

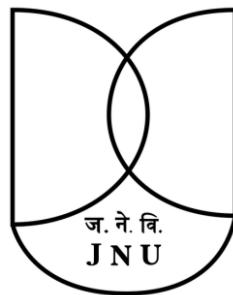
**PHILOSOPHICAL CONTESTATIONS ON SOCIAL
JUSTICE: A COMPARATIVE STUDY OF JOHN
RAWLS, AMARTYA SEN AND MARTHA
NUSSBAUM**

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

DOCTOR OF PHILOSOPHY

Submitted by

MS. SUMEGHA GOYAL

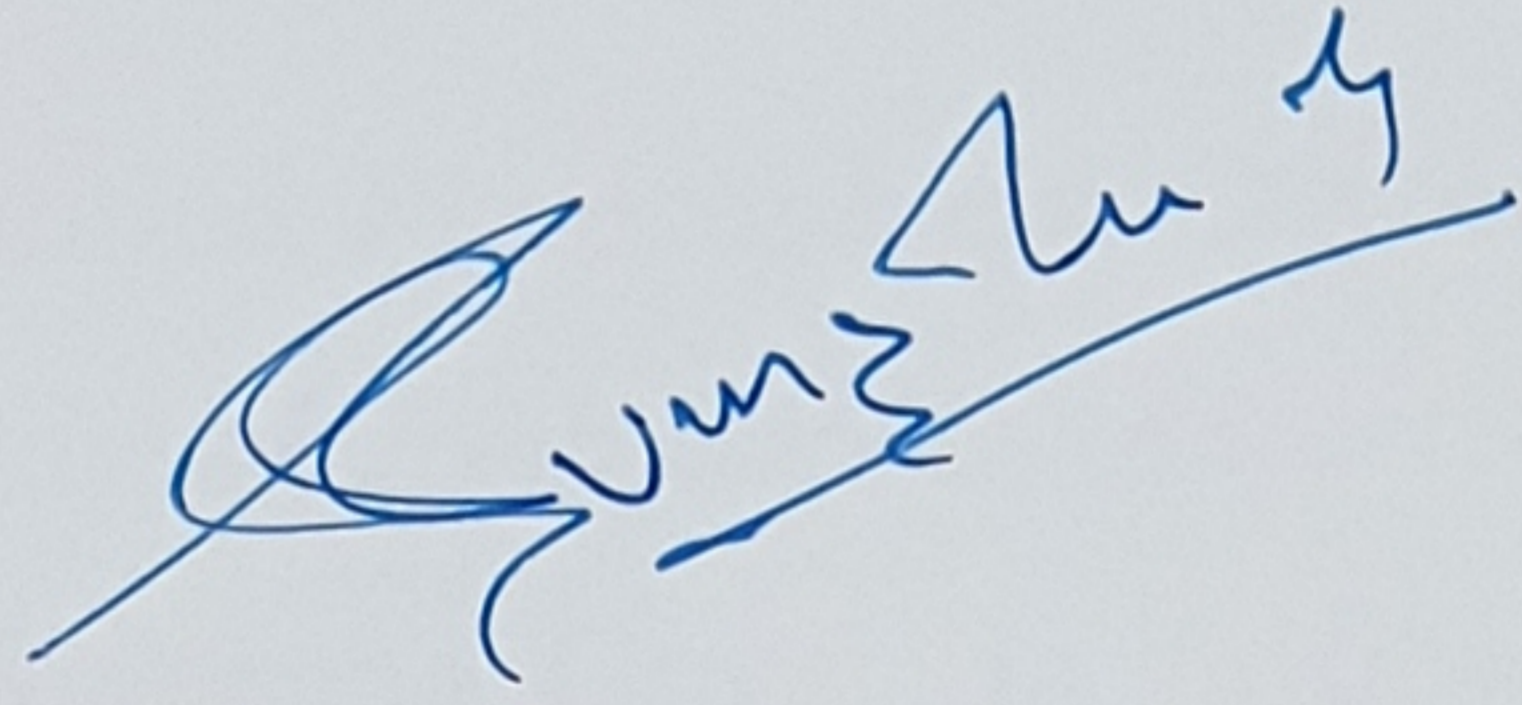


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DECLARATION

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CERTIFICATE

This is to certify that the thesis entitled *Philosophical Contestations on Social Justice: A Comparative Study of John Rawls, Amartya Sen And Martha Nussbaum* submitted by Sumegha Goyal, in fulfilment of the requirement for the award of the degree of Doctor of Philosophy of Jawaharlal Nehru University, is her original work. It has not been submitted, either in part or in full, for any other degree or diploma of this or any other University, to the best of our knowledge.

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Dedicated to
Shri Sunil Kumar Gupta
&
Smt. Sapna Gupta

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PREFACE

The present work is a critical and comparative study of the philosophical contestation on the concept of social justice i.e. distributive justice between of John Rawls, Amartya Sen and Martha Nussbaum. The notion of justice has been a developing concept and it is in that process that we come across various discrepancies arising out of moral, legal, human rights, political and economic aspects, etc. It is generally believed that justice is an ideal concept and could be attained by ideal or perfect institutions, philosophers like Hobbes, Locke, Rousseau and Kant who have developed justice on the basis of hypothetical social contract theory held this perfect view of justice. They have supported an insight into the perfect, ideal or absolute justice which is necessary to comprehend the particular example of justice. In this background, I'll be discussing, on the one hand, Kant's formulation of justice on the basis of human autonomy and dignity and, on the other, John Rawls who rejuvenates the ideal justice. The second stream of philosophers includes, Amartya Sen and Martha Nussbaum who have argued towards minimizing injustices rather than rejuvenating ideal justice of social contract tradition.

I am grateful to the authors whose works have directly or indirectly helped me. I have always tried to supply exact quotation and full reference to original works, and in the footnotes and bibliography, I have also furnished suggestions for further reading. In referring to the works of Plato, Aristotle, and Kant, I have used the most accurate available English translations. I am thankful to those translators of the texts.

INTRODUCTION

I, in the present study, will discuss critically the philosophical contestations on the concept of social justice i.e. distributive justice between John Rawls, Amartya Sen and Martha Nussbaum. The contestation can be traced from two streams of thinkers of enlightenment rationality during 18th and early 19th centuries in Europe. First; there are philosophers like Hobbes, Locke, Rousseau and Kant who have developed justice on the basis of hypothetical social contract theory. They have advocated an insight into the perfect, ideal or absolute justice which is required to understand the particular example of justice. In this context, I'll be taking into account, Kant's formulation of justice on the basis of human autonomy and dignity on one hand and, on the other, John Rawls who revitalizes the ideal justice. The second stream of philosophers include Adam Smith, Condorcet, Mary Wollstonecraft, Bentham, Mill and Marx, who have argued towards minimizing injustices in one way or another. MacIntyre, Amartya Sen and Martha Nussbaum attempted to revitalize the same. On minimizing injustices, I'll be taking into account the positions of Amartya Sen and Martha Nussbaum.

The notion of perfect justice in Kant can be elaborated in the context of his critical appreciation of social contract theory as only regulative on the one hand and on the other hand the concepts of autonomy and dignity formulated in terms of enlightenment rationality and the maxims of categorical imperative. The social contract theory was propounded by Hobbes, Locke and Rousseau one way or another. It was repudiated by Hume on the ground that there is no historical evidence to any contract, original or otherwise. His account of justice is based on convention and customs. Kant argued that even if there is no historical evidence to social contract, it will help as regulative, not constitutive principle.

Kant in brief but seminal article in December 1783 entitled "Answer to the Question: What is the Enlightenment?", Kant's answer is: "Enlightenment is the coming out of man from his self-imposed immaturity". "An Answer to the Question: What is

Enlightenment?”. For Kant, once humanity reaches at the stage of enlightenment and develops reason to the extent that it becomes autonomous and dignified, it can perform juridical and ethical duties. Enlightened being acts in the conformity of categorical imperative, realizes an ideal such as universality, end-in-itself and kingdom of ends. This ideal reaches at the notion of a just society wherein every enlightened being makes a general consent in formulating the principles of justice. At this stage human being can realize his own betterment and for the sake of entire society. Thus, the principle of perfect justice transforms an individual behavior in such a way that everyone can act rationally to transform oneself and society as well.

Liberating self-reflection is reliant on giving a balanced restoration of the universal principles for human action. In other words, Enlightenment develops reason to the extent that it becomes autonomous and gets rid of restraints from tradition and authority. This is the philosophical vision for perfect justice. It is Kant’s philosophical insight into perfect justice that has been carried forward by John Rawls by modifying social contract theory¹ and by reformulating the doctrines of justice to be applied to the institutions. According to Rawls, “the principles for determining the basic institutions of a society as to what is just are: First: each person is to have an equal right to the most extensive basic liberty compatible with similar liberty for others. Second: Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.”² First principle is ‘principle of equal liberty’, second principle includes ‘difference principle’ i.e. (a) and (b) the principle of fair equality of opportunity.

Rawls’ doctrine of justice as ‘fairness’ focuses on ‘just institutions’ rather than concentrating on ‘just individuals and societies’ (as it is in Kant) which can help to create effective institutions and reduce injustices and inequality as well. This position has been criticized by Rawls in *Political Liberalism*, he writes “... is a political conception and it is justified by reference to political values and should not be presented

¹ Sterba writes, “... unlike the social contract theory that uses the device to explain the origins of the state and the nature of sovereignty, Rawls revived it to explain principle of justice”, 2003: 94.

