsuitable for as a theory of justice because of lack of concrete objective list of capabilities. Which made it difficult to evaluate the progress and take necessary steps to rectify the injustices. Important Rawlsian thinker Thomas Pogge writes-

The question to which Resourcists and capability theorists give competing answers is not about what makes the world better or worse, but about what makes institutional schemes more or less just. This latter question is different in many respects. It is different, for instance, by involving a complementarity of relative gains and losses. If persons with higher metabolic rates are to be entitled to free supplementary food, then who will be made to bear to cost of its production In thinking about the just design of such institutional schemes, we must ask not merely whether we approve of the relative gains they bring to the naturally disfavored, but also whether we can accept the relative losses they bring to others. And we must ask whether proposed compensation rules achieve equity among their beneficiaries with their diverse special needs, and equity also among their contributors. Thus, in addition to the vertical inequality problem, capability theorists also face the difficult task of specifying a plausible such criterion of social justice in detail.⁹²

So Pogge criticizes capability approach on its vagueness and there is no way in the framework of Sen how to know which set of capabilities are important? Which one should be dealt primarily by the state. How to compensate for certain deprivations because it's still quite vague to access. Sen also replies to these questions by making important distinction between theory and approach. He said it's certainly not a well defined theory because it will take shape as per the situation. It's merely an approach to evaluate.

⁹² Thomas Pogge. 2002. "Can the Capability Approach Be Justified?" *Philosophical Topics*, Vol. 30, no. 2, P. 167-228

Communitarian:

Communitarian felt that overemphasis on individual and the notion of good life they individually feel to value many a times ignores the communal problem. There is a communitarian opposition to normative individualism. Communitarians like Walzer and Kymlicka argued that “moral assessment” of any institutional order should be based on how it treats the collectives with it for example national, ethnic, religious, linguistics etc.

Charles Gore: capability remains individualistic:

Charles Gore critiqued Sen’s focus on individual capabilities as the basis for well-being evaluation and development. He made it clear that there are situations where the individual’s reasons which she values can’t be reduced to individual properties. Like shared language or moral norms. The logical corollary to this argument is that Sen is not looking into the fact that how the freedom of an individual will affect the freedom of others.

Gore argues that the capability approach remains individualist because the ‘goodness or badness of social arrangements or states of affairs is evaluated on the basis of what is good or bad for individual well-being and freedom and [because it] is also reduced to the good of those individuals’.

Gore applied Charles Taylor’s concept of ‘irreducibly social goods’⁹³ which means social goods are of value which cannot be decomposed into individual characteristics. “For example, the word ‘beautiful’ can be understood, and has a meaning, only against a further background of meaning. Women with large hips were once upon a time

⁹³ (n.d.). Philosophical Arguments — Charles Taylor | Harvard University Press. Retrieved July 5, 2017, from <http://www.hup.harvard.edu/catalog.php?isbn=9780674664777>

considered as the standard of beauty, while in other contexts only slim women could qualify as being beautiful. Without the irreducibly social good of a language code and cultural practices, an individual uttering the word ‘beautiful’ would be incomprehensible.” Therefore according to Gore Capability approach “fails to recognise the intrinsic value of these irreducibly social goods, and incorporates them only to the extent to which they affect individual properties.”⁹⁴

Martha Nussbaum:

Martha Nussbaum argues -

I find a puzzling tension in his (Amartya Sen) writings at this point. On the one hand, he speaks as if certain specific capabilities are absolutely central and non-negotiable. One cannot read his discussions of health, education, political and civil liberties, and the free choice of occupation without feeling that he agrees totally with my view that these human capabilities should enjoy a strong priority and should be made central by states the world over, as fundamental entitlements of each and every citizen...On the other hand, Sen has conspicuously refused to endorse any account of the central capabilities.⁹⁵

Nussbaum argues above that capabilities are pivotal to construct a normative theory of social justice specially inconsideration with gender justice, only if it is properly spelt out which capabilities are more important than other. Nussbaum further argues that for a just society we may have to limit certain freedoms, for example- expression of racist view.

⁹⁴ Alkire S. (2008) Using the Capability Approach: Prospective and Evaluative Analyses, in S Alkire, M Qizilbash and F Comim (eds) The Capability Approach: Concepts, Measures and Applications . Cambridge: Cambridge University Press. P.109

⁹⁵ Martha Nussbaum. 2003. “Capabilities as Fundamental Entitlements: Sen and Social Justice.” Feminist Economics 9 (2): 33, p. 43

Des Gasper:

Gasper charged Sen for merely finding “indices superior to GDP” not a sufficient conception of “human personhood”. Gasper argued that one should go beyond capability and distinguish between skill and potential; also he suggested to make proper distinction between possibilities and outcome of ‘functionings’. Furthermore he argued that Sen’s “concept of freedom must be partnered by concepts of reason and need.”

Conclusion:

Despite all the criticisms, on a conclusionary note one can certainly say that the capability theory of justice by Sen enables everyone to choose a life which they value or in Sen’s words, they have ‘reason to value.’ This is really important as one can lead a satisfactory life, which will be real justice to someone, only when one can lead a life which she reasons to value. Sen emphasis that certain capabilities are fundamental to pursue such life makes capability theory valuable. For Sen instead of some academic discussion what is more important is what is happening with people on ground. Capability theory makes an important point that justice can’t be merely ensured with institutions but the social outcomes in the lives of people.

Chapter 3

Plurality of Identity and Recognition: Reconfigure the concept of Justice

Introduction

1. Hegel- *Phänomenologie des Geistes*
2. Frantz Fanon- The Dialectic of Black Skin, White Masks
3. Charles Taylor- The Politics of Recognition
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Conclusion

Chapter 3

Plurality of Identity and Recognition: Reconfigure the concept of Justice

Introduction:

Amartya Sen in his book *Identity and Violence* emphasized much on 'Identity Pluralism'. There is no one particular identity to which people should be classified. Every individual operates with different identities simultaneously and which one s/he want to assert will depend on the context. He contested many high theories which classify the world on the basis of such identities and which often leads to fomenting violence. Sen is in favour of providing people an opportunity to decide which alternative they want to choose or want to stay back in the similar identity in which they are born after visiting all other possibilities. He suggests that it is only possible by providing reasonable choice to people through democratic means of reasonable discussion. Classifying the world on the lines of dominant identity only prepares the ground for social confrontation.

But before we go into a detailed analysis of Sen's reading of Identity and the question of Justice, it's important to see the contemporary discourse around identity, multiculturalism and recognition to achieve at a better theory of Justice. It's important to analyse how each of the these philosophers are analysing the problems of identity politics and possible solutions for a better world. Sen talks about at length on Neo-colonialism and its aftereffects. I will try to establish a dialogue between Frantz Fanon, mainly *Black Skin, White Masks*, on his ideas of neo-colonialism and Sen. Jean Paul Sartre in his book

Colonialism and Neocolonialism makes pertinent point regarding the formation of identity. How the ‘Other’ is responsible for the formation of the self in the post-colonial society. I will be delineating on the formation of identity in Amartya Sen as well vis a vis Sartre. The communitarian discourse will be touched upon mainly looking at Charles Taylor’s view on the contemporary identity questions. This chapter will also discuss the famous debate between Axel Honneth and Nancy Fraser and will try to place Sen in it to have a better understanding of the theory of justice. The contemporary debate of recognition try to reorganise the theory of justice in terms of due recognition. Recognition provides normative foundation to the theories of justice, which I will be exploring below.

Hegel: Phänomenologie des Geistes

The most prominent thinker who affected the recognition politics the most is Hegel. But there are many scholars who submitted that Hegel’s idea of recognition was actually drawn from Fichte. Quoting Fichte on Recognition:

There are a few questions which philosophy must answer before it can become Wissenschaft and Wissenschaftslehre. . . . Among these questions are the following: ...How does the human being come to assume and recognize that there are rational beings similar to it outside of it, since such beings are not at all immediately or directly given to or present in its pure self- consciousness?. . . The relation of rational beings to each other I term Gesellschaft. But the concept of Gesellschaft is not possible except on the presupposition that there actually exist rational beings outside of us. . . . How do we come to such a presupposition.⁹⁶

⁹⁶ Robert R. Williams, 1992, *Recognition- Fichte and Hegel on the Other*, State University of New York Press, p.49

Fichte made an argument in his book - *Foundation of Natural Right*- for *ego* to understand itself as a free self, it must acknowledge the claims of freedom of other individual. Hence the freedom of any individual is both acknowledged and limited by the other. He also asserted that corollary is true as well, leading him to argue that mutual recognition is important to realise once being. This is called intersubjective ontology of humans.

Hegel criticised Fichte but it's not an absolute rejection. Infact one can say Hegel took many things from Fichte on recognition theory. Hegel charged Fichte over his failure to unify the 'transcendental standpoint' with the 'empirical standpoint':

Hegel complains that Fichte fails to unify the transcendental standpoint with the empirical standpoint, or the transcendental ego with the empirical ego (...) Fichte is inconsistent: On the one hand, he holds the idealist position that there is nothing in the ego except what is posited by the ego, and, on the other hand, he maintains that the Anstoß influences or summons the ego to action. Fichte claims it is impossible for a finite intellect to escape from this circle. Hegel's point is that Fichte's assumptions make it impossible to have a circle at all. Since the system abandons its fundamental principle, it becomes dualist and fails to revert upon its starting point.⁹⁷

Fichte's central argument is that self-consciousness is a social phenomenon. He argued that for an individual's self awareness the existence of other is important. Therefore mutual recognition of individuals is a necessary condition for the self according to Fichte.

Hegel in his book *Phenomenology of spirit* wrote that self consciousness exists in itself only to be acknowledged or recognised by other. Hegel pointed out that our independence requires the recognition of other. Hegel further asserted our rights are materialised only

⁹⁷ Ibid. p. 82

with the intersubjective recognition of the freedom of others. Without recognition there cannot be freedom and rights are concrete expression of the freedom. Speaking in terms of social beings, Hegel asserted that our existence as social being is dependent on the recognition we receive in the society.

Master-Slave dialectic :

Hegel in the classical text *Phenomenology of Spirit* argued:

Self-consciousness is faced by another self-consciousness; it has come out of itself. This has a twofold significance: first, it has lost itself~ for it finds itself as an other being; secondly, in doing so it has superseded the other, for it does not see the other as an essential being, but in the other sees its own self.⁹⁸

Hegel in the above para titled as: 'Independence and dependence of Self-consciousness: Lordship and Bondage- 'Herrschaft' and 'Knechtschaft' generally known as master and slave, argued that the absolute knowledge is not possible without one self-consciousness recognising other. The relation between master and slave is a relation of the needs of the dominant group which is fulfilled by the subordination of the other. The slave exists fulfils masters needs by his labour. But this relation has two major flaws. One, Master is perversely dependent on the slave for recognition. This fact inverts the relation of dominations between the two. Moreover, this relationship of recognition between the two sides is incomplete because the recognition is a forced recognition of the slave not by choice. Than it's not recognition in it's true worth. This very situation leads to the requirement of mutual recognition and formalised equality to have recognition in its true sense.

⁹⁸ G.W.F. Hegel, 1977, *Phenomenology of Spirit*, trans. A.V. Miller, Oxford: Clarendon Press, Pg. 111.

Also, the capability and the desire to get recognition is with the slave. Because slave is not satisfied with the situation therefore always want to come out of it. He looks for freedom and recognition. Therefore it's the slave who holds the key to freedom actually as he wants to come out of the situation and transform whereas the master wants to maintain the status-quo. Therefore the master-slave dialectic is an unsatisfying relation. But the slave accepts the life as the slave realises that life as a slave is better than no life. But this is spiral situation where master too is dependent on the slave for recognition. Therefore hegel concluded that recognition is a principle which works between two equals. How to bring this equality, hegel replies by the pro-active role of social institutions and doing Justice.

Frantz Fanon: The Dialectic of Black Skin, White Masks

On the one hand Hegel's master-slave dialectics attempts to conceptualise the process of recognition. As per master-slave dialectics recognition is mutual. On the other hand Fanon tried to apply it from his situated experiences. This master-slave dialectics is taken up by Fanon to generate a criticism for colonial subjugation and mutual recognition.

In its immediacy, consciousness of self is simple being- for-itself. In order to win the certainty of oneself, the incorporation of the concept of recognition is essential. Similarly, the other is waiting for recognition by us, in order to burgeon into the universal consciousness of self. Each consciousness of self is in quest of absoluteness. It wants to be recognized as a primal value without reference to life, as a transformation of subjective certainty (Gewissheit) into objective truth (Wahrheit).⁹⁹

⁹⁹ Frantz Fanon, *Black Skin White Masks*, 1986, Pluto Press, P. 217-218

Frantz Fanon in his book *Black Skin White Masks* explained how racism occupies the mind of the oppressed which affects the psychology of the oppressed. This leads to alienation of the oppressed from both the society and their body. He explains the existential challenges faced by the blacks. Fanon argued that black people wears a white mask in order to get a kind of recognition. Fanon draws the trajectory of a black self from the trauma of being considered as inferior due to racial identity and recuperation. Fanon deconstruct the European colonizing model which is hierarchical and sets black as 'negro' and define itself against it. This Negrification on the one hand promotes hatred towards blacks and an appreciation for white culture. So much so that blacks start valuing themselves on the criterion of the white world.

Fanon applied Hegel's concept of master-slave dialectic to analyse contemporary relationship between black slaves and white masters. Fanon argued for the need of recognition to transform 'subjective certainty' to 'objective truth.' Fanon argued that this recognition is not possible without struggle which entails risk of life. Fanon emphasised on reciprocal relationship. According to Fanon it is important for oneself to transcend the immediate present and get recognised. But in his contemporary situation, Fanon found it almost impossible to get the kind of recognition from his white masters leading him to conclude in favour of violence. According to Fanon to achieve freedom is to risk one's life. It will be achieved only by counter- violence. All colonized individuals are "people in whom inferiority complex has taken root." To come out of this impasse violence is an important means.

Fanon was greatly influenced by Sartre. Sartre in his book *Anti-Semite and Jew* wrote that it is not “the Jewish character that provokes anti-Semitism but, rather, ... it is the anti-Semite who creates the Jew– Fanon would add that ‘it is the settler who has brought the native into existence and who perpetuates his existence’”¹⁰⁰ When Sartre asserted that this the life of ‘inauthenticity’ for the Jew, it inspired Fanon to conclude that colonial subject is not only denied her freedom but she is unable to be fully human.