² Rawls.1999: 60.

as part of a more comprehensive moral, religious, or philosophical doctrine”³. However Rawls’ own critical analysis of his first position concerns with just institutions with ethics of liberalism. A lot of work needs to be done in order to acknowledge that justice is not subject matter of evaluating institutions and principles for distributing primary goods but minimizing injustices at individual and social level.

It may be emphasized that institutional choice and arrangement focused approaches to justice are not sufficient conditions since the social order consists of individual who are external to the institutions and the second gets affected by the earlier. The notion of minimizing injustice is very necessary wherein less people are capable to use their freedom, rights and toleration. More importantly, the search for perfect justice could divert us from dealing with real-life, instant injustices like discrimination relating to education, skill, health, environment, etc. for women, tribal people and marginalized community who are deprived of all these.

In recent times, Amartya Sen and Martha Nussbaum have developed justice as welfare through capability approach. There is an attempt to tackle the issues of minimizing injustices by highlighting that human being has a dignity with their ability to pursue their own ends. Sen’s notion of minimizing injustice is a dynamic departure in the debate on justice which concentrates on the well being of each and every individual. It does not focus on the means of most important goods and just institutions but minimizing injustices by removing obstacles in actual opportunities in day to day life. Sen has brought a fresh notion of justice as welfare through freedom, capability and public enlightenment. Instead of institutional mechanism which governs collective choices, Sen’s minimizing injustices make each and every individual to act on his/her own preferences.⁴

³ Rawls, 1996: 20.

⁴ Paul Anand, Graham Hunter, Ron Smith write in “Capabilities and Well-Being: Evidence Based on the Sen-Nussbaum Approach to Welfare”, “We should start from a conception of what makes a good life for a human being, and build up from this to a theory of the social good. That it is the opportunity to live a good life rather than the accumulation of resources that matters most for well-being, and that opportunities result from the capabilities that people have. This so-called ‘capability’ approach thus

Carrying out further the notion of minimizing injustice, Martha Nussbaum considers the quest for justice and equality of opportunities between genders. She tries to establish an inclusive society and the possibility of feminist perspective on justice. In order to minimize social injustice, we must incorporate the historical and cultural situation and conditions of dissimilar peoples. For Nussbaum, “the need to recognize that the lives of women are highly varied, that women live within a variety of traditions, and that the best account of human justice is not one that merely projects western values onto groups with different concerns”⁵. Her main concern is to pay notice to the real incident and conditions of individual women. The majority of women across the world fail to benefit from the economic, political, social and legal position enjoyed by men. This discrimination and their deprived situation is due to their cultural traditions and practices that mould their lives. The conflict between cultural practices and women's rights has been prevalent as a social phenomena and it has to be interrogated. The question arises – are we going to minimize women’s injustice and pass gender equality under the purview of human rights or let the culture or tradition decide their lives?

The main objective of the thesis will be to present the concept of distributive justice as a contested concept with different viewpoints from diverse perspectives. While acknowledging the contending positions and the distinct nature of the philosophical visions of Kant, Rawls, Amartya Sen and Martha Nussbaum; I’ll argue that justice in the perfect sense of the term is required as an ideal to be attained and minimizing injustice would be the process to achieve the same in terms of capability building, well-being and gender equality. The philosophical concepts like dignity, autonomy, perfection and fairness, etc. in Kant and Rawls are the visions and welfare in Sen and women’s equality and entitlement in Martha Nussbaum are the exemplifications of the vision of justice. The former is holistic, foundational, unified with principles and even deontological; whereas the latter emerge out of the struggle against

focuses more on people and less on goods. In it resources do not have an intrinsic value; instead their value derives from the opportunity that they give to people”. 2005: 9-55.

⁵ Nussbaum, 1999: 6-8.

deprivation, ill health, illiteracy in general and women in particular. Whereas dignity could be regarded as good and postulated; welfare schemes could be recognized as derived and derivatives.

The ambition and challenge of the present study is to recognize perfect justice as an ideal and the injustices in the spheres of education, health, environment, etc. as the reality, and develop an inclusive notion of justice. The purpose of this study is first of all to show the deep and subtle differences which led them to obviously divergent views on justice and secondly to show how we should think about the inclusive notion of justice. It may pave the way for a constructive integration by clarifying those issues which remain in need of resolution.

As a matter of fact, there are discrepancies in the notion of justice itself when we discuss the theories like distributive, rectificatory/ reformative, retributive, restorative, etc., or concepts like goodness, *eudaemonia*, dignity, fairness, harmony, etc. These theories and concepts have evolved to address particular aspects of justice concerning institutions, distribution of resources, deterrence of crime and theories of punishment, and so on. Many significant questions neighboring justice have been sternly discussed and argued over the time of human history: What is justice? What are the demand of justice from persons and societies? What is the correct allocation of possessions and wealth in society is it: equal, need, meritocratic, or something else? There are many potential answers to these questions from different view points on the philosophical, political, social and economic scale. In view of the above discussion I have divided the present study into four chapters. The brief outline of those chapters is as follows:

Chapter-1 entitled Prelude to Social Justice i.e. Distributive Justice is concerned with the theory of distributive justice advocated by Aristotle. Being an unusual case justice is not included, by Aristotle, in table of virtue and vices though he regard justice to be virtue rather highest or supreme virtue because all other virtues are included in justice. Aristotle gives example for not including justice in the table because a just conduct will be a virtuous conduct. Another interesting point

regarding justice as a virtue is that it is not a mean between two different vices, injustice is sole extreme in itself. For Aristotle justice consist in regarding people according to what they are worthy of. And society is just if it facilitates individuals to comprehend their chief nature which help to live a good life. Social contract including many philosophers professed that justice is not a topic of pleasing high merit or moral desert. And, we do not judge or evaluate societies on the ground that whether it generates righteous people or not but, whether it generates just structure of virtues and rights inside which person can chase their morals. With this view, they reject Aristotle's position. Since the idea of perfect justice introduced by Kant and revived by Rawls is derived from hypothetical social contract theory propounded by Hobbes, Locke and Rousseau, it is therefore necessary to revisit social contract theory introduced justice by way of a hypothetical contract for mutual advantage to have a just society as a prelude to social justice. Where as in Hobbes justice lies in the hands of the Monarch, in Locke justice is in the form of individual rights related to life, freedom and property. For Rousseau, it is the general will or moral collective will of the individuals in the society who will shape the laws of institutions which will deliver justice. The social contract theory was repudiated by Hume on the ground that there is no historical evidence to any contract, original or otherwise. His account of justice is based on convention and customs.⁶ Kant has attempted to re-visit social contract theory not as a historical phenomenon but as a regulative mechanism to be used as the tool to explicate nature of sovereignty and starting point of state on the one hand and autonomy and dignity of the individuals on the other. In order to give precise presentation of the above issues, themes, views I have divided this chapter into two parts: I) Aristotle on Distributive Justice and II) Social Contract Theory.

Chapter-2 is titled as Kant on Perfect Justice here I'll try to examine contending claims on social contract theory and the emergence of perfect justice. Kant's theory of justice is attempt in which right to freedom and human dignity supersedes the idea of goodness in Plato and eudaimonia in Aristotle. According to Kant the 'right' is

⁶ Hume, 1953: 54..

morally prior to the 'good'. To substantiate his position, Kant has placed freedom of will at the centre of categorical imperative of universality, end in itself and kingdom of ends. With deontological ethics, Kant tries to repudiate teleology in Plato and Aristotle, and proposes a critic of consequentialist ethics. There are certain questions which need to be addressed – Kant has created an unbridgeable gulf between 'ought' and 'is', what are its implications on his formulation of perfect justice? Is justice merely formal in the same way as moral laws are? To answer such questions, I'll go into the details of Kant's contention that moral laws are vindicated how an action ought to be and what an action ought not to be. The same applies to the concept of justice- how justice is to be delivered, not what kind of justice is to be delivered. In order to give precise presentation of the above theme I have divided this chapter into three parts: I) 'Right' superseding 'Goodness', II) Autonomy and Dignity, III) Universality, End in itself and Kingdom of Ends.

Chapter-3 is titled as Rawls on Distributive Justice here I will discuss how Rawls try to rejuvenate ideal conception of justice through perfect institutions. Rawls has discussed about social contract theory not to explicate the beginning point of state its sovereignty or autonomy of the individuals, but as transcendental mechanism to explain the principle of distributive justice with reference to institutions. Individuals and their conducts are just if they match to the wants of just institutions. In Rawls Justice as Fairness, the straight interest is on 'just institutions' instead of focusing on 'just individuals and societies' which help to create effective intuitions and reduce injustices and inequality as well. Now, the manner in which these institutions are précised and incorporated into a social structure profoundly affects people's plans, personality, wishes and their future opportunities, along with the kind of individuals they aspire to be. The question arises: is justice limited to the recognition of fair and just institutions and principles or it is apprehensive of the general public as well? I will attempt to vindicate Rawls' position on justice and bring out its shortcomings in two fold manner. First the way Rawls has criticized his own earlier position in his later work and secondly the way his successors like Sen, Martha Nussbaum and others have criticized both the positions of Rawls. In order to give precise presentation of the above views I have divided this chapter into three

parts: I) Re-visiting Social Contract Theory, II) Veil of Ignorance and Critiquing Inequality (Nepotism), III) Justice as Fairness.