Sartre argued that Humanity is not predetermined by any fixed essence. Sartre asserted that we become what we are through interactions with others. Colonial domination in the times of Fanon became a way of seeing where the skin color was the most important defining feature of the self. This particular way of looking at the colonized not only defined by the colonizer but also formed an important part the way black people looked upon themselves. Fanon wrote- “Black man has no ontological resistance in the eyes of the white man.” Because the white society generally associated bad things with black it leads to certain formulation for black people. This also lead to development of an inferiority complex among the colonised about their own skin color. Fanon contested this notion and said that this blackness is a construction, not naturally given. This black exists only in relation with their white master. There is no black essence. The relationship between black and white is crafted as negative and inferior in the context of white master and black slave. There is nothing negative about blackness as such. Fanon also made an important point by concluding that this situation is not merely psychological. Fanon asserted that this situation is a “reflection of economic situation”. But the kind of recognition which Fanon or Hegel is talking about is very different from the recognition

¹⁰⁰ Jean Paul Sartre, *Colonialism and Neocolonialism*, 2001, Routledge

theories of scholars like Nancy Fraser or Honneth. These liberal theories of recognition treats the concept of recognition as a discourse of possessing equal rights as citizens. Whereas for Hegel the recognition is recognition of dignity and worth. This is very different from the recognition of equal political rights.

Charles Taylor:

Charles Taylor in his essay ‘Multiculturalism and the Politics of Recognition’ argued that contemporary politics is in “need” of the politics of recognition. This need is the driving force behind nationalist movements as well. Moreover this demand keeps coming from different quarters as well. The minority groups, the subaltern groups, feminists groups are demanding for recognition which in today's political context is known as multiculturalism. The link between recognition and identity gives a sense of ‘urgency’ for the politics of recognition. Where according to Taylor, identity designates the “fundamental defining characteristics as human being”. Taylor further asserts that our identity is partly shaped by recognition or its absence and “often by the misrecognition of others....”¹⁰¹

Therefore, Taylor is identifying the need of recognition discourse in most of the contemporary movements. He also draws a relation between Identity and recognition or absence of recognition. Taylor asserted that individuals are formed intersubjectively. Identity of a person is not an outcome of merely our own self. The identity is formed intersubjectively meaning by the constant dialogues between two selves. An individual’s identity is formed by constant negotiation with family members, friends, teachers etc. At

¹⁰¹ Taylor, Charles. 1994, ‘*The Politics of Recognition*’. *Multiculturalism: Examining the Politics of Recognition*. Ed. Amy Gutmann. Princeton: Princeton University Press. P. 25

the same time he further elaborates that if the other self is missing that will lead to an incomplete formation of self.

Taylor is criticised for an essentialist view of self. Since he made claims that one's self will be discovered in the process of articulating the self. Taylor argued for 'equal recognition' or 'politics of universalism' where all the individuals are suppose to be treated same universally through common citizenship. The second concept he argued was about politics of difference. While asking for universal equal rights it's also important to recognise the individual difference which are peculiar to one individual or group. Taylor argued that the ideas which generally got accepted as universally acclaimed principles are against the interest of the minority groups. Taylor gives an example to elaborate his point:

The main locus of this debate is the world of education in a broad sense. One important focus is university humanities departments, where demands are made to alter, enlarge, or scrap the "canon" of accredited authors on the grounds that the one presently favored consists almost entirely of "dead white males." A greater place ought to be made for women, and for people of non-European races and cultures. A second focus is the secondary schools, where an attempt is being made, for instance, to develop Afrocentric curriculum for pupils in mainly black schools.¹⁰²

Taylor here argued that the example of changing the curricula of the students is not important because they are going to miss an important concept of certain race or region. But the central reason to do it is that such literature presents a demeaning picture of the local populace in this case, blacks.

¹⁰² Ibid, P.65

Moreover, Taylor in his seminal work *The Politics of Recognition* tried to portray Fanon as one of the most important spokesperson for multiculturalism:

“Taylor’s “The Politics of Recognition,” which tries to make a case for Fanon as a prophet of the sort of multiculturalism which maintains that “recognition forges identity,” and thus that the solution to questions of social oppression lies in reform of curricula—allowing for the inclusion of women, minorities, etc. (the “etc.” is a staple of such suggestions) (Taylor 1994:97). But to reduce Fanon’s work to a request for this type of recognition is to obscure the fact that when Fanon writes about the life-and-death struggle of master and slave, it is real life and death that are at stake; when he protests against the social construction of blackness, against racism’s “epidermal schema”¹⁰³

The liberal argument of securing political rights for citizenry quoting different identities is way different from what Fanon and Hegel are arguing for.

Axel Honneth-Nancy Fraser Philosophical Exchange:

The concept of recognition is used by different scholars in fairly wide manner. Charles Taylor’s work- *The Politics of Recognition* and Axel Honneth’s *The Struggle for Recognition* published in the same year but with two different approaches towards recognition.

¹⁰³ Anthony Alessandrini, 1999, *Frantz Fanon: Critical Perspectives*

Axel Honneth in the first chapter (“Introduction: A Theory of Justice as an Analysis of the Society”) of his book *Freedom’s Right* wrote :

One of the major weaknesses of contemporary philosophy is that it has been decoupled from an analysis of society, instead becoming fixated on purely normative principles. Although theories of justice necessarily formulate normative rules according to which we can assess the moral legitimacy of social orders, today these principles are drawn up in isolation from the norms [Sittlichkeit] that prevail in given practices and institutions, and are then ‘applied’ secondarily to social reality.¹⁰⁴

Both Taylor and Honneth expressed concern the way contemporary philosophy analysing the multi- cultural society but their approaches remained quite distinct. On the one hand Taylor argued that difference-blind liberalism cannot recognise the need for identity. On the other hand Honneth described injustice as a denial of intersubjective recognition which disrupts subject’s relationship with herself. According to Honneth this can be done in three ways, either through physical abuse which can be compensated by recognition of ‘love’, or by refusing legal protection, which requires recognition of rights and finally ‘denigration’ of the collective life of someone which requires recognition of solidarity. Or in simpler words Axel Honneth identified three patterns of recognition- Love, Rights and Solidarity. Honneth argued that these are necessary for the individual’s development. Here recognition as love means the emotions being fulfilled by other. Rights refer to moral responsibility for mutual recognition and solidarity is recognition of personal abilities.

Whereas Nancy Fraser summarizes politics of recognition in the following way:

Politics of Recognition -focuses on cultural injustices, rooted in social patterns of representation, interpretation and communication, including cultural domination (being

¹⁰⁴ Axel Honneth, *Freedom’s Right*, 2014 Polity Press, P. 1

subject to patterns of interpretation associated with another culture); nonrecognition (being rendered invisible in the authoritative communicative practices of one's culture); and disrespect (being disparaged in stereotypic public cultural representations or in everyday life interactions).

-the remedy is cultural or symbolic change to upwardly revalue disrespected identities and cultural products of maligned groups, or positively value cultural diversity.

-targets are status groups, defined by relations of recognition in which they enjoy lesser esteem, honour, prestige than other groups.

-aims to affirm group differences.¹⁰⁵

Therefore for Fraser, the idea of recognition as an important category of justice stems from the act of making marginal culture 'invisible'. Nancy Fraser further summarises politics of redistribution in following way:

Politics of Redistribution :

-focuses on socio-economic injustices rooted in the economic structure of society, including exploitation (having the fruits of one's labour appropriated by others), economic marginalization (being confined to undesirable work or excluded from the labour market entirely), and economic deprivation (lacking an adequate material standard of living).

-the remedy is economic restructuring, such as income redistribution, reorganizing the division of labour, or regulating investment decisions.

-the targets of public policies are classes or class like collectivities defined economically by a distinctive relation to the market or the means of production.

-aims to reduce group differences (i.e. to reduce class differences in opportunities and culture).¹⁰⁶

¹⁰⁵ Will Kymlicka, 2001, *Contemporary Political Philosophy*, Oxford University Press, p. 332-333

¹⁰⁶ Ibid p. 332

Fraser while articulating her theoretical position on politics of recognition tried to synthesise the binary created between recognition and redistribution. Recognition politics is said to have raised questions of cultural injustice whereas redistribution politics raises the questions related to economic injustices. In the conceptualisation of Taylor and Honneth recognition is primary category of social analysis whereas for Fraser both forms of injustices- recognition and redistribution are primary. The remedies suggested by Fraser are more context dependent.

Amartya Sen: Plurality of Identity and Violence

“The Jew is a man, whom other men look upon as Jew;...it is the anti-semite who *makes* the Jew”- Jean Paul Sartre in *Portrait of the Anti-Semite*

‘Recognition of Competing Affiliations’

Amartya Sen begins by quoting Wittgenstein over identity- “Wittgenstein the great philosopher once remarked that “there is no finer example of a useless proposition” than saying that something is identical to itself, but he went on to argue that the proposition, though completely useless, is nevertheless “connected with a certain play of imagination.”¹⁰⁷ Sen further asserts that the conception of identity influences our thoughts and actions in manifold ways. He complicates the above assertion by drawing a comparison between “being identical to oneself” to “sharing an identity with others.”¹⁰⁸

¹⁰⁷ Amartya Sen, 2006, *Identity and Violence*, Penguin Books, P. xi

¹⁰⁸ *Ibid.* P. xii

Sen further asserted that the global politics is now increasingly turning into politics of religious/ cultural divisions in the world. This kind of framing of politics ignore all other ways of looking at the people. Sen gives the logic of this kind of division that people think world can be understood by “singular and overarching” system. He criticised the Solitarist approach to understand the world. He suggests to understand identity through “relative importance” of different associations people have in different contexts because people have “inescapably plural identities.” This consistent imposition of a unique identity leads to “sectarian confrontation” leading to promotion of violence. The “shared humanity” gets challenged when the numerous division are ignored and people try to see the world in terms of a unique single identity in terms of religion/culture/nation/civilization.

Sen makes an very important philosophical point when he says that “the uniquely partitioned world is much more divisive than the universe of plural and diverse categories that shape the world in which we live”¹⁰⁹ He further suggests that it is not just a matter of intentions but the problem of conceptualisation of our understanding of the world which leads nurturing of violence. The possible solution is to see that we are “diversely different” and can interact with each other in great many different ways given the proper choice and reasoning.

In the chapter - “The violence of illusion” Sen suggested that “a sense of identity can be a source not merely of pride and joy, but also of strength and confidence”. Sen further quotes Hilary Putnam on Social Capital that “an identity with others in the same social community can make the lives of all go much better in that community; a sense of

¹⁰⁹ Ibid. p. Xiv

belonging to a community is thus seen as resource- like capital” But Sen makes an important addition that the kind of solidarity which is seen among the community turns into a great sense of exclusion when an immigrant enters.

Sen argued that we definitely have choice which identity to stress but “even when are clear about how we want to see ourselves, we may still have difficulty in being able to persuade others to see us in just that way”¹¹⁰ Sometimes such attributions are fair and perfectly fine but this also have a possibility to vilify the other person and incite violence. There are two important features of such attribution, one, such things can be attributed to a particular identity which are untrue. Second, such untrue attribution is being asserted as the only relevant feature of that identity. He further draws an important connection that “organised attribution”¹¹¹ often prepare the space for mass persecution and denigration.

Sen also emphasises the role of circumstances in the invocation of the identity¹¹². He gives an example, in 1930s Germany, Jewish people could invoke many other identities except their Jewishness. But in today’s Israel it’s the same identity which is being asserted. He suggests the role of reasoned choices in identity based thinking as the important solution against violence.

In the chapter ‘Denial of Choice and Responsibility’ Sen criticise the ‘Imagined Singularity’ as a basic classificatory idea of the world. He criticised Samuel Huntington’s

¹¹⁰ Ibid P.6

¹¹¹ Ibid p.8

¹¹² To elaborate upon this point Sen gives an example from Alan Ryan’s book J.S.Mill where Mill noted that his views on women's suffrage were taken as “whims of my own.” Sen quotes “It is perhaps worth recollecting that John Stuart Mill’s *The Subjection of Women*, published in 1874, was taken by many of his British readers to be the ultimate proof of his eccentricity, and as a matter of fact, interest in the subject was so minimal that this is the only book of Mill's on which his publisher lost money”

book- *The clash of Civilisation* for a classification based on religious divisions ignoring other divisions like -

rich and poor... different classes and occupation... people of different politics... different language groups”¹¹³ Further Sen points out that such grand religious classification not only misses other inherent identities but also magnify the voices of religious authorities. “The Muslim clerics, for example, are then treated as the ex-officio spokesmen for the so called Islamic world, even though a great many people who happened to be Muslim by religion have profound differences with what is proposed by one mullah or another.”¹¹⁴

Quoting V.S. Naipaul Sen asserted that shared history and sense of affiliation based on that history are not the only way of seeing oneself:

There are a great variety of categories to which we simultaneously belong. I can be, at the same time, an Asian, an Indian citizen, a Bengali with Bangladeshi ancestry, an American or British resident, an economist, a dabbler in philosophy, an author, a Sanskritist, a strong believer in secularism and democracy, a man, a feminist, a heterosexual, a defender of gay and lesbian rights, with a nonreligious lifestyle, from a Hindu background, a non-Brahmin, and a nonbeliever in an afterlife (and also, in case the question is asked, a nonbeliever in a “before-life” as well). This is just a small sample of diverse categories to each of which I may simultaneously belong.¹¹⁵

This vast array of identities lead to two important conclusions that identities are “robustly plural” and when we attach importance to one identity it should not obliterate the importance of other identity.

¹¹³ Ibid P. 11

¹¹⁴ Ibid p. 13

¹¹⁵ Ibid p.19

In the chapter “Identity disregard and the Rational Fool” Sen answers the question which is often raised that identities are interest driven and are single minded self seeking.¹¹⁶

Sen asserts that the idea that each person has different identities and relates to different significant group and the person belongs to all of them simultaneously, seems complicated is actually an elementary recognition of the ordinary normal life.

In our normal lives, we see ourselves as members of a variety of groups: we belong to all of them. The fact that a person is a woman does not conflict with her being a vegetarian, which does not militate against her being a lawyer, which does not prevent her from being a lover of jazz, or a heterosexual, or a supporter of gay and lesbian rights. Any person is a member of many different groups (without this being in any way a contradiction).¹¹⁷

The singular classification¹¹⁸, as made by Samuel Huntington, for example, by understanding world by civilisational partitioning is conceptually weak and ignores the diverse identities people simultaneously belongs to.

‘Culture and Captivity’

Sen further raises a very pertinent question- “that culture matters” and “how does culture matter?” Sen contested the view which see culture dominantly in terms of civilisations or religious categories. According to Sen one’s cultural background has a major influence on one’s behaviour and thought process. But there are other factors as well which

¹¹⁶ Sen makes a satirical comment to explain this point - : “if it is not in your interest, why would you have chosen to do what you did?” This wise-guy skepticism makes huge idiots out of Mohandas Gandhi, Martin Luther King Jr., Mother Teresa, and Nelson Mandela, and rather smaller idiots out of the rest of us, by thoroughly ignoring the variety of motivations that move human beings living in a society, with various affiliations and commitments.”

¹¹⁷ Ibid P. 46

¹¹⁸ In the chapter ‘On Seeing India as a Hindu Civilization’ Sen critics Huntington, while describing India as ‘Hindu Civilisation’, for downplaying the fact India has many more Muslims then the whole of British and French population put together or more than nearly every country in Huntington's definition of the “Muslim world.”

influences the identity of an individual. Sen makes five major reasons how culture is not the sole determinant.

First, there are factors like “class,race,gender,profession,politics” which plays an important role in determining our lives. Sometimes they have more far reaching effect than cultural impressions.

Second, culture is not a homogeneous category. Within the category there are different voices and people prefer to attach importance to different traits in different situations. There are many discordant voices and “discordant voices are often internal, rather than coming from the outside.”

Thirdly, Sen argued that “culture does not sit still.” There are many examples when cultural stationariness got broken by social discussions. “The temptation toward using cultural determinism often takes the hopeless form of trying to moor the cultural anchor on a rapidly moving boat.”

Fourthly, Culture is not an completely independent force which affects and doesn't get affected by other social determinants. “For example, economic globalization brings in not only more trade, but also more global music and cinema.”

Fifth, Sen made an important distinction between- the idea of “cultural liberty” and “valuing cultural conservation”.Cultural liberty focuses on on freedom to either keep or change one's priority (on the basis of greater knowledge or further reflection, or, for that matter, on the basis of our assessment of changing customs and fashions¹¹⁹.) On the other

¹¹⁹ Ibid. p. 113

hand “valuing cultural conservation” means continuing the traditional lifestyles by immigrants for example. Cultural freedom is an important capability which people have reason to value but one need to be careful with the relation between cultural liberty and multiculturalism.

There is a consistent demand that different cultures within a country should be allowed to flourish simultaneously but the more important argument in favour of multiculturalism is - “this is what cultural freedom demands.” The importance of asserting cultural freedom should be distinguished from accepting every cultural inheritance. The criteria suggested by Sen is, to see, if a person is provided with an opportunity to critically scrutinise the given cultural norm, will she accept if there are adequate choices are available? There is a growing interest in the world for cultural values, the role of cultural values for the development of human faculty but it is often turned out to be, explicitly or implicitly, a demand for cultural conservation. Cultural freedom by definition includes the liberty to “question the automatic endorsement of past traditions.” This is particularly important when young people want to disown certain cultural norms. If we agreed that human beings should be given freedom to make reasonable choices. If we respect the choices made by them. Then these choices can’t be negated in the name of imposed cultural conservative practice.

But Sen also puts a note of caution that critical liberty can be curtailed if a minority community is is not allowed to pursue their cultural norms in the name of contrasting with the majority values. For example the suppression of the choices of “gays, immigrants or specific religious groups” are the case in point. “The insistence that gays or lesbians live like heterosexuals, or stay inside closets, is not only a demand for

uniformity, it is also a denial of the freedom of choice.” actually the logic of cultural freedom works just other way round. Diversity is important for cultural freedom, it leads to making of more and better choices.

Cultural diversity will be improved if an individual is can lead whatever life she had reason to value. “For example, the freedom to pursue ethnically diverse lifestyles, for example, in food habits or in music, can make a society more culturally diverse precisely as a result of the exercise of cultural liberty. In this case, the importance of cultural diversity—instrumental as it is—will follow directly from the value of cultural liberty, since the former will be a consequence of the latter.”¹²⁰ Sen further argues that diversity also enhances the freedom of those who are not directly involved. Culturally diverse society lead to manifold opportunities of divergent experiences.

To illustrate, it can plausibly be argued that the rich tradition of African-American music—with its African lineage and American evolution—has not only helped to enhance the cultural freedom and self-respect of African-Americans, it has also expanded the cultural options of all people (African-American or not) and enriched the cultural landscape of America, and indeed the world.¹²¹

Sen further explores the dichotomy between cultural liberty and cultural diversity. To maintain cultural diversity in the society it may seem to simply continue all pre-existing practices. But this also qualifies to support cultural conservatism in the name of cultural diversity. This also qualifies to sticking to one’s own cultural background and never trying to experience the activities of other culture even if there is sufficient reason to do

¹²⁰ Ibid. p. 115

¹²¹ Ibid. P. 115

so. Therefore diversity will be achieved at the cost of cultural liberty. If the most important thing is cultural freedom then cultural diversity is always conditional.

Still there can be an argument that cultural diversity is important and should be accepted as this is what is “inherited”. Sen contends this logic as “Being born in a particular culture is obviously not an exercise of cultural liberty, and the preservation of something with which a person is stamped , simply because of birth, can hardly be, in itself, an exercise of freedom” Sen asserts that in the name of freedom not everything can be argued especially if the person didn’t get an opportunity to choose or not choose that freedom. “Just as social suppression can be a denial of cultural freedom, the violation of freedom can also come from the tyranny of conformism that may make it difficult for members of a community to opt for other styles of living.” argued Sen.

‘Dialectics of the Colonized Mind’

Sen started by suggesting that “The dialectics of the colonized mind includes both admiration and disaffection.”

In the contemporary world there is a strong resistance against ‘westernisation.’ Which is a resistance against the ideals and ideologies propagated and originated in west. But Sen suggested that many ideas which are considered as western today have non-western roots “for example,nothing exclusively, “western” about valuing liberty or defending public reasoning” but they are being labelled as west which leads to resentment towards such ideals. From asserting “Asian values” to “Islamic ideals” an attitude gained ground that whatever is ‘western’, not on the basis of its merit or demerits, should be discarded.

Sen suggests that out of many reasons of this anti-western tendency is the legacy of western imperialism. They not only subverted the polity of the colonies but also made life in colonies west-centric. Sometimes the colonial mind admires it, sometimes it develops a deep resentment against the western masters, that's the dialectics with which the colonial mind operates.¹²² The reasons for postcolonial alienation is not just a reaction against colonial humiliation or exploitation. The colonial masters worked with a psychology which perceived the colonial subjects as "inferior" which generated a strong sense of humiliation among the colonised.¹²³

Sen argued that it is unfair to an individual to see oneself been misrepresented by the colonisers even if they are correct in their analysis. Sen asserts "to lead a life in which resentment against an imposed inferiority from past history comes to dominate one's priorities today cannot but be unfair to oneself."¹²⁴

This develops a 'reactive self-perception' which not a very good basis for self-understanding. This affects the present of an individual to a great extent. Sen cites three far-reaching effects- Firstly, this gives an unnecessary hostility towards many global ideals which are not of western origin but counted as one nowadays. Secondly, it leads to

¹²² In Jean Paul Sartre's book, *Colonialism and Neocolonialism*, similar argument is posed- "For Fanon, the colonial subject is not only denied his or her freedom and reduced to an object; he or she is unable to be fully human at an individual level: colonial oppression works at the level of psychology as well as in material form. If existence precedes essence, as Sartre argued, then the essence of the colonized subject aspiring to a 'white mask' is one of inauthenticity and bad faith."

¹²³ Amartya Sen in his book, *The Argumentative Indian*, made similar claims in details - "The colonial experience of India not only had the effect of undermining the intellectual self-confidence of Indians, it has also been especially hard on the type of recognition that Indians may standardly have given to the country's scientific and critical traditions. The comparative judgement that Macaulay made popular in the early nineteenth century ('a single shelf of a good European library was worth the whole native literature of India and Arabia') was seen to apply particularly to Indian analytical work"

¹²⁴ Ibid. P. 89

a distorted reading of the scientific history of the world. Thirdly, such tendencies helps in fostering religious fundamentalism.

Sen suggests, by quoting, Partha Chatterjee¹²⁵ that due to the undermining of the colonial self by the colonizers Indians start emphasising its ‘spiritual’ supremacy to regain her confidence. Partha Chatterjee suggests in his book, *The Nation and Its Fragments*, the anti-colonial nationalism develops its own domain of sovereignty within colonial society, by dividing the world into the domains of material and spiritual. In the domain of the material progress one need to acknowledge the progress in science and technology and try to reach there. Whereas the domain of spirituality is the inner domain of identity. The more colonized reaches towards the material progress of the coloniser the more spiritual domain asserts. This also amounts to challenging the misreading of colonial past.

Sen further mentions Akeel Bilgrami on his paper- *What is a Muslim?* Suggesting, in the postcolonial world non-western people think of themselves as “the other.” Bilgrami suggested-

...a good deal of Islamic revivalism in various countries in the Middle East, South Asia, and North Africa, not to mention some of the northern cities of England, is the product of a long colonial and postcolonial history, which has shaped a community’s perception of itself in terms of the Other. It is a defensive reaction caused not only by the scars and memories of Western colonial rule but by the failure of successive governments to break out of the

¹²⁵ Partha Chatterjee in his book *Nation and Its Fragments* said - “[A]nticolonial nationalism creates its own domain of sovereignty within colonial society well before its political battle with the imperial power. It does this by dividing the world of social institutions and practices into two domains—the material and the spiritual. The material is the domain of the “outside,” of the economy and of statecraft, of science and technology, a domain where the West had proved its superiority and the East had succumbed. In this domain, then, Western superiority had to be acknowledged and its accomplishments carefully studied and replicated. The spiritual, on the other hand, is an “inner” domain bearing the “essential” marks of cultural identity. The greater one’s success in imitating Western skills in the material domain, therefore, the greater the need to preserve the distinctiveness of one’s spiritual culture. This formula is, I think, a fundamental feature of anticolonial nationalisms in Asia and Africa”

models of development imposed by a dominating neo-colonial, neo-liberal presence of Western corporate interests in their region.¹²⁶

Akeel Bilgrami argues that non-western people are defining their identities in terms of “being different” from Western people. This ‘otherness’ got characterised in both cultural and political nationalism.

Sen concludes with a very important insight that this approach of “non-Western” or “anti-Western” seeking independence from the colonial dominance is in fact dependent on them only. This singular mode of thinking to seek justice against the wrongdoings of the west or to “catch up with the west” both are subservient to West. “The colonial masters of yesterday continue to exert an enormous influence on the postcolonial mind today.”

‘Multiculturalism and Freedom’

Sen argues that the ‘ideas of identities’ is closely linked with the understanding of the nature and merits/demerits of multiculturalism. Sen talks about two approaches to multiculturalism: One, which concentrates on the on the promotion of diversity as a value in itself. Two, which upholds the freedom of reasoning and decision-making.

Sen raises two fundamental questions over which multiculturalism is to be assessed. One, while categorizing human beings one should respect the inherited traditions, for example religion, in which one happen to be born. This amounts to choosing an unchosen identity, which have priority over other affiliations like class, gender, social involvements. Two, the classification should be based on the identities which an individual will choose herself and take responsibility of their own choices.

¹²⁶ Akeel Bilgrami, 2014, *Secularism, Identity and Enchantment*, Harvard University Press, P. 227-228

Sen further emphasised on the problems of “Plural Monoculturalism.” He distinguished between multiculturalism and plural monoculturalism. Plural monoculturalism exists when two traditions coexists side by side without interaction. In popular discourse multiculturalism is actually a plea for plural monoculturalism. Sen simplifies it-

If a young girl in a conservative immigrant family wants to go out on a date with an English boy, that would certainly be a multicultural initiative. In contrast, the attempt by her guardians to stop her from doing this (a common enough occurrence) is hardly a multicultural move, since it seeks to keep the cultures sequestered. And yet it is the parents’ prohibition, which contributes to plural monoculturalism, that seems to get most of the vocal and loud defense from alleged multiculturalists, on the ground of the importance of honoring traditional cultures, as if the cultural freedom of the young woman were of no relevance whatever, and as if the distinct cultures must somehow remain in secluded boxes.

Sen argues that just being born in any culture and simply accepting it is not cultural liberty. Since this is not an outcome of conscious choice. On the contrary one decide to stay back in the same culture after considering the alternative possibilities. But one can decide to move away. This moving away can be a complete disconnect or can be a disagreement with few rituals.

‘Freedom to Think’

Sen criticise the high theories of culture and civilisations, which are quite influential, for forcing people into boxes of singular identity. He criticizes them for the fact that these theories do not condone violence but promote them. The problem with the high theories like ‘Clash Of Civilisations’ is that they don’t try to understand human beings with their diversified identities but dominantly as member of one particular social group.

“civilizational classifiers have often pigeonholed India as a “Hindu civilization”—a description that, among other things, pays little attention (as was discussed earlier) to India’s more than 145 million Muslims (not to mention Indian Sikhs, Jains, Christians, Parsees, and others), and also ignores the extensive interconnections among the people of the country that do not work through religion at all, but through involvements in political, social, economic, commercial, artistic, musical, or other cultural activities. In a less straightforward way, the powerful school of communitarian thinking also hallows exactly one identity per human being, based on community membership, and in effect downplays all other affiliations that make human beings the complex and intricate social creatures that we are.¹²⁷

So in the above quote Sen ends by suggesting that this belittling of human identity has far reaching consequences. Such categorisation can be exploited to foment intergroup strife. These civilisational grand theories claims that there “objective is to identify what is perceived as a pre-existing reality... and the theorists see themselves as discovering a confrontation, not creating-or adding to- one.” But these theories have influenced social thought, political action and public policies. In the above quote the characterisation of Indian civilisation as ‘Hindu Civilisation’ draws applause from sectarian activists back home. Such high theories are used readily for accentuating sectarian exclusion leading to social confrontation. On similar lines ‘theories of Islamic exclusiveness’ focusing on belligerently religious identity, ignoring all other identities, provides the conceptual basis for violence. Sen also raises a very pertinent question that resistance on the other side tends to remain itself confined either to denounce the religion or to define or redefine to

¹²⁷ Ibid. P. 177

place everyone on the right side of the religion. This framework keeps oneself inside the same problem whether in contestation or redefining.