Next, Chapter-4 is titled as Amartya Sen on Justice as Welfare which discusses social justice through capability approach. There are contending claims between Amartya Sen and Martha Nussbaum on capability theory to improve people's well-being, development and freedom. Justice as welfare through capability approach tackles these issues by highlighting human beings having dignity and with their ability to pursue their own ends. But they have divergent views on the concept of capability to promote human welfare. For Sen, capability is a comprehensive moral doctrine whereas for Nussbaum, it is the basic entitlements, since it simply stipulates some essential conditions for a affably just society, say, gender discrimination, in the form of a set of basic entitlements of all citizens. In *The Idea of Justice*, Sen criticizes Rawls's original position and concept of 'veil of ignorance'. Sen has also criticized the utilitarianism of Bentham and Mill on the ground that act utilitarianism and rule utilitarianism along with hedonistic calculus cannot help us much either in minimizing injustices or enhancing happiness. Instead of transcendental institutionalism, Sen proposes realization-focused comparison which is mainly involved in removing the visible injustice from the world and hence he goes to 'retreat of justice.' Sen argues that Kant and Rawls have developed perfect justice to concentrate mainly on attaining the institutions correct with transcendental institutionalism, and it is not frankly focused on the real societies that would eventually come out. He has distinguished between *niti* and *nyaya*, both concepts give the vision of justice but the notion of *nyaya* underlies relative justice in terms of individual's suffering and with this, I will formulate and understand justice in broader sense for the sake of entire humanity. I will bring out the discrepancies and the implications between well-being (collective) and happiness (individualistic) to substantiate minimizing injustice in Sen. In order to give precise presentation of the above theme I have divided this chapter into three parts: I) Freedom and Well-being, II) Capability and Re-visiting Inequality (Nepotism), III) Public Enlightenment: Re-visiting Goodness.

Lastly, Chapter-5 is titled as Martha Nussbaum on Gender Justice. In this chapter the capability approach is discussed in a way, different from Sen. Nussbaum builds up the capability approach, not as a procedural justice but as an outcome-oriented approach that gives an impartial account of justice as welfare. I'll attempt to bring out the close relationship between the institutional and constitutional design in Martha Nussbaum with the quest for justice and equality of opportunities between genders. I'll address the questions concerning minimizing injustice in terms of discrimination, particularly gender discrimination in the cultural practices of different peoples on the one hand and legal, political, social and economic status of women on the other. The discrimination and the deprived situation of women are due to the cultural traditions and practices that mould their lives. I'll try to interrogate the conflict between cultural practices and women's rights. The question arises – are we going to minimize women's injustice and bring gender equality under the purview of human rights or let the culture or tradition decide their lives? With a feminist perspective, Martha Nussbaum attempts to establish an inclusive society which not only incorporates the basic philosophic visions of Kant, Rawls and Sen but also transcends it. In order to give a precise presentation of the above theme I have divided this chapter into three parts: I) Women and Human Rights II) Poverty and Gender Inequality III) Capability and Gender Justice.

In order to present the contending issues and themes I have adopted the method which is historical, analytical, critical, and normative. Historically, I will trace the concept of distributive justice in Aristotle in addition to social contract theorists and Kant's enlightenment rationality. It is analytical because I shall develop an understanding about various concepts in the realm of justice like autonomy, dignity, fairness, welfare, capability, etc. It is critical and comparative because I'll be discussing the positions as distinct as Aristotle, Kant, John Rawls, Sen and Nussbaum. The normative aspect of my approach has a reference to the ideas of goodness, happiness, fairness, well-being, equality, etc. I will also critically evaluate the utilitarian approach taken by Mill and contrast it from the pragmatic approaches taken by Sen and Martha Nussbaum.

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CHAPTER-1

PRELUDE TO SOCIAL JUSTICE i.e. DISTRIBUTIVE JUSTICE

In this chapter, I will discuss the discrepancies in the notion of justice, when we discuss the theories like distributive, rectificatory/ reformative, retributive, restorative, etc., or concepts like goodness, *eudaemonia*, dignity, fairness, harmony, etc. These theories and concepts have evolved to address particular aspects of justice concerning institutions, distribution of resources, deterrence of crime and theories of punishment, and so on. Many significant questions neighboring justice have been sternly discussed and argued in course of human history: What is justice? What are the demand of justice from persons and societies? What is the correct allocation of possessions and wealth in society is it: equal, need, meritocratic, or something else? There are many potential answers to these questions from different viewpoints on the philosophical, political, social and economic scale. The present chapter is concerned with the theory of distributive justice advocated by Aristotle. And since the idea of perfect justice introduced by Kant and revived by Rawls is derived from hypothetical social contract theory propounded by Hobbes, Locke and Rousseau, it is therefore necessary to revisit social contract theory introduced justice by way of a hypothetical contract for mutual advantage to have a just society. I will divide the chapter into two parts which are as follows:

Part-I Aristotle on Distributive Justice.

Part-II Social Contract Theory.

PART- I

ARISTOTLE ON DISTRIBUTIVE JUSTICE.

Plato begins his notable work *The Republic* with question “What is justice?” Being a student of Socrates, Plato makes Socrates speak in *The Republic* on all issues of

justice, laws, and state. Socrates applied the dialectical method in his discussions. He carefully analyzed all the definitions of justice which were proffered. He refuted the definition of justice given by Polemarchus i.e. “Justice is helping friends and harming enemies” . In series of discussion Socrates convinced Polemarchus that “just man is good, and business of harming people, whether friends or not, must belong to his opposite, the unjust”. Next, in long series of discussion he also refuted Thrasymachus definition of justice as “Justice as the interest of the stronger”. The refutation was carried out by means of analogies from arts- “the art of medicine, the art of the shepherd, the art of navigation and so on”. Thrasymachus asserted another point that unjust person is happier than just person. But Socrates proves that a just man is happier than the unjust because the soul of a just man performs the various functions of the human soul well. After refuting all the definitions on justice and after proving that a just life is to be favored more than the unjust life. Plato quotes Justice as “minding one’s own business”. So, to Plato, “justice” consists in everyman doing his own job and he also recognizes justice as obedience of one’s duty to the state and its laws. Socrates in discussion with his friend Crito made this point clear that obedience to the state and its laws is justice. Discussion goes like this:

Socrates: Then the laws will say: "Consider, Socrates, if this is true, that in your present attempt you are going to do us wrong. For, after having brought you into the world, and nurtured and educated you, and given you and every other citizen a share in every good that we had to give, we further proclaim and give the right to every Athenian, that if he does not like us when he has come of age and has seen the ways of the city, and made our acquaintance, he may go where he pleases and take his goods with him; and none of us laws will forbid him or interfere with him. Any of you who does not like us and the city, and who wants to go to a colony or to any other city, may go where he likes, and take his goods with him. But he who has experience of the manner in which we order justice and administer the State, and still remains, has entered into an implied contract that he will do as we command him. And he who disobeys us is, as we maintain, thrice wrong: first, because in disobeying us he is disobeying his parents; secondly, because we are the authors of his education; thirdly, because he has made an agreement with us that he will duly obey our commands; and he neither obeys them nor

convinces us that our commands are wrong; and we do not rudely impose them, but give him the alternative of obeying or convincing us; that is what we offer and he does neither. These are the sort of accusations to which, as we were saying, you, Socrates, will be exposed if you accomplish your intentions; you, above all other Athenians." Suppose I ask why is this? They will justly retort upon me that I above all other men have acknowledged the agreement. "There is clear proof," they will say, "Socrates, that we and the city were not displeasing to you. Of all Athenians you have been the most constant resident in the city, which, as you never leave, you may be supposed to love. For you never went out of the city either to see the games, except once when you went to the Isthmus, or to any other place unless when you were on military service; nor did you travel as other men do. Nor had you any curiosity to know other States or their laws: your affections did not go beyond us and our State; we were your especial favorites, and you acquiesced in our government of you; and this is the State in which you begat your children, which is a proof of your satisfaction. Moreover, you might, if you had liked, have fixed the penalty at banishment in the course of the trial-the State which refuses to let you go now would have let you go then. But you pretended that you preferred death to exile, and that you were not grieved at death. And now you have forgotten these fine sentiments, and pay no respect to us, the laws, of whom you are the destroyer; and are doing what only a miserable slave would do, running away and turning your back upon the compacts and agreements which you made as a citizen. And first of all answer this very question: Are we right in saying that you agreed to be governed according to us in deed, and not in word only? Is that true or not?" "How shall we answer that, Crito? Must we not agree? **Crito:** There is no help, Socrates."

Socrates: "Then will they not say: "You, Socrates, are breaking the covenants and agreements which you made with us at your leisure, not in any haste or under any compulsion or deception, but having had seventy years to think of them, during which time you were at liberty to leave the city, if we were not to your mind, or if our covenants appeared to you to be unfair. You had your choice, and might have gone either to Lacedaemon or Crete, which you often praise for their good government, or to some other Hellenic or

foreign State. Whereas you, above all other Athenians, seemed to be so fond of the State, or, in other words, of us her laws (for who would like a State that has no laws?), that you never stirred out of her: the halt, the blind, the maimed, were not more stationary in her than you were. And now you run away and forsake your agreements. Not so, Socrates, if you will take our advice; do not make yourself ridiculous by escaping out of the city. "For just consider, if you transgress and err in this sort of way, what good will you do, either to yourself or to your friends? That your friends will be driven into exile and deprived of citizenship, or will lose their property, is tolerably certain; and you yourself, if you fly to one of the neighboring cities, as, for example, Thebes or Megara, both of which are well-governed cities, will come to them as an enemy, Socrates, and their government will be against you, and all patriotic citizens will cast an evil eye upon you as a subverter of the laws, and you will confirm in the minds of the judges the justice of their own condemnation of you. For he who is a corrupter of the laws is more than likely to be corrupter of the young and foolish portion of mankind. Will you then flee from well-ordered cities and virtuous men? and is existence worth having on these terms? Or will you go to them without shame, and talk to them, Socrates? And what will you say to them? What you say here about virtue and justice and institutions and laws being the best things among men? Would that be decent of you? Surely not. But if you go away from well-governed States to Crito's friends in Thessaly, where there is great disorder and license, they will be charmed to have the tale of your escape from prison, set off with ludicrous particulars of the manner in which you were wrapped in a goatskin or some other disguise, and metamorphosed as the fashion of runaways is- that is very likely; but will there be no one to remind you that in your old age you violated the most sacred laws from a miserable desire of a little more life? Perhaps not, if you keep them in a good temper; but if they are out of temper you will hear many degrading things; you will live, but how?- as the flatterer of all men, and the servant of all men; and doing what?- eating and drinking in Thessaly, having gone abroad in order that you may get a dinner. And where will be your fine sentiments about justice and virtue then? Say that you wish to live for the sake of your children, that you may bring them up and educate them- will you take them into Thessaly and deprive them of Athenian citizenship? Is that the benefit which you would

confer upon them? Or are you under the impression that they will be better cared for and educated here if you are still alive, although absent from them; for that your friends will take care of them? Do you fancy that if you are an inhabitant of Thessaly they will take care of them, and if you are an inhabitant of the other world they will not take care of them? Nay; but if they who call themselves friends are truly friends, they surely will." "Listen, then, Socrates, to us who have brought you up. Think not of life and children first, and of justice afterwards, but of justice first, that you may be justified before the princes of the world below. For neither will you nor any that belong to you be happier or holier or juster in this life, or happier in another, if you do as Crito bids. Now you depart in innocence, a sufferer and not a doer of evil; a victim, not of the laws, but of men. But if you go forth, returning evil for evil, and injury for injury, breaking the covenants and agreements which you have made with us, and wronging those whom you ought least to wrong, that is to say, yourself, your friends, your country, and us, we shall be angry with you while you live, and our brethren, the laws in the world below, will receive you as an enemy; for they will know that you have done your best to destroy us. Listen, then, to us and not to Crito." "This is the voice which I seem to hear murmuring in my ears, like the sound of the flute in the ears of the mystic; that voice, I say, is humming in my ears, and prevents me from hearing any other. And I know that anything more which you will say will be in vain. Yet speak, if you have anything to say."

Crito: I have nothing to say, Socrates.

Socrates: Then let me follow the intimations of the will of God.⁷

Socrates imagined that he was speaking to the laws of Athens. And, the laws of Athens have said to him that he must either convince or obey, so that you (Socrates) in staying in the city have made a kind of contract with the laws either you convince them to change the unjust laws or if you can't or fail to convince them, then you obey. One of the interesting points to be noticed here is: in what sense Socrates has been said to give consent because there is no actually signing on the dotted lines. The opportunity to flee from the jail which Socrates rejected and, continued to stay in jail

⁷ Plato, 2014.

are the signs that he consented. So, we can say that there were certain traces on social contract in Socrates discussion which I will elaborate in next part of the chapter..

Justice in Aristotle comes under activity of state and not as individual ethics. Justice can be reached by two processes called distribution and corrective. Distributive justice plays an important role in Aristotle's *Nicomachean Ethics* and *Politics*. It concerns with the allocation of wealth, possessions, goods and resources amongst the citizens. Aristotle explained it through geometric proportion: whatever a person is getting from society will be proportional to his merit. So, an excellent individual will be given more than a dire individual. Merit will be the criterion for distribution of riches and admiration. Aristotle was of the view that excellent individuals contribute a lot to the growth and prosperity of the state hence, they deserve supreme dignity. Aristotle is charged of 'aristocratic prejudice' and distributive justice gives strength to this. Aristotle claims that women, slave and working men lack autonomy to work out all the merits; as a result they are given a smaller part of the states riches. The circularity of the distributive justice can be seen in way it professes this idea that people with maximum opportunity will get maximum admittance to the leisure, liberty, and capital essential for virtue. Aristotle argues aristocracy as best form of governance but it can be argued that he failed to vision the unjust aristocracy in his concept of distributive justice. Aristotle was of opinion the right aristocrat (male) should govern the state. And such rule of male aristocrats and nobles remains unquestionable to him. Distributive justice should ensure maximum opportunity and respect to those male members of the society who display maximum virtue and not to those who have maximum power, riches, or friends. It can be noticed here that Aristotle is trying to make institutions right by guarding them rather than focusing on injustices. A just distribution is a proportional distribution. For example, a cobbler and an agriculturist cannot barter one shoe for one crop, since shoe and crop are of different value. The cobbler would have to provide certain amount of shoes proportional in value to the crops the agriculturist offer. Money shows the exact claim put forward on a variety of goods and permits for just exchanges. Distributive justice concerned with:

1. Equal treatment: Unjust means one's moral Rights have been violated. One has been made to suffer a burden that one had a right to avoid or one has been denied some benefit that one has a right to possess.
2. Fairness: Apply rules the same; treat similar cases alike except where there is some relevant difference. Emphasizes impartiality and consistency in justice, a formal principle – it does not tell us which differences are relevant and which are not.
3. Equality: Justice is held to require that our treatment of people reflects their fundamental Moral Equality. What a person has done makes a difference. Justice also requires that people get what they deserve.⁸

Hence, those who support unequal treatment are liable to the claims of injustices. There are three important principle of social justice too:

First: Principle of need: need is claim that resources should be allocated according to need because person might be missing essential necessities of life.

Second principle of desert: desert is a claim that resources must be distributed according to merit or presentation that is higher. High performance should draw greater respect⁹.

Third principle of equality: equality refers to the claim that everyone must be treated equally irrespective of its position, wealth, and class in a society. Thus all advantages such a rights should be distributed equally.

These three principles play important role in context of social justice. Distributive justice is based on merit of some kind, though it does not mean same sort of merit.

⁸ Lamont, Julian and Favor, Christi, "Distributive Justice", *The Stanford Encyclopaedia of Philosophy*.

⁹ "The different desert-based principles of distribution differ primarily according to what they identify as the basis for deserving. While Aristotle proposed virtue, or moral character, to be the best desert-basis for economic distribution, contemporary desert theorists have proposed desert-bases that are more practically implemented in complex modern societies". Lamont, Julian and Favor, Christi, "Distributive Justice", *The Stanford Encyclopedia of Philosophy*

Universal justice and Particular justice

At the outset of the *Nicomachean Ethics*, Book V, Aristotle begins by discussing two types of justice: “general justice” which is concerned with respecting laws. The distinctiveness of universal justice with lawfulness holds with it, for Aristotle, a distinctiveness of universal justice and virtue of character:

And the law also prescribes certain conduct: the conduct of a brave man, for example, not to desert one’s post . . . those of the temperate man, for example, not to commit adultery or gratify lust; . . . and similarly with regard to rest of the virtues and wickedness, commanding these and forbidding those – rightly, if the law has been rightly enacted, not so well if it has been made at random. Justice in this sense is complete virtue.¹⁰

Second is “specific” or “particular” justice which is apprehensive of what can be called “fairness” in some sense, the sense depends upon particular thought and circumstance. In his following text, Aristotle chiefly investigates particular justice. Within this “specific” or “particular” type of justice he makes an additional distinction: distributive justice and rectificatory justice. The latter “supplies a corrective principle in private transactions. Rectificatory justice distinguishes two sub-cases, “corresponding to the two classes of private transactions, those which are voluntary and those which are involuntary”. Some examples of voluntary transactions: “which have to be treated under the title of corrective justice are selling, buying, lending at interest, pledging, lending without interest, depositing, letting for hire”¹¹. The aim of rectificatory justice is to rectify unequal distribution of profit and loss among individuals.

In court of law judges by equating the gains and losses of both the parties, thus confining to means, restores justice. Average between the two ends is its algebraic evaluation. For example: suppose Ram has assaulted Mohan or has stolen his possessions. This is a case of “involuntary transaction”. In this case Mohan will have too little and Ram will have its lawful possessions plus the stolen one. To, put it another way Mohan will have its original possessions minus the stolen one and Ram

¹⁰ Aristotle, 1972: 108.

¹¹ Ibid., 178.

who is thief will have too much. It is in such situation rectificatory justice ensures original position. Standard of reference would be the first distribution of goods between people. To recreate the moral lawful situation, in the above example, a judge will take away the item stolen from the thief and restore it with his original owner that is Mohan. Thus, rectificatory justice needs to be acknowledged normatively. And legal system should correct any kind of unfairness and injustice that comes in front, by correcting a situation. Next, Aristotle talks about distributive justice.

Distributive Justice engages in distributing honors, wealth and further resources. It mirrors our perception of justice as mean between two limits of injustices. Everybody consent that justice engage in the distribution of things in proportion to worth or merit. The man who acts partially acquires too much, the sufferer too little, of what is excellent. The equality of geometric kind is required: suppose a distribution between party A and party B will be just if both get the share which is proportional to the proper standard whatever that might be. Now, the question arises: why Aristotle thinks is to be an intermediate way? It can be answered by looking at simple case of just and unjust distribution. Presume that A and B spend funds in some venture, and profits are about to be distributed. According to concept of distributive justice equal individuals should receive equal shares. Now, the calculation of equality of individuals will include the amount or percentage of investment made by individuals. Presume that A has put in 80\$, that B has put in 40\$, and now 90\$ is profits which is to be distributed amongst A and B. Clearly just distribution will include by giving profit to A according to amount he has invested, which is twice than B. 60\$ for A vs. 30\$ for B. In this case unjust distribution will be one which violates the proportion of the distribution. Presume a wrong distribution involves happen by giving A 62\$ and B 28\$ or by giving A 58\$ and B 32\$. Then the just distribution will involve A getting – 60\$ – is middle between what he acquires in the initial unfair distribution – 62\$ – and what he acquires in the second unfair distribution – 58\$. As a result, a fair share is intermediary between a share that is too big by some sum and a share that is too little by that same sum.