Conclusion

Sen pushes forward the idea of democracy in terms of public reasoning. He suggests that there should be global discussions on pertinent human problems. The institutions should be strengthened and utilised to fullest to generate such discussions. That's how we can create a global democracy without waiting for a 'gigantic global state.' but this global state is a creation where people can keep their local affiliations as well. Sen throughout the text emphasised on the plurality of the identity. He is against the idea of picking one particular dominant identity, say religion, and classify people on the basis of it and foments violence.

Final Remarks:

Sen is talking about different identities a person may carry in different contexts. An individual may be born in a particular identity but s/he should get a reasonable opportunity to experience other alternatives as well. He also criticises the way high theories classify and understand the world. They usually divide the world as per certain dominant identities, like religion. But Sen questions such classification suggesting that religion is not the sole identity which an individual would like to value. In different contexts a person may choose to assert a different identity. Therefore Sen is for the plurality of identities. He suggests that democratic reasonable discussions are important

to achieve a better understanding and to do justice with the choices an individual may want to choose.

If we look at two important thinkers discussed above Hegel and Fanon along with Sartre, they are more interested in the question that how their self identity is formed. So for Fanon in a colonial context the master is the other, who defines the identity of the colonized slave. Here Sen will argue that a black colonised slave is having many other identities. She is a woman, in say, Algeria, pursuing medicine etc. so to just look at her from one single viewpoint is limiting her. But Fanon will argue that it's not a liberal question of political rights or how she is defined in a certain political milieu. It's a deeper struggle with which she is constantly fighting, which is rooted in her inferiority complex, in her blackness created by the white other. Sen suggests a democratic method of reasonable discussion and choice to resolve it. Whereas Fanon realised that in a colonial context no one listens to them. In the context of FLNs struggle in Algeria Fanon reaches to a conclusion that violence is the only way out to be human. He further asserts that its not just to seek political freedom that violence is necessary, it's important so as to achieve a sense of one's self. To come out of sense of inferiority.¹²⁸

In the Indian context of Dalit question, is it a matter of one of the identity which some one can choose to neglect? For Sen, the answer may be yes to an extent but for Hegel or

¹²⁸ Not as a part of the main argument here but I do feel that there is need to discuss formation of identity because of the axis of oppression as well. If I'm a upper caste gay christian man, I would probably stick closest to the gay identity because that is the most oppressed/ most threatened. In case of the dalit gay person the identity will probably be assertion of both or fusing of both because both of them are under threat. Like Sartre says the jew is formed by the antisemite, the dalit is formed by the upper caste, the reclaiming of that identity is because of 1) democratic politics where the oppressors now negotiate on the basis of the categories they have imposed 2) because of the historical meanings associated with the imposed identity and the solidarity and community formation that happens because of it. The blacks as oppressed find solidarity in other oppressed, the history of oppression becomes a collective bond for the community. Though now they attempt to give new meanings to it, the historical bond remains

Fanon it's a deeper question of the formation of self thrust upon the Dalits by virtue of their birth and perpetuated in the Hindu caste varna system.

Here one more important point one can raise that what if instead of feeling denigrated by the 'blackness' thrust upon black colonised slave by white colonists or the casteism thrust upon the Dalits by upper caste Brahmins, the Dalits and Blacks assert the same identity? The possible answer to this question, I will be dealing with in my next chapter along with Akeel Bilgrami.

Chapter 4

Bilgrami's Conceptualisation of Just-Society

4.1 Introduction

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Chapter 4

Bilgrami's Conceptualisation of Just-Society

Introduction

“What’s your line of business, then?”

“I’m a scholar of the Enlightenment,” said Nicholas.

“Oh Lord!” the young man said. “Another producer of useless graduates!”

Nicholas felt despondent. - Steven Lukes¹²⁹

Akeel Bilgrami in *Marx, Gandhi and Modernity* (2014) and *Secularism, Identity and Enchantment* (2014) while making an argument how individual human subjectivity can be socially unalienated by being theoretically configured in non-individualistic terms questions the theoretical and methodological framework which put sloganised ideals of justice of European Enlightenment- Liberty & Equality- at irresolvable tension with each other. Bilgrami further mentions two important features of political theorizing that produce this tension, firstly, linking the notion of property to a notion of the personal liberty- liberty that is carried in a right and therefore enshrined in law of land. Second important feature is “incentivization of talent”. It has been taken for granted or natural that someone’s talent should be acknowledged as hers and that it is she who should be

¹²⁹ These quotes are from the book *handbook of political theory* by Dryzek, Honig and Anne Phillips published by Oxford. The background of the quotes and relevance here is quite similar. In Steven Lukes’ fictionalised book on political theory, in the chapter- *The Curious Enlightenment of Professor Caritat*- where the Prof. is searching for the land of Egalitaria. He lands up in Utilitaria and asked to deliver a lecture on “Breaking Free from the Past” and in Communitaria, on “Why the Enlightenment Project Had to Fail”. If we retitled the title of his lecture at Communitaria to “Why the Enlightenment Project Failed and What’s the Alternative” Then the professor at Communitaria is can very well be called Prof. Akeel Bilgrami.

praised and rewarded for it. We considered it as right possessed by individual rather than just a symptom of the *Zeitgeist* in embodied form, for it violates what we conceive to be the liberty of an individual to reap the praise. But like the liberty attaching to the possession of property, this way of thinking of liberty as attaching to talent also promotes social and economic inequality. One can see that in range of practices from commercial endorsements associated with talented sports person to so called “merit” to bonuses to bankers. So, how to make the two ideas compatible? What paradigm shift would be needed? By possibly disinherit the entire tradition of liberal thought of Enlightenment, by replacing them on a center stage with a third more primitive concept, more fundamental than even liberty and equality. The concept not necessarily older and more traditional in our political understanding but something more immediate to our experience and our ordinary lives: the concept of “unalienated life”.

He further argues in his book *Marx, Gandhi and Modernity* (2014) that contractualist theorists (From Locke to Nozick) have argued powerfully for historical progressive necessity of the incipient form of capitalism which both Gandhi and Marx suggested unnecessary. Social contract theory tried to establish that in a original scenario as a pre-political condition people in a freely chosen consent decided to live by a certain arrangement which transformed them into citizens. These claims founded the basis of Liberalism.

Bilgrami’s notion of justice is to fundamentally alter the framework in which we are trying to look for a just society. He is talking about individual’s right in non-individualistic terms by way of his conception of “unalienated life”. According to Bilgrami unalienatedness came with the sense of belonging that was possible by the

social frameworks of period prior to modernity. Whatever the defects of societies prior to modernity were, alienation was not among the defects. But the point is –the unalienated life of those earlier times was indeed marred by the oppressive defects in those societies’ framework. It is precisely those defects that the sloganised ideals of Liberalism (Liberty and equality) were intended as directly addressing. But as argued beforehand that the methodological framework within which these two concepts were developed made it impossible to conceive them directly. Therefore they will be indirectly deployed – therefore transforming the concepts of liberty and equality. Now if the idea of unalienated life is to bring- indirectly- it is bound to be very different from the unalienated life which is acknowledged to have existed in times prior to modernity because the conditions in which they existed then, were also acknowledged to be acutely lacking in precisely, liberty and equality. Therefore new framework would solve three things at once- a transformed notion of liberty and equality and a transformed notion of unalienated life too. So there will be a holistic triangular transformation. Furthermore, Liberty in it’s “intuitive” sense is the idea of self governance, so if we have to transform the idea of liberty then we have to think in terms of interests of everyone in the society. But Bilgrami is not merely making a critique of self interest rather the very construction of the notion of liberty. Bilgrami asserts that both the social and natural world presents to us with a normative demands to which our agency responds. But, norms and values are not just subjectively generated. whereas a range of philosophers including Hume and Adam Smith described values as reducible to our desires and moral sentiments. But along with Gandhi and Marx, Bilgrami suggests, the right view of values, puts them in the world as properties, that make normative demands on us. Therefore, instead of what Hume and

Smith suggested that values are projections of our desires and moral sentiments onto the world. Rather, our desires, preferences and moral sentiments responses to value properties in the world. So, if the values are the normative demands coming from the world itself then we have to see the world right, to see correctly it's normative demands. Therefore the phenomenological point here is to be unalienated, our agency is to be in responsive sync with these perpetually presented normative demands coming from the world as we are apprehended it. That is "what it is to be at home in the world"- to be sensitive in our perception to the demands coming from the world as we apprehend it. So in short to see these demands of the world for what they are, our own orientation to the world in viewing the normative demands of its value laden layout has to be to something that goes beyond the orientation in which individual interests and desires are primary.

Overall, Bilgrami is critiquing liberal economic and political point of view from Locke's contractualism to his resonance in contemporary times, upholding the political agency of emerging nations. Here a point of further research remains why a tradition of political philosophy theoretically frame it's two chief ideals in a way that they are pitted against each other. Though Akeel Bilgrami is fundamentally critiquing Liberal paradigm but this very fact opens an interesting possibility of a comparative study of his "unalienated life" with Amartya Sen's assertion of 'justice here and now' and "futility" of perfect theorization of philosophy of justice to improve people's lives.

Possibility of Political Agency and Unalienated Subjectivity

Bilgrami in the essay titled “Capitalism, Liberalism and the Claims of Historical Necessity¹³⁰” begins by raising two philosophical points. One, is there a possibility of political agency “in the face of the claims of historical necessity” and secondly, can individual human subjectivity be socially unalienated by configuring it in theory in non-individualistic terms.

Bilgrami explores it further by analysing the possibility of the freedom or ‘agencies’ in social change given the broad tendencies of ‘dispositions’ or necessity. Bilgrami tried answering the question by deploying Hegel’s doctrine of Historical Materialism¹³¹ Bilgrami tried to explore the above theoretical argument by citing two understandings by Gandhi and Marx. Gandhi while defining ‘western’ was signifying towards the wrongs-the social, cultural and cognitive fall-out -of capitalist structure in the west argued that this is ‘uncompulsory’ for Indian society. Gandhi in his book *Hind- Swaraj* draws a parallel with India and the early modern period Europe. He asserted that there is no reason why India too should follow the similar trajectory. He lamented the post-Westphalian order of growing centralised states affecting the human mentality and social life leading to the consolidation of capital’s domination. Bilgrami draw a comparison of Gandhi with the dissenters of the early Modern period Europe. If Gandhi was right than how it affects the grand narration of historical materialism.

¹³⁰ Akeel Bilgrami, 2014, *Marx, Gandhi and Modernity*, ed., In *Capitalism, Liberalism and the Claims of Historical Necessity*, Tulika Books

¹³¹ Bilgrami himself expresses his unsurety while employing the doctrine of Historical Materialism whether it is merely intended as an ‘observation of systematic changes in the structure of class relations in successive economic formations’ or whether it has been used as a description of ‘evolution’ or on the basis of deterministic logic to progressive necessities in history.

The second example deployed by Bilgrami is the “writing of the *very* late Marx” Marx in the very late phase of his life sympathetically wrote about Russian peasant communes. Marx argued that on the trajectory of the early to late modernity, it is not necessary that Russia is bound to follow the same route. A route in the form of primitive accumulation and deep-set privatisation of property. Bilgrami argued that taking a lesson from the past of Europe can Russia avoid the “painful capitalist incubation”, adopting some of their mechanism and developing some revolutionary incipiently collectivist economic ideals of the commune. This lead us to the same question which was being asked in the very beginning that to what extent the agency of an advanced proletariat class is “a priori” and “necessary condition” for Russia to achieve the stage of socialism minus the capitalist stage.

To make his point Bilgrami draws a connection between the early Marx and the Very late Marx making a three-fold periodisation and contesting the notion that the early writings of Marx are were radically different from in terms of their analysis of society. Therefore Bilgrami draws a connection between possibilities of the Russian peasant commune and the aspiration to “the ideal of unalienated life” in the early works of Marx. Therefore Bilgrami concluded that the very late work of Marx on the direct revolutionary possibilities in Russia raises the similar set of questions as raised by Gandhi to device an Indian path towards modernity.

Therefore, according to Bilgrami there is a possibility to avoid the capitalist path followed by European societies. Bilgrami contested Europe’s liberal theorists, who paternalistically, made it ‘inevitable’ for all their ex-colonies to follow the same

trajectory what was followed by Europe. Bilgrami contested the very concept that what is 'rational' for Europe may not be the case with rest of the world.

This argument is very similar to the efforts made by Sen in his book *Identity and Violence* in the chapter 'Denial of Choice and Responsibility' where Sen criticize the 'Imagined Singularity' as a basic classificatory idea of the world. Sen criticised Samuel Huntington's book- *The clash of Civilisation* for a classification based on one single division, which is religious divisions, ignoring other divisions like - "rich and poor... different classes and occupation... people of different politics... different language groups"¹³² Both are contesting the given knowledge of the west liberal theorists.

Furthermore, Bilgrami argues that social theory which was "contractualist in conception" established this path of modernity as 'rational' for Europe. From Hobbes, Locke, Rousseau to the contemporary contractualists like Rawls and Nozick asserted the need of historical necessity of the European path of modernity, which Bilgrami got in contestation with Gandhi and Marx.

Bilgrami described the rudiments of such contractualists theory. He argues that all the social contract theory establishes a scenario "described as 'state of nature'" which is a condition on the people to 'freely chosen consent' where they have to give consent to certain principles or arrangements to live in that state. This consent "immediately transforms" these people into citizens and the 'state of nature' into polity. But this arrangement will work only if, as per Bilgrami, if the consent to these principles is being demonstrated as 'rational'- "The principles and arrangements freely consented to must

¹³² Amartya Sen, 2006, *Identity and violence*, P11

make these people better off as citizens than they hitherto were as mere people, prior to politics, in a state of nature”¹³³ Bilgrami explained that “canonical scenario” in which there is a prior state of nature and someone-leviathan- will come on the common land and ask for people to give consent for the arrangement. Those who consented becomes the citizenry with legitimate claims over the land.

This framework will work, as per Bilgrami, only if people are better-off than the prior state of life they were in. Or the only other possibility can be that at least some of them were promised to have a better life conditions in the new arrangement than what they were initially having. The second requirement was fulfilled by promising that “they can hire others at wages” which enable them to live better. Therefore Bilgrami concluded that the social contractarian ideal is roughly an argument from “Pareto-improvement.” Social contractarian claims become the cornerstone of the political arrangement which came to known as “liberalism” in which “free-speech, private property, and wage labour” were seen as progressive advances completed on the condition of mutual advantage or advantage of some and disadvantage of none (pareto-improvement).

Going again in the spirit of historical materialism Bilgrami asks a very pertinent question that what is the historical context which lead to articulation of such contractualist theory.

The answer is that

the theory philosophically consolidated the system of enclosures which had been practised by brute force for many decades earlier, and in doing so it prepared the ground for it to become a form of right with law and governance to back it up. The point was to present the political principles and arrangements which justified the system of enclosures as a moral and political achievement since it was based on a form of rational and freely

¹³³ Akeel Bilgrami, 2014, Marx, Gandhi and Modernity, p. 165

chosen consent, which generated a compact that created a citizenry in its inhabitation of nature and its relation to the sources of livelihood and production, and the polity to sustain it in these relations.¹³⁴

So Bilgrami placed the contractualist theory in the historical context and tried to understand the reasoning which led to the formulation of such arguments. Bilgrami quoting Marx from the 27th chapter of *Capital* raises the predatory nature of the primitive accumulation, where Marx is talking about primitive accumulation in general but enclosures in England in particular. Bilgrami constructed a counter-argument against the Lockean contract, who were legitimising enclosure, attributing it to the dissenters during English revolution, as the theoretical source of their protest. Bilgrami attribute his argument to Winstanley:

The entire contractualist scenario as you have presented it generates an opportunity cost. An opportunity cost is the cost of an avoided benefit paid for making a certain choice. That avoided benefit is the collective cultivation of the commons that is prevented by the choice to privatise the land in your initial step in the scenario. Once the step is taken it is true what you say that those who were hired for wages are better off than they were in the *state of nature* but they are not better off than they would have been if the land had not been privatised in the first place and if there was a collective cultivation of the commons instead.¹³⁵

In the above argument Bilgrami presents a different notion of consent other than the Lockean one. According to Bilgrami whether people consented or not should be seen as contractualist proposes but rather viewed as “what he she would choose in antecedently specified sorts of conditions that do not obtain”. The moment this view is accepted the contractualist tradition than there is no rationally implicit consent.

¹³⁴ Ibid. p.166

¹³⁵ *ibid.* P. 166

Therefore, Bilgrami shifted the focus of the imaginary dialogue between “pre-emptive Winstanley” and John Locke between the two notions of consent. Then Bilgrami further constructs the presumable reply by Winstanley:

If you ignore my counterfactual and insist that the sense of consent you have on offer suffices in the contractarian scenario and that everyone has indeed implicitly consented in that sense, then I will have to point out that the implicit consent you have attributed in particular to those who are hired to work for wages, was coerced by a condition that they could not avoid, their non-possession of the land (in the face of the possession of the land by others). My alternative notion of consent was articulated with the view to establishing that that non-possession (in the face of possession by others) should be seen as avoidable. thus, your insistence on your notion of consent, even despite the assertion of my counterfactual, brings out in the open that possession of the land by some and not others is a coercive condition in which the latter has to ‘consent’ in your sense of the term. And so the contractualist tradition presents a coerced implicit consent fraudulently as a *freely chosen* implicit consent.¹³⁶

Bilgrami argued further that the social theory of early modern period presented these developments as ‘rational’ or natural.¹³⁷ This is the same rationality which was later deployed in the erstwhile colonized lands that this method of development is inevitable. Claims were made that this path of modernity is “historically progressive” and therefore necessary.

While criticising the high theories of western modernities Bilgrami mentions Indian thinkers as well, particularly Amartya Sen. Bilgrami mentions sen speaking against those who were protesting “the ‘eminent domain’ form of dispossession of the peasantry in

¹³⁶ Ibid. p. 167

¹³⁷ Bilgrami mentions marx’s writing about such theorists in his ‘letters to Vera Zasulich’ that Henry Maine “hypocritically pretends that the english government tried to save the Indian communes from their destruction while in fact participating in their violent destruction”, marx further writes that Maine gave reason that - ‘communes are succumbing to the spontaneous power of economic laws’ Proving Bilgrami’s point of constructing the claim of historical necessity.

rural Bengal” Sen argued that England went through the pain to create its Londons and Manchesters and therefore India too will suffer that way on its path of development. Bilgrami contested Sen for siding with the similar line of argument as proposed by the liberal social theorists whom Bilgrami is contesting through Gandhi and Marx. Bilgrami contests the very underlying idea of liberal line of thought that claims of rational development in Europe is indispensable for rest of the world and is a historical necessity. Bilgrami contested the philosophical rationalisation of the contractual premise by raising two mutually contesting claims:

- a) On what is consented to making one better off than one was in the state of nature and
- b) the consent being freely made” but going by Winstanley’s dissenting claims these conditions cannot be jointly true. Since Winstanley argued that the first requirement is not fulfilled therefore there is no question of the second premise be true that consent is freely made. This therefore “leaves the social theorists without their premise, to say nothing of their conclusion.

This makes the claims made by Gandhi and Marx vindicated. Gandhi is right, as per Bilgrami in claiming that there is no need for India to follow the path of so-called historically progressive necessity. Gandhi claims stand justified that Indian path to modernity can avoid the “civilisational harms” and “alienated societies” which are the fall out of the European development.

Similarly, Marx’s denial of the necessity for Russian communes to follow European trajectory of development. Though there is a crucial difference between Gandhi and Marx- Marx’s vantage point is the revolutionary potential in the Russian communes to develop a “collectivists” possibilities. For Marx the question whether everyone has to follow the same trajectory is less important rather he is dealing with the premise whether

for a revolution to arrive a certain trajectory is needed. Bilgrami draws further into this “theme of emancipation of human subjectivity”

By criticizing Lockean logic of social contract consent argument Bilgrami not only contested the contractarian philosophers at that time rather he nailed the contemporary theoretical framework of liberal theorisation.

The final argument made by Bilgrami pointing out the lacuna of the liberal theorisation initiated by contractarians like Locke but later on “fortified” by liberal thinkers following the same framework. Lockean theory was rationalising the enclosures movement going on at that time. But the protesting voices of early modern England were committed to “collective cultivation of the commons” and were making the similar claims which were later on made by Gandhi and Marx that a particular mode of development is not necessary and neither it is a historical necessity.

The larger project of Bilgrami is to question the very basis of liberal framework, of which “Locke was only a very early influential figure.” therefore Bilgrami further deconstructs one of the central notion of liberal theorisation.

Tragedy of the commons and Incentivisation of Talent

According to Bilgrami the most “standard resource” which form the basis of liberal paradigm of theorisation is the idea and the argument called ‘tragedy of commons’. The underlying idea is to contest any ideal of cooperative life for ex. Collective cultivation of commons or as Bilgrami points out in the contemporary times “the preservation of the environment, say, fresh air being the relevant common” the intractable problem raised by

liberal paradigm is of individual human psychology. It claims that individual human psychology when it acts most rationally it undermines the collective which is needed to run the collective also known as multi-person prisoner's dilemma. Therefore a collective is a process in which an individual pay the cost of contributing resources and the benefit is shared between all the members of the collective.

The argument against this theorisation is if in case an individual is not paying any cost despite that s/he will receive the complete benefits and the cost of his not-doing too will be shared among all the members of the collective. So in this process if everyone is doing his work what every individual is suppose to finish than finally everyone is on the gaining side. But the problem arises from the fact that the individual member is in “epistemic dark” whether others are contributing or not or whether they are doing which they are capable of, then the person doing her work will be in dilemma that whether his/her contribution is going to waste? In the liberal framework of political thought there is one more, most pervasive, understanding that what if one of the individuals decides not to cooperate or not do her/his work will still be in advantageous position. So non-cooperation or not doing is the ‘rational’ thing for the individual not the other way round. Further the cooperation will be doomed if each individual start doing it - the individual rational thing. And therefore the collective will fail. Therefore it is tragedy of the commons. Therefore they conclude that privatisation is a process of more surety and efficient.

The argument further made is that tragedy of the commons is not an argument for ‘privatisation’ of the land of commons but to ‘regulate’ the land. But Bilgrami strongly argued against the “tinkering solutions” like regulation and policing. According to

Bilgrami these arguments are vulnerable to the same strategy of the arguments that generated tragedy of the commons. To counter this argument Bilgrami made even more elaborated and fundamental criticism of way of thinking in liberal doctrine than the argument he was making initially. Initially, by invoking Gandhi and Marx he developed a resistance to claims about the historical necessity of capitalism in all contexts.

Liberty and Equality- irresoluble tension

Bilgrami argued that liberal political theory in one respect a ‘perverse historical trajectory’ From the very beginning of the emergence of the ideals of liberty and equality the theorisation has put these two important principles against an indissoluble tension with one another.¹³⁸

The cold war rhetoric with one side claiming to pursue liberty but damned by other as pursuing it at the cost of equality, and vice versa by the other side, is only the crudest and most publicly familiar symptom of this perverse development.

What generated this tension between the two most important ideals Liberty and Equality? The faultline according to Bilgrami lays in certain features of Liberty. The most important feature of liberty is bestowing individuals with possession of *private property*. *This very feature put liberty at structural difference with equality*. According to Bilgrami this argument is very well analysed by Marx.

Another feature of liberty which is taken for granted by everyone not just social theorist is “incentivisation of talent” according to Bilgrami.

¹³⁸ Akeel Bilgrami, *Social Scientist*, 2012

The contemporary theorist who champions the cause of incentivisation of talent in the contemporary times is Robert Nozick. Robert Nozick in his book *Anarchy, State and Utopia* put forward his main argument- theory of individual entitlement which Bilgrami is broadly calling as incentivisation of talent. The most popular thought- example, given by Nozick on these lines is known as Wilt Chamberlain example. He suggests to imagine a society where distribution of wealth follow a non-entitlement conception-say D1. There is a member of the society called Wilt Chamberlain, a basketball player, who is very popular and draws a lot of fans. He put a condition to his contract that he will only play if each person coming to see the match puts twenty-five cents into a special box, the money in the box will go to chamberlain. This will lead to a new distribution pattern called D2. Now whether D2 is just? Is Chamberlain entitled to his money? For Nozick- an emphatic Yes. For Rawls and Marx, the answer is No. Rawls will ask this huge sum to be used for the least well-off. According to Nozick- no one is doing anything against their will. People are coming by their choice and spending money. Contractors are happy with the proposal since they too are getting more money anyway. Therefore, these voluntary exchanges led to a perfectly valid situation of liberty. Now under Veil of ignorance we all agree to think about the best possible situations for the person at the lowest rung. Nozick is asking a different question from there and asking whether he is entitled to his personal wealth? He found it unjust that state will take the money in the name of equal distribution of the wealth.

Nozick argued that each individual is responsible for her/his entitlement without any interference from the state. For Nozick to form a just society is not the goal of justice theory. One need to start from just situation, a just outcome will follow. For Nozick

justice is procedural meaning by, if you start from just situation and applies the just step on every step than the outcome will be automatically just. With the help of the thought experiment of Wilt Chamberlain Nozick asserted that State has a minimum role to play in individual's contract. Therefore individual in Nozick's theorisation is autonomous and right-based.

For Bilgrami this frame of reference is not just pervasive in the social theorists but in general as well.

In Liberal theory notion of liberty is increasingly been seen as an exercise in 'self-governance'. The notion of desert which is the right to reap the praise and reward for the productions of one's talent, became central to one's exercise of 'self governance'.

After registering the tension between the two most fundamental ideals of liberal thought Bilgrami argued that "there was no way to make the two ideals compatible without changing the meanings of the terms 'liberty' and 'equality' as they are theoretically defined in liberal theory." Bilgrami quote Thomas Kuhn mentioning the term 'mass', the term means something very different for Einstein's physics and different for Newtonian mechanics, therefore Bilgrami asserts that if liberty and equality were ever to be made compatible, this cannot happen by making changes or improving upon the liberal theory.

This will happen only if

By overthrowing it for a theory that was not really a *commensurably* measurable *improvement* on it. It would be a change in meanings, not a change (and improvement) in theory, because a theory t2 about some phenomenon X cannot be an improvement on theory t1 if the meaning of X has changed by the time you arrive at t2. It is best to simply declare that one is shifting to a new framework (paradigm, to use Kuhn's word) and

talking about different things while retaining the same terms for them- liberty and equality.¹³⁹

To complete this project Bilgrami again invoke Marx and Gandhi arguing for an unalienated life. Bilgrami stresses on the recoil of both the thinkers from liberal political thought as a proposal that because of the irresolvable tension between liberty and equality, *remove liberty and equality from the stage on which liberal paradigm has placed them. Instead put an ideal of unalienated life on the centrestage.* He further argues to bring back liberty and equality later but not as the main fundamental ideals but “merely as necessary conditions for this other ideal of an unalienated life”. This will put the ideal of liberty in a fresh way that it cannot be defined in terms which will put it in irresolvable tension with equality.

In his article written in 2012 in *Social Scientist* for the first time Bilgrami tried elaborating his new conception of unalienated life. He argued that the idea of alienation is the idea that nobody is well-off in a group if someone is badly off and Bilgrami asserts vehemently that this idea is not an idea of equality itself but an idea of malaise. An idea-idea of malaise- from which even well off too suffer when there are divisions between well off and badly off. In this paper Bilgrami articulated unalienated life as absence of this malaise.

An Unalienated Life

For a possible definition of an ‘unalienated life’ Bilgrami argued that unalienatedness came with a sense of belonging. This was made possible by the period prior to modernity.

¹³⁹ Akeel Bilgrami, 2014, Marx, Gandhi and Modernity, ed. Capitalism, liberalism and the claims of Historical Necessity, p.171

Further he argues that all social theorists agreed upon that whatever be the defect of societies prior to modernity were, alienation was not one of the defects. But the same set of intellectuals do agree that “*unalienated life of that period was indeed marred by the oppressive defects in those societies framework.*” But to name that defect as ‘feudal’ is not acceptable to Bilgrami. He argues that the term feudal is vastly summarising and somewhat misleading. Bilgrami argues that it was precisely to directly address these defects against which people embraced the liberal ideals of equality and liberty.