Hence for Aristotle “geometrical” proportion concerns with just distribution of goods amongst individuals. For Aristotle, just distribution consist in giving equals an equal share and unequal’s an unequal share and if that does not happen then it is a matter of argument and accusations. Therefore, geometrical proportion in division gives importance to the assessment of people rather than shares, and presumes that people are unequal’s. One must question that is this individual “equal to” or worthy of the part he is receiving? These type of questions, for Aristotle, results in distributing equals equally and unequal’s unequally. Justice as fairness in Aristotle terms does not considers everyone to be equal because people are different, hence they deserve differently, it concerns with what one is worthy of.

Role of nature is very important in Aristotle’s understanding of distributive justice. Aristotle is of view that people are unequal by nature. This notion of justice for the society makes life difficult for the underprivileged. Geometrical distribution honors natural disparity and thus endorses the idea of unequal shares to unequals. Moreover such natural disparity goes in favor and profits the fortunate one.¹²

Justice has been given special place by Aristotle, Being an unusual case justice is not included, by Aristotle, in table of virtue and vices though he regard justice to be virtue rather highest or supreme virtue because all other virtues are included in justice. For Aristotle justice consist in regarding people according to what they are worthy of. And society is just if it facilitates individuals to comprehend their chief nature which help to live a good life. Social contract including many rights-oriented philosophers professed that justice is not a topic of pleasing high merit or moral desert. And, we do not judge or evaluate societies on the ground that whether it generates righteous people or not but, whether it generates just structure of virtues and rights inside which person can chase their morals. Hence, they reject Aristotle’s position.

¹² There is difference in Aristotle’s theory of justice and Rawls’s theory of justice. Rawls appeals to the idea of an original moral equality between people. For, rawls inequalities must benefit disadvantage.

PART-II

SOCIAL CONTRACT THEORY

Social contract theorist (Hobbes, Lock and Rousseau) introduced justice by way of a hypothetical contract for mutual advantage to have a just society. Where as in Hobbes justice lies in the hands of the Monarch, in Locke justice is in the form of individual rights related to life, freedom and property. For Rousseau, it is the general will or moral collective will of the individuals in the society who will shape the laws of institutions which will deliver justice.

“Man is born free, and everywhere he is in chains. Many a one believes himself the master of other, and yet he is a greatest slave than they”¹³ with these quotes Jean Jacques Rousseau dramatically begins his most celebrated work of political philosophy: *The Social Contract*. Rousseau was interested in knowing why anyone would bargain a rule of government for his or her natural freedom. It was the most important question within political philosophy at that time.

In the beginning of 17th century social contract means many individuals, but previous theorist talked about contract for example between king and the people. Hugo Grotius begins with idea that individuals have established a political society by giving up some of their natural rights and then move on to establishment of political society. Thousands of years before Grotius, Socrates made a similar point when he refused to flee from the jail even when offered with the opportunity. He refused to flee because that would be a disobedience of his duty to the state and its laws. Therefore he accepted the punishment and drank hemlock. This has already been discussed in part I of the chapter. Coming back to 17th century when John Locke and other contract philosophers tried to create basis for tacit consent.

Hugo Grotius idea of natural rights was unique in 17th century. He said that all of us have natural right in order to preserve ourselves. Though, Grotius gave no proof but with the idea of natural rights he was trying to look for the moral commencement for

¹³ Rousseau, 1998: 5.

a society, a kind of natural law which is acceptable to all. And, was trying to set up base for the moral consensus for instances where religious diversity can shoot up.

His idea of rights had incendiary strength because its power can alternatively go back to individual if political society realizes the intention for which it was originally created. The people are sovereign and individual people are sovereign. They began as sovereign. Grotius claimed that people are not under authority and this was novel idea that people have the original authority, which could possibly return to them. Grotius was of the opinion that our natural rights get dominated because we fail to acknowledge that each person has a right to preserve himself. So, Grotius suggested that no one should interfere with others liberties and rights or harm others and if anyone does so then that person is liable for punishment. Grotius idea of natural rights was criticized by Thomas Hobbes.

In 1651 the great English philosopher Thomas Hobbes in his influential book *Leviathan* discussed in length about social contract. Hobbes opposed the natural basis of the society. He was trying to persuade by his work that we have absolutely incompetent explanation to abide by the natural law in all circumstances and the device he used to do that is, what he calls, the state of nature. By saying so, Hobbes not only condition the natural rights people have to preserve themselves but at the same time builds the psychology and thinks that people's dominant passion, all on the whole aggressive and nasty ones compete with each other as far as they can protect what they regard as their own. Hobbes writes:

So, that in the nature on man, we find three principal causes of quarrel. First, competition secondly, diffidence; thirdly, glory. The first; makes men invade for gain; the second, for safety; and the third, for reputation. The first use violence, to make themselves masters of the other men, persons, wives, children and cattle; the second, to defend them; the third, for trifles, as a word, a smile, a different opinion, and any other sign of undervalue, either direct in their person,

or by reflexion in their kindred, their friends, their Nation, their profession, or their Name.¹⁴

Thus, these competing passions will create a state of war; battling with one another for power. Results of that condition, says Hobbes, would be terrifying and so people will be dominated by fear: fear of death, fear of each other, and fear of everything. Hobbes thinks that is an important turning point because fear is a real passion that really powerful of all. Once people are into such condition they have reason to come out it, they have passionate motivation to improve their situation and that will be turning point to the social contract. “The mutual transferring of Rights is that which men call *Contract*”.¹⁵

Hobbes gives psychological interpretation of human nature. Hobbes idea is that people in state of nature will come together to make a covenant on mutual agreement. One thing they will agree to is that the body shall be represented by one supreme ruler. The supreme ruler is then given all the power with people posses to represent their collective interest. This is done because the supreme ruler can only protect their rights, my making laws and by enforcing the contract and for that, Hobbes said, it needs a suit. He writes:

Again, one of the contractors, may deliver the things contracted for on his part, and leave the other to perform his part at some determinate time after, and in the mean time be trusted; and then the contract on his part id called Pact, or Covenant: or both parts may contract now, to perform hereafter: in which cases, he that is to performs in time to come, being trusted, his performance is called keeping of promise, or faith; and the failing of performance(if it be voluntary) violation of faith.¹⁶

John Locke in 1689 published *Two Treatises of Government* in which he talked about social contract. There are many similarities and differences between Hobbes and Locke. One similarity is that both think of power in abstract terms. That is to say,

¹⁴ Hobbes, 1996: 88.

¹⁵ Ibid., 94.

¹⁶ Ibid., 94.

power for them is something which people possess as kings, members of royal families etc. Power is a function, function that can be given by the citizens and a way to re-imagine the physical order function of that power is to think back historically or hypothetically to the notion of state of nature. So, both Hobbes and Locke tried to imagine man as a united being in state of nature.

Hobbes state of nature appears to be as one which is pretty violent, mean and shrewd. Whereas Locke in imagining the state of nature imagines it as, if not, pleasant humane law then certainly natural condition of equality and freedom. He writes:

To understand political power right, and derive it from its original, we must consider, what state all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of law of nature, without asking leave, or depending upon the will of any other man. A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident, than that creatures of the same species and rank, promiscuously born to all the same advantages of nature.¹⁷

A condition in which man uses its natural capacity, obey a natural law and that natural law encourages them to preserve themselves, preserve the good of a community and, respect each other's property. To this he writes: "this equality of men by nature, the judicious Hooker looks upon as so evident in itself, and beyond all questions, that he makes it the foundation of that obligation to mutual love amongst men."¹⁸ Important question arise here: what motivates people to become part of political society? Locke answers this question in a following way: in a state of nature people try to seek their personal again, out of their competitive nature. They can acquire each other's property and therefore, when things go ugly man may decide to become part of political society through social contract. He writes:

I easily grant, that *civil government* is the proper remedy for the inconveniences of the state of nature, which must certainly be great, where

¹⁷ Locke, 1821: 189.

¹⁸ Ibid., 190.

men may be judges in their own case, since it is easy to be imagined, that he who was so unjust as to do his brother an injury, will scarce be so just as to condemn himself for it; but I shall desire those who make this objection, to remember, that *absolute monarchs* are but men; and if government is to be the remedy of those evils, which necessarily follow from men's being judges in their own cases, and the state of nature is therefore not to be endured.¹⁹

Regarding the inconveniences of state of nature, Locke says:

No one has right to harm another in his life, health, liberty or possessions. And if anyone does so, that is to say, in transgressing the law of nature, the offender declares himself to live by another rule than that of reason and common equity, which is that measure God has set to the actions of men, for their mutual security and so he becomes dangerous to mankind. And in this case, and upon this ground, every man had a right to punish the offender, and be executioner of the law of nature. But punishment must be at the level where offender with so much severity, as will suffice to make it an ill bargain to the offender, give him cause to repent, and terrify others from doing like.²⁰

Another important question that can be asked is: when according to Locke people can appeal to God? For Locke, when people make a contract by mutual agreement and give away their natural right and power to government to act for general good, in such case, if government works for the benefit of people then things are okay. But, if government works opposite to the expectations of people against good and violates rights of people, at that point people have to decide whether to create a new government or get rid of the distorted one. Since, it is very difficult to know for people to know exactly when that moment will come because that inevitably involves violence and civil war. And, that is the kind of last appeal where making such judgment, Locke suggest that yes in the end we have to listen to the voice of God, our conscious and make a decision.

Locke was against divine rights of kings. According to divine right theory, the monarch gains his sovereignty directly from God and therefore was not answerable to governed

¹⁹ Ibid., 197-198.

²⁰ Ibid., 191-197.

or to any human authority. According to this theory, to oppose the will of the monarch was to oppose the will of God. Locke believed that this theory will lead to tyranny; therefore, he rejected this theory and countered it with idea of the natural rights. Locke actually criticized the Robert Filmer notion of patriarchy and divine rights of kings in his first treatise. Filmer based his political theory on natural law; he equated the power of sovereign over his people with the power of a father over his family. He supported his argument that every monarch has inherited his patriarchy from Adam by using the Book of Genesis, and was therefore exquisitely destined. The lawmaking body could only give views to the monarch, who single-handedly made laws, which progressed solely from his will. No law bound sovereign or the ruler, for the reason that by nature it was not likely that a man should impose a regulation on himself. Filmer discarded the self-governing model that citizens were born equal and free, in argument that everybody is secondary to a father. It is from the patriarchs all rulers and gains their power, which is therefore absolute, and established upon divine rights.

Locke contends that Filmer theory is full of contradictions. With rejection of the divine right theory of monarchy and absolutism, Locke turns to the conception of government and the natural rights of the people in the second treatise. Locke argued that natural rights are those rights from which government derive their legitimacy. Three important natural rights for example: life, property and liberty, says Locke, are conferred by birth. Role or duty of government was to guard these natural rights and if administration fails to do so than citizens have right to rebel against government. Thus, natural rights theory directly challenged the divine right theory of monarch. So in this way monarch consent is granted by the human authority and not by God.

Locke was also against the Hobbes's version of rights against absolutism. Locke argues that the absolute ruler is one which is lawless power so; no one can enter social contract by agreeing to give an absolute authority.

To this he writes:

Though the legislative, being supreme power in every commonwealth; yet, first, it is not , nor can possibly be absolutely arbitrary over the lives and

fortunes of the people... it can be no more than those person had in a state of nature before they entered into society... for nobody can transfer to another more power than he has in himself; and nobody has an absolute arbitrary power over himself, or over any other, to destroy his own life, or take away the life or property of another. Legislative power is limited to public good of the society. Thus obligations of law of nature does not ceases not in society...stands as on eternal rule to all men, legislators as well as to others.²¹

According to Locke rules for other and for themselves must be in confirmation to the law of nature i.e. to the will of god. Also he adds, the legislative authority is not a absolute ruler it is bound to give justice in a society, and protect rights of people through laws and official judges. That is fundamentally as, Locke puts, giving power to lion instead of giving it to themselves because 'you' are afraid of polecats and foxes. Locke criticizes both divine rights of kings and absolute authority of monarch.

Rousseau thinks that there is a conflict between the obedience to the law in a society and ones freedom. Problem is how to reconcile this? According to Rousseau, societies around us are full slaves and not of people. These societies full of people who mistake what their freedom is, they haven't found a right solution to the problem. But how this problem can be solved? What is meaning of freedom for Rousseau? Rousseau has talked about three kinds of freedom i.e. natural, civil and moral freedom.

He writes:

Natural liberty is limited only by the powers of the individual, from civil liberty, which is limited by the general will; and possession, which is nothing but the result of force or the right of first occupancy, from property, which can be based only on a positive title. Besides the preceding, we might add to the acquisitions of the civil state moral freedom, which alone renders man truly master of himself; for the impulse of mere appetite is slavery, while obedience to a self- prescribed law is liberty.²²

²¹ Ibid., 304-305.

²² Rousseau, 1998: 19-20.

Rousseau thinks that natural freedom means, freedom to be anything directed by our will. This natural freedom is lost when our interest conflicts with others. The question is how can we regain something that is like natural freedom? Rousseau replies that by entering into contract we can regain our natural freedom in terms of civil freedom with certain advantages and disadvantages. He writes:

To find a form of association which may defend and protect with the whole force of the community the person and property of every associate, and by means of which each, coalescing with all, may nevertheless obey only himself, and remain as free as before. Such is the fundamental problem of which the social contract furnishes the solution. Although, in this state, he is deprived of many advantages that he derives from nature, he acquires equally great ones in return; his faculties are exercised and developed; his ideas are expanded; his feelings are ennobled; his whole soul is exalted to such degree that if the abuses of this new condition did not often degrade him below that form which he has emerged, he ought to bless without ceasing the happy moment that released him from it forever, and transformed him from a stupid and ignorant animal into an intelligent being and a man. What man loses by the social contract is his natural liberty and an unlimited right to anything which tempts him and which he is able to attain; what he gains is civil liberty and property in all that he possesses.²³

Thus, he wants to have a kind of society where people compete under their own will and, to do that he appeals to the republican model of the society. The idea being if everybody involved in making the law, then they legislate the law for themselves. And, in obeying them they only obey themselves. So, they are not under the will of anybody else although, they are obeying the law.

For Rousseau, we cannot alienate our will, we cannot give out our will to the sovereign, in way where sovereign tell us what to do instead of saying that we ourselves have to be part of legislative body. The difficulty for that was how that could actually come about? How will people share a common-will not just technically but, actually? Rousseau thought that was possible in some very small

²³ Ibid., 14-19.

and special society. Aristotle made similar point in pointing out organic connection between state and individual. According to Aristotle, state moulds the ethical life of the individual. State is the form and individuals are its matter. For Aristotle, it is not individuals but family which is unit of the state. By making family as unit of the state, Aristotle criticizes the Plato's conception of collective parental life. So, by holding a organic view of relationship between the state and individual, Aristotle and Rousseau comes close to each other. In other contract theories state becomes an external instrument for sustaining the life of individuals. But for Aristotle, individuals and state form one living organism.

Rousseau social contract allow to regain freedom-one naturally has that, in most conscious societies you lose because people come to regard themselves only. And, become obsessed with reputation, and possession of self esteem. In that process they lose their inner freedom- freedom which has lot to do with inner space according to Rousseau. This freedom could be regained by entering into society through contract, where all becomes citizen, where we become higher version of ourselves. This higher version is dedicated to a common goals and act collectively over the general good. So, for Rousseau, this is good reason to enter into social contract.

Regarding state of nature we can say that, it is a kind of anarchy and civil war model, and hence a complete failure. But, on the other hand, state of nature, for Locke, is an ideal state in which under certain conditions people can live in harmony with each-other. Rousseau has a very solitary idea of state of nature. Converse of what Hobbes said that man by nature is selfish and aggressive Rousseau is of opinion that man is solitary by nature and is capable of living in small units like family, essentially not sociable in equal manner. This view gives different picture of Rousseau's state of nature. He was interested in psychological and educational preconditions for citizenship because it is very hard to imagine, when one reach social contract. In Rousseau's idea of society one has to do a lot of hard work, one has to do lot of national service paying taxes and paying someone to be your delegate is not just enough. One has to be an active participant and has to socialize in certain kind of way

to be that kind of citizen. It is not morally considered to be simply imposed on existing societies. On the other hand, Locke was of opinion that- you make a contract and then everything runs smoothly. Hobbes said, you make a contract and then if you have any doubts, don't worry, sovereign will force you to obey. Rousseau thinks of a contract as a suitable process. People have to keep working on it.

Religion played important role in making social contract, Hobbes was afraid of religion and, thus thought that religion could tear societies apart. So, he argued that the sovereign has to have almost complete control over the religion. But, Rousseau sees much more positive dimension of that, the religion can be civil religion. And that religion can itself be through festivals, through participation part of shaping our psychology so, that we can become a complete citizen. About general will Rousseau was of opinion that it has to be created through socialization, education and participation, it cannot be forced from outside through violence. French revolution failed because it tried to create general will through external force. Rousseau was of the opinion that people need to be forced to be free. By this he means that people have to be politically re-educated, if they don't agree will general prescription of the society.

David Hume remarked some interesting points on social contract theory. First, according to Hume, social contract didn't occur. Secondly, since people don't enthusiastically consent to the political system they belong to therefore, consent is not the only source of tacit government. But that doesn't mean that those governments necessarily bad or necessarily illegitimate. In disagreement with social contract theory he writes:

It is in vain to say, that all governments are or should be, at first, founded on popular consent, as much as the necessity of human affairs will admit. This favors entirely my pretension. I maintain, that human affairs will never admit of this consent; seldom of the appearance of it. But that conquest or usurpation, that is, in plain terms, force, by dissolving the ancient governments, is the origin of almost all the new ones, which were ever established in the world.

And that in the few cases, where consent may seem to have taken place, it was commonly so irregular, so confined, or so much intermixed either with fraud or violence, that it cannot have any great authority.²⁴

Another thing which Hume says about the Republican model of social contract is that it leads to perversion of human nature by forcing people to keep aside their desire for general good and become citizens rather than individuals. That cannot be done for very long, and if one tries to do that too hard then their might actually be bad consequences. For Hume, social contract is not helpful way of thinking about society. Precisely the notion of individual rights and that individualized consent having to be the most important. We need to think in terms of general amount of utility and, as the basis of social contract. For Hume, convention is deeper than contract.

Social contract theories fall apart into two directions: on one hand we had Jeremy Bentham who developed into Hume's line and criticized natural rights by saying that we cannot have basis for natural rights. We have to simply look forward to know, what is best utilitarian basis to construct and develop a society? On the other hand, in Germany, we have Kant saying: if you are going to talk about natural law you can't just say it is a general law which is there. How would we establish its validity? Instead it has to be a law which we give ourselves. So, in between those two poles the social contract basis for natural rights is left behind.