Bilgrami further argues:

since the methodological and theoretical framework within which those two concepts were then developed made it impossible to so much as conceive how they could be jointly implemented, we should no longer see them as something to be *directly* deployed, but rather as indirectly deployed- merely as necessary conditions for the achievement of a quite different (directly deployed) ideal- thereby transforming the concepts of liberty and equality.¹⁴⁰

Now if the ideal of an unalienated life is to be materialised, and also the ideals of liberal theorisation liberty and equality, then it is bound to be very different from the unalienated life which was existing prior to modernity. Because the unalienated life existing prior to modernity was lacking in precisely liberty and equality. Therefore given the “rudimentary conceptual dialectic” what Bilgrami pointed is a new framework which will solve three things at once - a transformed notion of Liberty and Equality, and “a transformed notion of unalienated life” So this will be conceived as a ‘holistically triangular transformation- we overcome a certain conceptual- historical dialectic and in doing so together and at once, transform all three concepts that feature in the dialectic.’”

¹⁴⁰ Ibid p. 172-173

Conceiving Individual liberty in Non-Individualistic Terms:

Bilgrami after the “triangulated bootstrapping transformation” of liberty, equality and unalienated life argues “what can be retained of the general idea of social ‘belonging’ of an earlier time in any revision of the idea of an unalienated life of our own time?” Let's understand the argument in two divisions: First, the social belonging of an earlier time was marred by the defects of a lack of liberty and equality. Secondly, attempts to overcome those defects were in turn marred by the fact that liberty and equality was formulated in a framework in which a) highly individualised notion of individual liberty attached to property and b) talent made for liberty's conceptual “incoherence with equality”. This is the most basic shortcoming of liberalism that came after enlightenment. Therefore Bilgrami concludes, given this dialectics, that the triangulated transformation of all the three notions have to find the its “initial roots” in “individual liberty being conceived of in collective or non-individualistic terms.” this notion according to Bilgrami is one of the most important defining feature of unalienated life. Now, Bilgrami onto his project to redefine liberty, explained liberty in it's most intuitive sense as the idea of self-governance, “the power to make the decisions that shape the material and spiritual aspects of our lives” therefore to transform the way of seeing liberty the idea of liberty has to envisage each individual to approach decisions not primarily with her own interest in minds but the interest of everyone in society. furthermore, Bilgrami himself critic the argument calling it as “critique of self-interest”.

Moreover, since till now he is developing a critique of tragedy of the commons which uphold individual rationality conceived as individual self-interest, therefore to just suggest that liberty should not be seen as self interest makes no interesting argument. But Bilgrami further elaborates the argument that individual self governance is always been seen as in individualistic terms. And collective governance is seen in non-individualistic terms. What Bilgrami is trying to construct is individual self governance in non-individualistic terms.

Conclusion: Phenomenological Perception of the World:

Bilgrami criticised Hume and Adam Smith who argued that values are reducible to our desires and moral sentiments. According to Bilgrami both natural and social world presents a normative demand to which our agency responds. He argues that norms and values are not subjectively generated “howsoever we wish from our individual subjectivities” a position upheld by Hume and Smith. As I have argued in chapter one as well while discussing Hume that Hume and Adam Smith described values as reducible to our desires and moral sentiments. And Utilitarian school of thought pushed their idea with their notion of subjective utilities.

The right view of values puts them *in the world* as properties that make normative demands on us. So the situation is quite the opposite of Hume and Adam Smith’s suggestion that values are projections of our desires and moral sentiments on to the world. Rather, our desires and preferences and moral sentiments are responses to value properties in the world. When one is asked, “Do you desire X?”, we don’t answer by

scanning our interiors to see whether we have the desire for X. We consider the desirability (the Value) of X.¹⁴¹

Bilgrami further explains this argument by drawing an analogy that if someone asks us - “Do you believe that it is raining?” than we don’t think like - let me check if my mind contain the belief that it is raining. We all will just look outside and check whether it is raining or not. Therefore Bilgrami suggests that what is true of our belief is also true for our desires and values. Therefore the normative demands “coming from the world” are equally perceptible as rain.

The phenomenological point therefore is, that one has to see the world right, to see, to understand what are the exact normative demands coming from the world. Therefore to be unalienated, according to Bilgrami is ‘for our agency to be in responsive sync with these perceptually presented normative demands coming from the world as we apprehend it’. This is how to be at home in world. To be sensitive towards the normative demands world make on us. We need to see the demands of the world not just our subjective desires. For Hume and Adam smith individual interests and desires are primary, whereas Bilgrami is asking to view normative demands of the world beyond this orientation.

Bilgrami draws a physical analogy of a car which he extrapolated on social- “How when one drives a car, we orient ourselves perceptually to the demands of the road ahead not from the point of view of one’s own individual body but from the point of view something larger than one’s individual body, that of the *whole car*” This orientation when it get extrapolated from the physical example of car to the “social” provides an important insight. The insight is- even though the one who is involved is the agency and mentality

¹⁴¹ Ibid p. 174

of an individual but because the agency have a freedom/liberty to perceive or agentively respond from a different point of view i.e. from the point of view of something larger.

Bilgrami argues:

“Even though it may involve the mentality and agency of individuals, because they each exercise their *liberty* in perceiving and agentively responding from the point of view something larger, the social or collective orientation of each individual to the world (seeing the world’s demands from the point of view of the interests of the collective) is bound to internally cohere with equality in it's outcomes. For equality would on this picture not be seen as something extra or further that is conceptually configured as something to be navigated in terms of a trade-off with liberty, but rather as built into the deliverances of the exercise of liberty itself, when the exercise of liberty is the exercise of a mentality in this form of unalienated agentive responsiveness to the normative demands of the ‘world’ ”

Therefore Bilgrami triangulated liberty, equality and unalienated life in a way together that the outcome is a different notion of unalienated life which is not the same as pre-modernity with it's absence of liberty and equality. Moreover, this framework also gives a notion of liberty which will not generate inequality in the same way as produced by post-enlightenment notion of liberty which attaches importance to talent and property, since this idea of liberty is not conceived in individualistic terms. Therefore in this fresh framework it is not possible to argue for a logic like tragedy of commons. The main argument raised in the tragedy of the commons- Would my efforts and contributions to the collective cultivation be wasted if others don’t also contribute?- will got alienated itself, Bilgrami claims. In this framework the idea is not to accept the argument and then

try regulating it with tinkering solutions like policing or punishment rather there is a fundamental critique of the thinking itself.

To further clear his point Bilgrami mentions an anecdote:

of an experience with my father in my pre-teen youth. He would sometimes ask that I go for walks with him in the early morning on the beach called 'Cuffe parade' near our home in Bombay. One day while walking we came across a wallet with some rupees sticking out of it. My father stopped me and said somewhat dramatically, 'Akeel, Why shouldn't we take it?' And I said, what is surely a classic response, 'Because if we don't take it, somebody else will.' I expected a denunciation, but his irritation passed and he said with a look of magnificence on his face: 'If we don't take it, nobody else will.' I thought this remark had no logic to it and it was designed to summarily end the conversation.

Furthermore, Bilgrami suggests after almost a decade later he realised that if we rightly see the world's normative demands on us then we can simply assume that everyone too will do the same. So the point he is making is, if we are in an unalienated framework of thinking in which people's phenomenological way of thinking is in away where people believe that everyone else must be doing her work than such questions won't arise at all. Since we are alienated and therefore not seeing the world rightly i.e. not seeing the world in non-individualistic terms therefore questions like multi-person prisoner's dilemma arise.

Bilgrami concludingly argued that to identify the trouble with the way of thinking that generates the problems like tragedy of the commons is to take the wrong thing to be the basis of action of our "social life". To simply his point Bilgrami points out what Wittgenstein is suggesting in an individual case and than extrapolate it to social.

Wittgenstein suggested that -

the right way to think of intentional action is to first think of the idea of the physical movement of one's arm and then it is transformed to a waving to a friend by the fact of the intention of the agent.¹⁴²

Wittgenstein suggests that in this problem the only fact is that it is only waving to a friend. We should consider just this one act as basic and nothing else. Therefore

To think that there is something which is prior and more basic, which is that there is a physical event, the arm moving, with an extra non-basic mental element of an intention added to it that transforms it to a waving, is to identify the wrong thing as basic. What is basic is just simply and irreducibly, the waving to a friend.¹⁴³

Wittgenstein was arguing for individual's intentionality and to analyse the right way to identify the basic from which it is emerging. Bilgrami brings a creative addition to the point Wittgenstein is making. He extended this point of individual intentionality to social. Which means shifting the individual aspect to the social aspects of an individual's mentality than it will lead to conceptualise the socially basic individual action.

Therefore Bilgrami responds to the proponents of the argument of tragedy of the commons as people having qualms that one's contribution to the collective might be wasted if others don't contribute is similar to the argument that one's arm is having qualms about one's waving, in Wittgenstein's example. So the problem is to identify the basic problem correctly.

Therefore, Bilgrami concludes with making a proper case against the contractualists understanding via multi persons prisoner's dilemma through tragedy of commons argument which snatches away the political agency of non-western nations claiming

¹⁴² Akeel Bilgrami, *Marx, Gandhi and Modernity*, ed. Tulika Books, 2014, p. 176

¹⁴³ *Ibid*, P. 176

historical necessity of a privatised capital. Overall, Bilgrami is critiquing liberal economic and political point of view from Locke's contractualism to his resonance in contemporary times, upholding the political agency of emerging nations. Here a point of further research remain why a tradition of political philosophy theoretically frame it's two chief ideals in a way that they are pitted against each other. Though Akeel Bilgrami is fundamentally critiquing Liberal paradigm but this very fact opens an interesting possibility of a comparative study of his "unalienated life" with Amartya Sen's assertion of 'justice here and now' and "futility" of perfect theorization of philosophy of justice to improve people's lives.

Contesting Bilgrami through Ambedkarite Lens:

Bilgrami on primacy of Caste or Class:

Akeel Bilgrami quoted Edward Said- "A single overmastering identity [...] is a confinement, a deprivation." (2001, p. 403)" and suggested that Edward Said is making a claim about nature of identities. That we all have plural, multiple identities and to remained stick to one particular identity will amounts to "confinement" of the self. Bilgrami remarked:

But what of Said's specific point about the nature of identity politics in his second remark—the idea that a single identity confines us? What the remark implies is that we have multiple identities and it then goes on to claim that it is narrowing to single out any one of these. This is a point that since Said, Amartya Sen has made much of in his recent book *Identity and Violence: The Illusion of Destiny* (2006).¹⁴⁴

¹⁴⁴ <http://journeyofideasacross.hkw.de/between-places-al-muthanna-and-undermining-dichotomies/akeel-bilgrami.html>

Bilgrami along with Said contested Amartya Sen as well. Bilgrami argues, whether caste, race or gender, all identities have argued that liberal paradigm is ‘complacent’ towards such identities which have faced historical discrimination. These historical atrocities needs to be corrected for a more gender-just, casteless, raceless society. Bilgrami further argues that it is not just liberalism that is being charged for such neglects of identity questions but left as well has been accused for the same albeit for a different stance. The difference between left and liberal neglect of identity question is that liberalism is charged for formulating a general universalism which doesn’t caters to the specific needs of the marginal groups, whereas left is charged for asserting class identity over all other identities. Since left is stressing class identity it amounts to same neglect which other identities face due to liberal generalisation.

Bilgrami argues further that it is perfectly fine to stick to a particular identity if that leads to a more just-society but he also stresses the fact that he “don’t doubt that the Left of an earlier period was insensitive in its theoretical formulations to these other forms of disrespect in its stress on the more fundamental nature of class over other identities.” If this is the case, then the obvious question is if left is not insensitive to other identity groups then what is the reasoning behind sticking and stressing one particular identity of class? Because Bilgrami believes that left analysis of considering class as the most fundamental category then any other categories like gender, caste or race.

Bilgrami argues,

The more fundamental nature of class in our societies can be revealed by formulating a very plausible counterfactual hypothesis. Let us observe first that identity politics has made many corrections on behalf of subjugated groups defined upon race (as in civil

rights in the United States), women (as in women's rights gained in many parts of the world), and caste (as in India in the last few decades). These gains are by no means complete but they are measurable. Now, about these gains, it is reasonable to say this by way of a counterfactual: *If such gains that have been made in the areas of race, gender, and caste politics had undermined capital and the corporate domination of the political economies in the societies in which the gains were made, then they would never have been allowed.* That is to say, if counter to fact, the gains had undermined the class relations around capital, then such gains would have been prevented from happening. Or to put it differently, the gains were only allowed because they did not undermine class relations. This, if true, is as close as we are going to get to proof that the Left is quite right in stressing class as the more fundamental identity in our kind of modern society.¹⁴⁵

Therefore Bilgrami takes a classical left position and stresses the primacy of the class over other identities. His reasoning is if other identity struggles are gaining ground it is because they are not assertive enough to hamper class relations around capital.¹⁴⁶ Now it's interesting to see an Ambedkarite response to the class-caste dichotomy.

Caste is an enclosed Class: An Ambedkarite Response

Bhim Rao Ambedkar in 1916 in his writings *Castes in India* asserted that “a caste is an enclosed class.” Anand Teltumbde argues that these two words divided the working class movement in india into two camps "movements oriented towards class struggle and movements oriented to deal with castes"¹⁴⁷ leading to eventual marginalisation of both.

¹⁴⁵ <http://journeyofideasacross.hkw.de/between-places-al-muthanna-and-undermining-dichotomies/akeel-bilgrami.html>

¹⁴⁶ To clarify his position Bilgrami proposes another counterfactual. He suggested- “What if feminists were to propose the following hypothesis in mimicry of the counterfactual I have just asserted: *If it turns out that in our societies the inequalities of class that exist are substantially overcome and these gains on the class front had the effect of undermining patriarchy, then these gains would never be allowed.*” Bilgrami argues that he is not sure whether this other conjecture will make any sense. That's why he is more confident of his position.