John Rawls goes back quite explicitly to Locke and Rousseau and tries to reformulate the notion of a contract not as the idea of an explicit promise, people make, but rather the idea of, a sought of, hypothetical contract. A contract to which people will consent to, if thought rationally, to attain justice in society and to have fair distribution of resources in particular.

So, contract theory in that diluted form actually has become central to contemporary debates about political obligation. Utilitarian does not give strong account of obligation it says: one should have laws that generally advantage and, their

²⁴ Hume, 1994: 170.

consequences may be good reason for obeying them. But it seems like a prudential argument does not give an account of obligation to obey them. Whereas the idea that you promised, you have agreed is thought to generate historically it has to.

To summarize, the discussion began by Plato's definition of justice as minding one's own work and obedience of duty towards state and its laws. Then chapter discussed about how justice can take place within society by discussing Aristotle distributive theory we then moved on to social contract theorist, which is second part of the chapter, because Hobbes, Locke, and Rousseau introduced justice by the way of social contract theory. Here we discussed that for Hobbes justice lies in hands of monarch, in Locke justice is in the form of individual rights related to life, freedom and property. For Rousseau, it is the general will or moral collective will of the individuals in the society who will shape the laws of institutions which will deliver justice. Then we saw in our discussion that social contract theory was repudiated by Hume on the ground that there is no historical evidence to any contract, original or otherwise. His account of justice is based on convention and customs. In next chapter we will see that how Kant has attempted to re-visit social contract theory not as a historical phenomenon but as a regulative mechanism to be used as mechanism to explicate the beginning point of state of nature and nature of sovereignty on the one hand and, autonomy and dignity of the individuals on the other.

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CHAPTER-2

KANT ON PERFECT JUSTICE

This chapter discusses Kant's theory of justice according to which right to freedom and human dignity supersedes the idea of goodness. For Kant, 'rights' are morally prior to 'good'. To substantiate his position, Kant has placed freedom of will at the centre of categorical imperative of universality, end in itself and kingdom of ends. With deontological ethics, Kant tries to repudiate teleology in Plato and Aristotle, and proposes a critic of consequentialist ethics. There are certain questions which need to be addressed – Kant has created an unbridgeable gulf between 'ought' and 'is', what are its implications on his formulation of perfect justice? Is justice merely formal in the same way as moral laws are? To answer such question I will go into the details of Kant's contention that moral laws are vindicated how an action ought to be and what an action ought not to be. The same applies to the concept of justice- how justice is to be delivered, not what kind of justice is to be delivered.

The three maxims of Categorical Imperative, especially the 2nd maxim end in itself--- dignity. Kant says, "the only thing that can be found anywhere of unconditional value is a good will."²⁵ For Kant virtues such as intelligence and calmness must be directed by the goodwill and good will is the source of values. He says, "A good will is a perfectly rational will."²⁶ It must be possible to formulate the moral law in terms of the rational nature of mankind. Kant's basic preoccupation behind "the categorical imperative is to formulate normative principles of action."²⁷ He says that "duty is the necessity of an action done from the respect for law and respect for law is not for the incentive of morality but morality itself."²⁸

²⁵ Kant, 1959: 59.

²⁶ Ibid., 180.

²⁷ Ibid., 180.

²⁸ Ibid., 181.

Once humanity reaches at the stage of enlightenment and develops reason to the extent that it becomes autonomous and dignified, it can perform juridical and ethical duties. Enlightened being acts in the conformity of categorical imperative, realizes an ideal such as universality, end-in-itself and kingdom of ends. This ideal reaches at the notion of perfect just society wherein every enlightened being makes a general consent in formulating the principles of justice. At this stage human being can realize his own betterment and for the sake of entire society. Thus, the principle

of absolute justice transforms an individual behavior and institutions in such a way that everyone can act rationally to transform oneself and society as well. I will divide the chapter into three parts which are as follows:

Part-I 'Rights' superseding 'Goodness'

Part- II Autonomy and dignity

Part-III Universality, End in itself and Kingdom of Ends.

PART-I

'RIGHTS' SUPERSEDING 'GOODNESS'

The notion of perfect justice in Kant can be elaborated in the context of his critical appreciation of social contract theory as regulative. Kant argued that even if there is no historical evidence to social contract, it will help as regulative, not constitutive principle. In *Metaphysical Elements of Justice*, Kant wrote:

The origin of the supreme authority is, from the practical point of view, not open to scrutiny by the people who are subject to it; that is, the subject should not be overly curious about its origins though the right of obedience due it were open to doubt...whether as a historical fact an actual contract between them originally preceded the submission to authority or whether, instead, the authority preceded it and the law only came later or even is supposed to have followed in this order-these are pointless questions that threaten the state with danger if they are asked with too much sophistication by the people who are already subject to civil law; for, if the subject decides

to resist the present ruling authority as the result of ruminating on its origin, he would rightfully punished, destroyed, or exiled...in accordance with the laws of that authority itself.²⁹

Empirical inquiry into beginning of government was irrelevant for the Kant. He argued that our political duty and responsibility towards present government has nothing to do with question that, whether social contract ever really happen. In defending the hypothetical social contract he says, it is an ideal that is warranted by reason alone.

Kant argues that moral obligation and moral autonomy are not in conflict in hypothetical social contract. A rational person would want to protect h/er autonomy rather than risking their life by living in state of nature which lacks security. Reasons guide our moral obligation and reason also demands that we willingly submit to hypothetical social contract and thereby lesser our personal decisions in the political area to legitimate moral authority of government. For Kant, this is practice of moral authority in hypothetical social contract not infringement of it a right thing to do.

Right has to do with laws and rules. “It is a paradigm which recognizes that people live in a group that requires organization and regulations, and frames values in terms of duty and conformance to rules”.³⁰ The approach which emphasizes on rights, in ethics, is called the deontological approach. Good is another way of thinking about actions or habits in ethics. Both good and rights are used for moral evaluation. “Good is a paradigm which recognizes that people have desires and aspirations, and frames values in terms of what enables a being to achieve its ends”.³¹ The approach which emphasizes on goods, in ethics, is called the teleological approach.

For Kant, moral evaluation is possible when humanity reaches to the stage of enlightenment and develops reason to the extent that it becomes autonomous and dignified, it can perform juridical and ethical duties. Kant’s theory of justice is an

²⁹ Kant, 1999: 84.

³⁰ Meacham, 2011: 4.

³¹ Meacham, 2011: 3

attempt in which right to freedom and human dignity supersedes the idea of goodness in Plato and eudaimonia in Aristotle. For Kant, the 'right' is morally prior to the 'good'. Greek philosophers like Plato and Aristotle treated 'good' as the starting point of Ethics, asserting that laws and principles are to be derived from it. They supported the doctrine that the good has priority over the rights. Claim about priority of rights, in Kant, "is not about giving equal consideration to persons or interests in deliberative procedures. It concerns the structure of the practical reasoning of moral agent who affirms the principles of right and justice".³²

Kant is of opinion that an individual is of immeasurable value, and what a individual has, what a individual does, what a individual believes, what a individual enjoys are all reliant upon individual's reason and the autonomy. Kant says that the virtues themselves- evenness of temper, patience, can be turned evil if they are used for evil. Thus, for Kant, then, 'good' follows 'right'. What is good is good because it is not just the expression of rational will but because it is achieved in accord with the universal principles of reason. The approach in ethics that follow goodness is called teleology. The words teleology is derived from the Greek word 'telos' which means 'end', 'purpose' or 'goal'. Utilitarianism has teleological approach to ethics, according to which rights follows from good. An action is right because it brings happiness. This view also affirms the Utilitarian thesis that the Right maximizes the Good. Right actions are right because they attain something that is good. On the other hand, the approach in ethics that follows 'rights' as prior to 'good' is called deontological approach. Kant used deontological approach. P.W Taylor summarizes both as:

A teleological theory holds that an action is morally right either if a person's doing it brings about good consequences, or if the action is of a kind which, if everyone did it, would have good consequences. In either case, ultimately it is the goodness or badness of the consequences of actions that make them right or wrong. A deontological theory holds that an action is right if it accords with a moral rule, wrong if it violates such a rule. Moral rules are based on an ultimate

³² Samuel Freeman, 1994: 341.

principle of duty which, in contrast to teleological ethics, does not specify an end or purpose whose furtherance makes actions right.³³

Kant's Deontological Theory

Kant argues and reminds, while taking a direct gibe at Aristotle, that neither can the primitive virtue of self-control and temperance be well thought-out as good in themselves. Why? Since being rich, strong, intellectual or controlled will help you to attain goals you have, these virtues don't assess the power and value of your agency or they don't look what those goals would be if your efficiencies are bloated as an agent. So, for Kant, a clever, persistent, wealthy, vigorous, sensible robber will be an exceptional robber but that won't put together his theifdom as good. Virtues which have been traditionally noted as virtue each of these, according to Kant, are worthy only if Goodwill is part of it.

Good will is good in-itself, it is not good for what it persuades or accomplishes, says Kant. It would not be an overstatement, to say, that Kant is a critic of consequentialism. For Kant outcome of an action is not that matters. And in a particularly renowned passage, Kant says, "the goodwill would remain good, even if by the niggardly provision of step-motherly nature it wholly lacked the power to accomplish its purpose", by which he means, an action will hold a moral worth even if a person with his goodwill be upset in all the aims that he has set to realize. He also reassures that even if a person didn't realize its aim "it would like a jewel still shine by its own light as something which has full value in itself. Its usefulness or fruitlessness can neither augment not diminish its value."

Question that arises here is: how could someone have such a vision? How could anyone have such a view of morality where morality of an action doesn't concerns with outcome that it produces, rather the intention, account or purpose under which the action is performed? Three important claims are made by Kant at this point.