¹⁴⁷ Anand Teltumbde, *Dichotomisation of Caste and Class*, EPW, Vol. 51, Issue No. 47, 19 Nov, 2016

Teltumbde argues that caste movements got largely co-opted by the ruling class and class movement in India did take some “patchy actions” but largely remained theoretically and morally deficient. Teltumbde’s central argument is that the binary of class and caste was a blunder emerging due to the dominance of Brahminic early communists who took the metaphor of base and superstructure as “scriptural dictum.” Teltumbde argues, all ancient societies had ‘stratified social structure’ similar to India’s chaturvarna system like “the *Burakumins* in Japan, the *Osu* in Nigeria, the *Baekjeong* in pre colonial Korea.”¹⁴⁸ But even all these systems were not as long lasting with religious support as does Indian chaturvarna system. Caste system survived many historical changes like feudalism, colonialism, capitalism and still continuing. Caste system also changed with the passing time in fact “the resilience of the Indian caste system can be explained by its adaptability, its self-organising as well as self-regulating character.” The life-world of caste got his first jolt from Buddhism, followed with rise of Muslim society and majorly after the coming of Britishers. Britishers brought modernisation, urbanisation and industrialisation to the Brahmin dominated caste lifeworld. Now caste perpetuation is not merely religious-ritual based but “sustained by politics and economics” which turn out to be even more detrimental.

Class on the other hand is a central concept in Marxism. Marx and Engels themselves didn’t define the term, rather kept evolving their position as per the context. Initially Marx said that capitalist society has only two classes- capitalist and proletariat later he also proposed third class of landowners. Later on he suggested categories like petty bourgeoisie, peasants and farm labourers. Therefore Teltumbde argued that for Marx

¹⁴⁸ Ibid.

himself the category class was not a static category rather an evolving one. Teltumbde also suggested that Nikolai Bukharin attempted to define caste and class.

A class, he explained, is a category of persons united by a common role in the production process, whereas a social caste is a group of persons united by their common position in the juristic or legal order of society. He explained, landlords are a class; the nobility are a caste. Economically speaking, this noble may be impoverished; he may barely vegetate; he may be a slum-dweller; but his station remains that of a noble.⁷ Although, written in the European context, this is broadly applicable to India too. A noble might be poor, living in a slum, but he would still command his birth privileges as do the Brahmins in India.¹⁴⁹

But while defining the Marxist position on caste Teltumbde unlines an important shift that the debate is not between difference between caste and class but how to think around class when the lifeworld of the people is caste discourse. For Marxist-leninist¹⁵⁰ in India the definition of class is defined by *objective reality*, but if that is the case then the obvious question any thinker including Teltumbde is asking is- the objective reality of India is caste stratification. Isn't it?

Therefore going by this definition he argues that in the indian context caste are the class.

This assertion comes closer to Ambedkar's assertion that caste is an enclosed class.¹⁵¹

¹⁴⁹ Ibid.

¹⁵⁰ Teltumbde also ponders upon what Lenin himself described class as "Classes are large groups of people differing from each other by the place they occupy in a historically-determined system of social production, by their relation (in most cases fixed and formulated by law) to the means of production, by their role in the social organisation of labour, and, consequently, by the dimensions of the share of social wealth of which they dispose and their mode of acquiring it." To which he suggests that this definition summarises the essence of the marxist discourse over caste.

¹⁵¹ The communist movement in India came in direct conflict with Dalit movement led by Ambedkar. Because the Dalits in the class struggle found the notion of class struggle pretty vague in comparison to the caste discrimination they were facing everyday. The communist theorised Ambedkar's attempt as futile as "the superstructure of castes would not change without the economic base changing through revolution." Dalits took this attitude of the communist leaders as no different from the Brahmins and

Further, Teltumbde argues, there is a little problem in this argument as well. The logic which divided Dalits and non-Dalits is also applicable within the Dalit caste further. Moreover, Teltumbde further suggests “the proletariat would include most of the Shudras and Dalits, but they would not be automatically a class until the caste contradiction between them is eradicated. Therefore, the process of class formation should have embedded the anti-caste struggles.” Therefore class struggle in India essentially has to be a caste-struggle.

Towards an Organic Indian Theory of Justice: Moving ‘Downward’ not ‘Backward’:

Political theory is built on the foundations of lived practices and thinking of the people argues Aakash Singh Rathore. People may not be able to understand the theory but they should be able find some affinities with the theory and their day to day life. He asserts that In India we are working with categories “alien to the lived social and political experience” of the native.¹⁵² He further claims that any indian political theory without having it's focus on Dalit liberation is like having “liberty without equality.” He clarifies that he is not supporting any attempt of ‘indigenizing’ Indian political thought. Which means he is not for invoking merely past glories. This is not going to help in building a organic indian political theory. He suggests that any true Indian political theory, which he

factually speaking, most of the communist leaders were coming from upper caste only. Which strengthened the disbelief of Dalits towards communists.

¹⁵² http://icpr.in/Seminaar/Dalit%20theory_aakash%20singh%20rathore.pdf, p. 1

calls Dalit svaraj¹⁵³, should follow the direction followed by Ambedkarite political practice which is not going ‘backward’ but ‘downward’.¹⁵⁴

Ambedkar faced a ‘double-bind’ in his struggle for emancipation, Dalits were included in Hindu fold but were ‘excluded within’ and with the achievement of independence Ambedkar feared that they will be ‘included out’. Ambedkar understanding this dilemma well argued for government of the people and by the people which means Dalits being one fifth of the population will have a part of political sovereignty. That’s why Ambedkar made clear that “Dalits must own and address their grievances’ which means the struggle for their emancipation will not be done ‘for them but by them’. Therefore Ambedkar faced a double bind that to empower Dalit is to seek independence, to seek true independence is to empower Dalits. Gandhi understood his dilemma pretty well and it finally lead to signing of poona pact.¹⁵⁵

¹⁵³ Dalit Svaraj: The usage of the term Dalit-svaraj appears against the very argument Aakash is making. He keep arguing in favour of recognizing the differences between Gandhi and Ambedkar but this usage seems ‘surreptitious reconciliation by other means’. To which he replies that the emergence of the term is from the writings of Ambedkar himself, coming for 215 times in his writing corpus, not a mere academic invention by Aakash.

¹⁵⁴ Aakash suggests that if Indian were slaves under British than Dalits were slaves of slaves. Therefore Dalits were doubly oppressed. But Ambedkar faced the ground level tension between aiming for nation’s independence or for liberation of Dalits or ‘depressed classes’. But now it is important to focus on the Ambedkar’s quest as the context of independence struggle is over.

¹⁵⁵ Gandhi advised Ambedkar three methods to answer the double-bind “There are three courses open to these down-trodden members of the nation. [1] They may call in the assistance of the slave-owning Government. They will get it, but they will fall from the frying pan into the fire. Today they are slaves of slaves....They will be used for suppressing their kith and kin. Instead of being sinned against, they will themselves be the sinners.... [2] The second is rejection of Hinduism and wholesale conversion.... [3] Then,...self-help and self-dependence, with such aid as the non-Panchama Hindus will render....The better way...is for the Panchamas heartily to join the great national movement that is now going on for throwing off the slavery of the present Government.”

Question of Agency:

The question of agency for both Ambedkar and Gandhi reeks of both class and caste biases. For Gandhi agency is an attribution of caste Hindus. In his opinion caste Hindus should do penance for their bad deeds of practicing untouchability. This is a paternalistic argument as by this logic you are not giving agency to Dalits to stand for themselves rather you believe they can't do anything at their own. It's only the caste Hindus who can do something for the emancipation of the Dalits. That's why they need to undergo penance and then carry forward the task of working for Dalits. Whereas for Ambedkar the Dalits were not supposed to depend on the benevolence of the caste Hindus but they themselves should develop the capability to fight for their own emancipation. That's why in comparison to Gandhi Ambedkar's imagination of agency is more democratic and wide. Ambedkar asserted that Dalits have to fight for themselves otherwise "Swaraj will not be government by the people, but...government...by the governing class;...and government for the people will be what the governing class will chose to make of it."¹⁵⁶ Ambedkar contested congress project to "protect" the depressed classes as a paternalistic project not an understanding towards the dignity and honour of Dalits. Ambedkar asserted: "Not bread but honour, is what they want. That can happen only when the governing classes disappear and cease to have control over their destiny."¹⁵⁷

¹⁵⁶ Ibid. 11

¹⁵⁷ Ibid.12

Ambedkar : Philosophy's Pariah

Aakash S. Rathore questions the casteist attitude of the upper caste dominated academia citing Akeel Bilgrami's profound article *Gandhi as Philosopher*.

Bilgrami suggested that Gandhi's political strategies were so integrated with abstract epistemological and methodological commitments that his thought took on the quality of *bonafide* philosophy, albeit not, obviously, academic philosophy. Bilgrami's efforts met with seemingly universal approbation. There has been no shortage of torch-bearers on the topic, an endless schedule of seminars devoted to reading Gandhi as a philosopher, and numerous research theses and doctoral dissertations composed on Gandhi's thought within academic philosophy programs both in Indian universities and abroad.¹⁵⁸

Aakash argued that whereas it turn out to be very difficult to introduce Ambedkar in philosophy curriculum on the other hand, Gandhi, who was “not just not an academic *philosopher*, he was not even an *academic*” became the centre of discussion in Indian political philosophy. Which is fine. No one is denying Gandhi¹⁵⁹ of his philosophical place but the absence of Ambedkar is intriguing when these two are not just two individuals but embodiment of two streams of thought in contemporary political philosophy in india. Aakash alleges that “in the guise of protecting the integrity of their discipline, academic philosophers in India are practicing social exclusion.”¹⁶⁰

¹⁵⁸ https://www.huffingtonpost.in/aakash-singh-rathore/indian-academias-shunning-of-ambedkar-the-philosopher-reeks-of_a_22025150/

¹⁵⁹ In the backdrop of the most classical Gandhi-Ambedkar debate Aakash argues that there is a Continuous attempt to reconcile the differences between Gandhi and Ambedkar. After examining Thomas Pantham's homogenizing, Ramchandra Guha's historicizing and Partha Chatterjee's dialectical reconciliation Aakash concluded that such attempt are principally false and in practice have the risk of appropriation of Ambedkar by upper caste intellectuals. Therefore he concludes that instead of reconciling the differences between the two, the approach should be to preserve their differences.

¹⁶⁰ To empirically justify his point Aakash gives a statistical evidence. ICPR till april 2017 has published 130 books, none on Ambedkar's social or political idea. In one of the leading philosophy journal Indian

CONCLUSION

Justice is a kind of plural phenomenon. It's not singular therefore there is no singular strategy or singular perspective by which justice can be ensured. Therefore it must be necessarily plural and open-ended. This argument is given by Sen in terms of global paradigm for justice. But the global paradigm will not be able to address the question of justice unless the local issue is equally or laterally connected with it. Therefore a global framework of justice must address the issues of caste inequalities, as it obtains in India for example.

There are multiple other inequalities that arise out of differences at social, political and the cultural level. So the question of difference of identity, difference of social position and all kinds of difference need to be addressed in a theory of justice. Whether a theory of justice addresses the question of difference or not should be a major question for testing that kind of theory of justice. How difference can be addressed should be the question of justice. The answer to my mind is that difference is positional so you can see the positional difference and positional difference will clearly characterize the kind of claims of justice that are made from a certain position. So position and the claims have to be weighed in the light of equality with others and it has to really create a different framework of liberty and equality based on an idea of difference and that will be a proper framework of justice. So, the difference becomes the key mover of the concept of justice without which justice cannot be secured.

By difference I mean difference in terms of social difference which is caste difference, difference between one community and another, the cultural difference, the political difference, difference which is articulated and not so articulated. So all forms of difference which remained germane in a plural democratic society for ex. India. So how difference could be accommodated within a broader framework of justice by bringing together the global and local. This framework takes care of individual subjectivist, subjective well-being of communities and also the political claims made by political claims of justice.

According to Charles Taylor such differences should be based on a proper rational notions of the community. It must be based on rationality of justifying each of the identity. Such justification must arise from the rise of the community itself. One cannot give an external justification. So an internalist understanding of justification provides a certain sense of belonging to the community and this sense of belonging includes also the kind of redistributive justice but when the question of difference between one community A and another community B comes in, internal justification provided for each of the community's belonging and their access to resources are going to be very difference. Because it is going to be different their claims, politics of claims, somebody will claim a greater share, someone will claim more than someone else. And someone may not be able to make any claim at all. Therefore there will be all kinds of epistemic surpluses and epistemic deficiencies. Justice has to take into account this epistemic fallout of the very politics of difference.

I also believe that one should further look into a care paradigm of justice. How care be individuated, care can be socialised, care can be gender based, care can be class based.

There is a need to develop a graded notion of care as a basic ingredient to the theory of justice. This attempt is to look at the paradigm of care which is broader than the feminist notion of care. Make it more inclusive and also to specifically address the question of difference.

The idea of recognising difference as the key to justice is also an attempt to suggest that let us decide what is just for us. Someone else on our behalf should not define what is just and how we should lead a just-life. Because with the change in location, changes the narration, the perspective to look at the same thing. This remained the central argument in much of the work on and around theories of justice. Global south asserting itself against eurocentric notions of justice, suggesting that let the third world decide its own interest. In India for example Dalits and Adivasis asserting for the same against the Brahmanical hegemony. Therefore the idea of recognising and appreciating differences should be the basis for developing an understanding of justice.

Theory and practice

In my thesis I have also attempted to judge both the thinkers on the parameters of theory and practice. I believe that Theory must inform the practice and practice too must inform the theory. Our research should be informed through practice. If that is the central consideration then we are trying to develop a justice theory which is grounded in everyday lifeworld of people. The intellectuals imagining a just society through contractarian device or any other method consider the everyday experience of individual on ground. Otherwise the entire attempt to be creative will fall apart. One cannot simply assume certain final goal and keep struggling to get them implemented as it's only in the

practice of day to day life we imagine and reimagine the end goals as well. This thesis is an attempt to bring the real life experience of people in philosophical methodology itself. While using the term methodology I am fully cautious that debate over practice should not amount to debate on methodology which will amount to debate over theory about theory. In my understanding the theory of justice must be oriented towards a theory of praxis. In terms of praxis of justice, justice is redistributive, recognitional and also it takes into account the idea of difference, it establishes relationship with secular democratic norms or the normative structure in which praxis works.

Engaging with Sen and Bilgrami

This thesis attempts to engage with the idea of justice beyond the dominant distributive framework.

I tried to engage with concepts like capability approach, recognition, participation along with distribution to develop a holistic approach to justice. The literature around justice is dominated by distributive framework of justice, I attempted to explore other concepts of justice and also engaging with their limitations. Amartya Sen and Nussbaum both tried to go beyond the distribution of social goods as understanding of justice in the Rawlsian framework whereas Bilgrami is contesting the whole enlightenment paradigm itself. Whether it is Fraser or Young or Ambedkar everyone is engaging to develop a holistic understanding without dismissing the distributive aspect. These engagements can be said more grounded because they are the critiques which are surfacing out of injustice on ground instead of some imaginary, ahistorical social contract. Amartya Sen has very successfully shift the emphasis from traditional indicators of justice to agency. The

question is no longer what amount of goods we are getting but what we will do with those goods and what those goods bring to us.

Amartya Sen argued that real justice lies in the people's ability to have opportunity to choose from among the combinations of functionings. Therefore for Sen the criteria to understand just-life is not how much one is having but whether an individual is able to lead a life which she wishes to lead. But the question to Sen is how to decide what capabilities are they? How much and to what extent? There is a lot of uncertainty in this formulation. To which Sen suggest that this can be sort out through public reasoning. But I will contest Sen on this count as public reasoning has one major lacuna which is that the term public carries with itself the idea of majority. There is no way one can ensure that public reasoning is not the dominant reasoning. It's not necessary that public deliberation or public reasoning will take us to the best scenario. It can definitely lead us to the popular opinion but popular doesn't mean it is always just. When Nussbaum tried to develop and concretised the list for defining capability approach Amartya Sen distanced himself from it suggesting that the list can't emanate from theory, it must have an organic development through public participation. The important underlying factor in Sen's approach is that he again established that distributive paradigm should not be the only paradigm and there is a need to elaborate the notion of justice. Therefore capability theory not only takes care of the economic aspect of the justice theory also the cultural aspect of the people's life.

Akeel Bilgrami is also stretching the framework of theory of justice by asserting that the approach which is considered historical and necessary for the third world countries in the contemporary scholarship of west is certainly not a natural trajectory to be followed. A

similar attempt can be seen in Amartya Sen when he liberally picks examples from classical Indian philosophy like *niti* and *nyaya* and suggested that the formulations which have a universal claim are not originating solely from west but there are fair evidences of the same in other non western civilizations as well. So one can safely assume that both the thinkers are challenging the eurocentric approach of visualising a just society. But I feel that there is a fair amount of work left despite the efforts of both Sen and Bilgrami to push democratisation in their own approach. Therefore their critique is not necessarily to contest them but to enrich the approach they have adopted. Here it is important to mention the Ambedkarite struggle for annihilation of caste. Sen's central focus being poverty and Bilgrami's over emphasis on the class as the basic category underlines the need of more voices from marginal experiences to be inducted while imagining a just society. Here comes the debate of representation as well within the distributive framework. That's why the current paradigm of distributive justice need to be supplemented with the voices of capability, representation, participation, functionings, recognition and cognition.

If we go by the most general understanding of political philosophy we can bifurcate the world into two major camps. One which uphold equality and another which upholds liberty. For Akeel Bilgrami point is not to take side or to argue which one is better than other. For Bilgrami he is more interested to understand the origin of the two concepts and under what circumstances they got articulated in a way which put them against one another. Therefore Bilgrami will suggest that we need to change the very method of looking at the problem. We have to develop a newer language to understand the situation we are dealing with. We need to understand the historical circumstances and what the

trajectory of the development of each stage and attempt to make necessary corrections at every stage to first reach at the right premise theoretically and then try to extrapolate the same on social life. This approach adopted by Bilgrami is an attempt to answer the queries of alienated modern individual leading a alienated social life. This is the same problem which Sen is engaging with while contesting utilitarianism. Sen suggests that an alienated individual may appear content with his so called real life situation. An individual leading a very deprived life may simply accept the hardships and learn to live with them without much noise or a desire to get better. In fact years of deprivation, alienation rather made them believe that this is the reality of the life and they start believing it, suggests Sen. Therefore if utilitarian method is followed, it will lead to a false conclusion. It may suggest that person is happy because utilitarians school has no method of measuring the deprived, alienated life an individual may be in.

Imagining human subjectivity in non-individualistic terms

Akeel Bilgrami attempts to reimagine individual human subjectivity in non-individualistic terms and to contest social alienation. Bilgrami's project is to contest the very basics of liberal idea of imagining a just-society. Bilgrami adopting a historical methodology goes back to enlightenment and contested the very framework which put the most cherished sloganised ideals of liberty and equality at loggerheads with each other.

Bilgrami points out the the major problem with theorizing which produces such tension is linking of notion of property to notion of personal liberty and providing legitimacy to it by making it law of the land. Second important feature he points out is 'incentivisation of

talent'. Considering it natural to get praised for individual talents and not seeing as a symptom of zeitgeist in an embodied form. Because we consider this an infringement of individual's right for not able to get the due benefits accruing out of her talents. Bilgrami in his attempt to correct this fundamental lacuna introduces his idea of unalienated life as the most fundamental concept, which he means that it is most basic to our most ordinary experience. Bilgrami point out that unalienatedness is a feature where there is a sense of belonging. But it was possible only before modernity. Modernity bought alienation as well. And the sloganised ideals of liberty and equality were trying to rectify. But the way these two were imagined it made it difficult to imagine the two as complementary. Here Bilgrami attempts to triangularly transform the problems in pre and post enlightenment.

Transcendental Bilgrami and everydayness of Sen

When Bilgrami is making an argument that it's only class which should be basic to our understanding of resistance because it's only class which is a serious threat to capitalism other struggles like caste, gender or race are not posing any fundamental contestation to capitalism there is a fallacy of emphasis. He is considering capitalism as the only and the basic structure of exploitation. There is certainly a link between capitalism, patriarchy etc. but these can be independent structure of power and can also be enmeshed. And more often they are not enmeshed. Sen argues that instead of looking, waiting and spending time in formulating a final grand theory of justice isn't it the act of acting on day to day injustices is also an act on the direction of espousing justice. Sen argues that isn't solving these day to day injustices will help in espousing the cause of justice only instead of simply waiting for a perfectly just societal arrangement to come and finally rescue the world from all the injustices as suggested by transcendental theorisation of justice. This is

the similar logic which Bilgrami asserts that the real struggle is to fight against capitalism and that's why class is the basic category. Isn't the struggle against caste, against gender discrimination, against racial discrimination is also an attempt towards fighting capitalism?

One can concludingly suggest that Bilgrami is not taking in account the ramifications of capitalism, which is the social order that arises out of it. The experience of inequality in the social order and inequality flowing from capitalism are two different issues altogether. The way in which inequality manifests in the social order poses questions of gender, tribal and caste.

Contesting Sen: contesting plurality

Amartya Sen argues for plurality of identity. He suggests that individual operates with different identities simultaneously and it is contextual what identity they will invoke at what time. Sen is in favour of providing people an opportunity to look at all other alternatives and should have a choice what they want to do, stay back in the same identity or to choose and invoke a different one. He argues that this is possible through public reasoning providing a reasonable choice. I am contesting this over simplification, liberal understanding of identity by invoking Fanon and Ambedkar. For a philosopher like Fanon racism occupies the mind of the oppressed which affects the psychology of the oppressed. This leads to alienation of the oppressed from both the society and their body. This argument is clearly applicable in Indian context and invoked by Ambedkar as well. Fanon further argues that Blacks start looking for recognition among the white people by

wearing a white masks, the way in India the process of sanskritization took place. There is an existential challenge faced by Blacks and Dalits.

Therefore whether it is the colonial context of Algeria or the Indian context today, the master is the other, who defines the identity of the colonized slave or Dalits. Here Sen will argue that a black colonised slave/dalit is having many other identities. She is a woman, in say, Algeria/India, pursuing medicine etc. so to just look at her from one single viewpoint is limiting her. But Fanon will argue that it's not a liberal question of political rights or how she is defined in a certain political milieu. It's a deeper struggle with which she is constantly fighting, which is rooted in her inferiority complex, in her blackness created by the white other, in her caste attributed to her by the virtue of her birth. In the Indian context of Dalit question, is it a matter of one of the identity which some one can choose to neglect? For Sen, the answer may be yes to an extent but for Hegel or Fanon it's a deeper question of the formation of self thrust upon the Dalits by virtue of their birth and perpetuated in the Hindu caste varna system. The point which is open for further research is what if instead of feeling denigrated by the 'blackness' thrust upon black colonised slave by white colonists or the casteism thrust upon the Dalits by upper caste Brahmins, the Dalits and Blacks assert the same identity? Instead of associating all kind of bad prejudices with black they start celebrating blackness, black color as a symbol of their resistance, as a symbol of their existence. That in my opinion will be a step forward in the formation of a just-society.

Justice: process or the end goal

An important question while dealing with the notion of justice is how do we look at justice, as an end goal or as a process. In fact even the imagination of the end goal is informed how the process is. The process leads to development of a self which can imagine a totally different end-goal. The way Rawls is imagining the theory of justice, considering the self as given and developing finest non biased principles for them may not lead to desirable goals. Because unless there is a continuous engagement with the process, people may have different experience but may not have the language to articulate it. People may be experiencing some injustice which they can't articulate in the Rawlsian framework. But the final position I will choose to take after carefully analysing both Bilgrami and Sen that Justice could be a process as well as an end goal. It is bound together by very operation of the idea of justice. They are both together. Process and end goal must come together in any articulation of justice. Both are conjoined. One cannot separate another, if we separate them then there is problem of establishing end of justice. And that will be a gap between theory and practice.

Convergence and divergence of Justice

Since the methodology I used in this study is a comparative exercise in conceptual terms. It's a comparison between concepts, arguments and discourse, pertaining to a common theme of political justice, economic justice and social justice. This study is a conceptual, argumentative and discourse related comparison. Therefore I will be articulating the convergence and divergences of justice keeping these two thinkers as representative of two different attempt to look at justice.

Convergence

I will try to articulate the convergence of justice. These convergence are very broad because it is also an attempt to locate the meeting ground of all the other thinkers whom I invoked in my thesis. *Firstly*, though everyone had specific goals of justice, most of them are agreeable to liberal position on justice, justice should be more liberal, neutral, impartial. It doesn't privilege one over the other. Impracticality is one of the major source of justice. And that's a claim everyone converges.

Secondly, on the goals of justice there is a huge conversion among almost all the thinkers. Then comes the question of political part of justice. The conversion in politics of justice lies in creating institutions of justice that can address the questions of injustice and certain other process which creates the situation of injustice. All these thinkers agrees to address the question of justice through institutions. An institutional paradigm of justice works through each of these thinkers, to have an institutional basis of justice. Almost all the thinkers find moral grounds to invoke institutionalism for justice. Sen critiques Rawlsian institutionalism because Sen wants a global framework of justice but not global justice per se. Sen is for institutional reordering in line with well ordered society. But then that well ordered society must be based on the idea of equity, liberty and certain values which are pluralistic and global.

Thirdly, even if somebody disagrees with a particular framework of justice still there is a large amount of convergence in terms of understanding justice as a democratic goal and understanding relationship of justice and democracy, there is a large amount of convergence. Because all of them talks about individual justice and justice at the

collective level through democratic formulations. Which effectively means creating a set of democratic principles which is participatory, inclusive, non-discriminatory and towards a universal understanding of justice. A universalist notion of democracy guides all these thinkers.

Fourth, there is an ethical convergence as well. There is an ethical perspective on justice which is justice has to promise a certain semblance of equilibrium, semblance of equality and also a semblance of harmony as an ethical goal.

Divergence

Firstly, *difference in conceptualisation of justice*: each of these thinkers have argued about a different conception of justice. Conception of justice is conceived in a certain way, conceptual understanding of justice is very different in each of them, for example, Amartya Sen would be talking about justice as something as a reflective equilibrium quiet in Rawlsian terms while Nozick would be talking about justice in certain kinds of claims making and how these claims are negotiated within the specific political framework of the state. So the conception of justice is very different, the conception of justice is different because the parameters, factors that are taken into account are very different from each other. Therefore everyone has a different political conception of justice.

Second, divergence in the very framework and the perspective of justice. For example Amartya Sen rejects the transcendental framework of justice, while Nancy Fraser would be saying that gender justice would not be possible without a certain amount of transcendence of women's own specific, physical, cultural and embodied forms of life.

No one rejects the idea of transcendence in a blanket way as Sen would reject based on his liberal pre-conception of justice. Everyone conceives of rather certain kind of transcendence as part of the framework of justice. Sen is arguing that we can't have a transcendental principles of justice whereas others are referring to the possibility of transcendence from the existing conditions in order to seek justice. This is a very important divergence between them. Some are trying to be more immanent, they want to look up in immanent situation, immanence in terms of opposing and countervailing forces that shape the very idea of justice. What are these countervailing forces- Countervailing forces are on the one hand the possibility of attaining a certain kind of justice in terms of fairness, in terms of redistribution etc. which is opposed by the possibility of injustice, the possibility of marginalisation, the possibility of exclusion, as in the case of many of the lower castes in India. Therefore there is a conceptual opposition in the very notion of justice and this opposition is theorised in different ways by variety of thinkers. Therefore this is a framework related problem and the divergence that follows.

Third, divergence is, everyone conceived of justice in material terms, in utilitarian material terms. Is there a possibility of non-utilitarian notion of justice. Justice is often looked up as a redeeming situation, how one redeem oneself from the situation of inequality etc. Now the whole idea of redemption is somewhat subjective and it is located to the subjects specific conditions. So the specific conditions of the subjects of justice is theorised differently by each of the thinkers. Someone will talk about the initial condition, as Rawls talks about his own initial position, which is picked up by Nozick and then Amartya Sen. But Nancy Fraser would be talking about presupposition of

unequal distribution of wealth resulting into disparity between one gender and another. Everyone perceive these situations, as situation of justice in terms of conceptual opposition.

Finally, some of these thinkers are welfarist and welfarist are talking about justice in very different term from non-welfarist. The non-welfarist conception of justice is entirely in terms of, say, justice as a certain kind of delivery mechanism, benefit sharing etc. While welfarist position would be more in terms of how individual and social welfare actually converges. So there could be variety of positions on this and these positions would be supposedly a divergent positions. Therefore this is another important divergence in term of welfare. The other important notion of divergence would be in terms of subjective well-being. Some of them don't take into account what is subjective well being for the subjects of justice.

There are convergences and divergences but beyond that my position is that justice is positional. It cannot be all the time something very global and something very abstract. Justice has to be based on addressing the issues of injustice in more simplified manner and in a more critical manner the sources of injustice has to be identified. And once the sources are identified, it is possible to reduce them, reduce their effects. As we reduce the effects the sources of injustice, we also build up a sustainable alternative sources making justice more tenable.

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