- 1) Actions which are done out of duty have moral worth.

³³ Taylor, 1975: 134-135.

- 2) Moral worth of an action done out of duty, in a second proposition, is by the maxim according to which an action is determined, not by the purpose that is to be achieved by it. So when an act is done out of duty its moral worth is seen by looking at the explanation under which it is performed not by the looking at the results which are expected from it.
- 3) At last, says Kant, duty is the obligation of an action done out of the admiration for the law since duty lies at the heart of deontological theory. According to Kant one is truly free when one subjects his will to the law which he has made for himself, that is to say, moral law has obligatory force upon him. Hence, for Kant “duty is the necessity of an action done out of the respect for the law”, and when a person act in such a way only then he acts autonomously.

Thus, Kant pointed three very important claims: Actions which are done out of duty has moral worth. Three motivations, Kant points, which one might have while performing an action are: act done either out of duty or out of inclination or out of self-interest. Out of these three motivations, action performed solely out of pure motivation of duty has a moral worth. Actions that are performed out of inclination or self-interest have no moral worth for Kant. For example, if you save men from heavy fire but you do so only because government have announced price money to the rescuer then that act of saving has no moral worth.

Kant articulates in order to determine whether particular action has moral worth or not the first question you need to ask yourselves is that ‘does our action is in agreement with duty?’ If our answer is ‘no’ then such act has no moral worth. The second that must be asked is: what is the intention or purpose with which the act is done? This question is for those acts which are eliminated from the morally worthy acts which accord with duty. There are many instances where one performs certain morally worthy act without direct fondness for that act for example: people pay income tax out of fear that if they don’t they will land up in jail or pay more tax not out of duty. Also, people follow certain traffic rules out of fear. For John Stuart Mill all these acts have moral worth but for Kant, these acts have no moral worth because they are not

performed out of duty, there is no inclination of keeping up with duty. So Kant thinks one has duty not to steal, and he considers case where one has stopped stealing because he has become rich. Being loyal to your spouse or wife for Kant is necessity, and if a married person loves someone else secretly then such cases have no moral worth. There's moral worth, says Kant, in acting compassionately towards someone when you actually feel compassionate towards them. Because in all these cases actions are done not with what is right thing to do but what is demand of morality. Here actions are performed because inclination comes in harmony with what morality demands from us not with what we ought to do.

This situation, for Aristotle, is one in which moral worth is articulated paradigmatically. But Kant is of opinion that in situations like this you cannot say that an action was done out of moral law. All you can observe is that action was performed in 'keeping with moral law' i.e. it matches with what moral law demands, rather than for duty sake. For Kant moral worth of an action can be seen in third case where an action is done out of duty sake and not out of personal interest or any other inclination. The opposite situation of the third case would be if you act compassionately in circumstances where there's no incentive for you, and you feel no compassion, in those cases, says Kant, we can observe that the act was done, not purely in keeping with, but from the moral law. Here Kant is not suggesting that life lives in this way as Aristotle suggested, is a badly lives life. Kant intended that situation where intention matches with duty hopefully keep ones away from doing wrong things, but such situation don't allow anyone to check one's character. And it is for one's own self that that drive or enthusiasm one get to do what is right thing should confirm to what moral law demands.

Since, we now know, what is to act out of duty for Kant we can understand his second claim. Then "an action done from duty has its moral worth not in the purpose that's to be obtained by it, but in the maxim according to which the action is determined." So, an action done out of duty sake only is in conformity with the demands of morality, because that is what demand of morality is. Not because one is inclines to act in that

way, not because there involved any self-interest, but because that act is what demand of morality is. Now, an act needs to be illustrated in a way to discover what morality demands. The manners in which one illustrates an act make use of- ‘a subjective principle of volition’ which Kant calls a maxim- that is, an explanation under which an action is executed. So, it acquires the form, maybe: in every interaction with everyone who appears into my shop, I will present them with an sincere accounting of how much their transaction is value despite of whether I could be revealed deceitful in this, or: in each and every of my encounters with those who are frail and in need of my assistance, I will offer them with the help that I can despite the consequences of whether that would be good to me .just by taking into account the intensions and not by taking into account the result, can the action be expression of the goodwill itself. “Goodwill is the only thing that is good in itself”, says Kant, and it is only by coming across the explanation under which an act is performed that we can establish whether the goodwill was implicated in the right manner in the preference to execute that action.

Last (3) claim “duty is the necessity of an action done out of the respect for the law.” So, we know two important claims of Kant i.e. Actions which are done out of duty have moral worth. And, when an act is done out of duty its moral worth is seen by looking at the explanation under which it is performed not by the looking at the results which are expected from it. The third claim is about- what is that this duty amounts to. If an act has to be done out of duty, say Kant, then it must be done with clear and open acknowledgement, in this way, at this particular point one is respecting and regarding the moral law to the extent that it communicates what morality demands of him. Not in so far that it communicates means that one may have a well- arranged happy, harmonious soul. An actions moral worth, says Kant, does not lie in its consequence, for the consequence could have happen in numerous ways. A suicide bomber who dressed up like a clown in a public and intended to kill thousands of people, and because his bomb got defused, the result could be that he produced enormous amount of joy in kids who were around him. The consequence can come out in many ways. Kant says Mill would have to say that in

making those kids happy he has done something more worth. But for Kant, no matter what is the explanation under which an action is performed, that explanation be that one have admiration for the moral law itself.

Now, what kind of law, says Kant, can that be, the deliberation of which must decide the will without mention to any “intent” anticipated consequence, so the ‘will’ can be called completely good without qualification?” we will discuss about this in coming sections of this chapter.

Deontological theory gives primacy to rights over good. According to Kant it is good which follows right not vice versa. With deontological ethics, Kant tries to repudiate teleology in Plato and Aristotle on the one hand, and proposes a critic of consequentialist ethics. For Kant, good defines ‘what is valuable’ and worth pursuing, whereas rights aim to define how and to what extent actions ‘ought’ to be justified to others. Goods thus focus on the goals of actions and rights puts constraints on action. Kant, thus has created an unbridgeable gulf between ‘ought’ and ‘is’. Deontology and priority of rights are often understood as being synonym, but latter is just one sub-category of the former. Both should not be confused as same. So, what is this priority of right means?

The priority of rights refers to the substantive limits placed on the kinds of considerations that can count as reasons in practical deliberations, which stem from the content internal to principles of right. The priority of right is a claim about how the substantive content of a (Kantian) moral conception restricts the desire and interests’ moral agents can take into account, individually and collectively, in formulating their purposes and rationally deciding what they ought to do, but also about the ends and interests that individuals and societies may legitimately pursue. As such, the priority of rights defines a notion of permissible ends, and (morally) admissible conceptions of the good. Admissible conceptions of the good are those whose ends and activities accord with the requirements of the principles of right.³⁴

³⁴ Samuel freeman, 1994: 336.

It is well understood now that deontological principles do not claim about giving equal consideration to persons interests in deliberative procedures; they do not direct us to maximize one rational good. They describe how moral principles of right internally relate the concepts of the right and the good. Moreover, according to Kant, these principles leave individuals free rationally to decide, recall, and follow their good, as long as it conforms to certain moral conditions.

On the other hand, “priority of rights describes the place of principle of rights in the practical reasoning of moral agent motivated by a sense of right and justice”.

Kant’s view brings together Deontology and priority of rights. Kant refers to a “paradox of method”: “the paradox is that the concept of good and evil is not defined prior to the moral law, to which, it would seem, the former would have to serve as foundations; rather the concept of good and evil must be defined after and by means of the law.”³⁵

Kant asserts that the concepts of good and evil "must be defined after and by means of the law" this is more fully set out when Kant successfully express a bit like a "Copernican turn" in ethics by being perceptive to the fault of philosophers who earlier to him were arguing the absolute principle of morals. Kant argued that will cannot determine the law, instead law should be first looked upon which is a priori and directly determine the will. He writes:

Therefore what we have to show a priori is, not why the moral law in itself supplies a motive, but what effect it, as such, produces on the mind. The essential point in every determination of the will by the moral law is that being freewill it is determined simply by the moral law, not only without the co-operation of sensible impulses, but even to rejection of all such...³⁶

This passage makes apparent the type of alteration involved. Kant is signifying that we should not commence by discovering something we take to have "value" and then stand our belief of moral law upon it but rather clear the notion of the moral law that

³⁵ Ibid., 347.

³⁶ Kant, 1956: 234-235.

is a priori and then figure out what can be said to have value in terms of what fits with it. This is the kind of deliberation is taken into consideration in assertion of the priority of the right over the good.

Rawls elaborated this view of Kant in this theory of justice. he asserts that “the principle of rights, and so of justice , puts limits on which satisfactions have value; they impose restrictions on what are reasonable conceptions of one good.”³⁷ In *Justice as Fairness*, for Rawls, principles of justice restricts the desires and aspiration rather than taking them as given. This priority of principles strengthens the concept of autonomy and dignity which are very basis for categorical imperative and of perfect justice.

PART- II

AUTONOMY AND DIGNITY

Principle of perfect justice revolves around the concept of autonomy and dignity. This chapter will discuss autonomy and dignity as foundational principles in formulating perfect justice. Kant offers a description of why one has categorical duty to value the dignity of other person and why people should not be used a means, purely even for superior ends. In light of this view that each and every person has certain dignity that demands respect that Kant rejects Utilitarianism. According to Kant the reason a person is worried with improved rights doesn't shoots from thought that we possess ourselves, but rather from the thought that we are all rational individuals. To say this is to say that we are individuals who are capable of reason. We are also independent individuals who are capable of acting and deciding freely. So, this faculty for reason and freedom is the only faculty we have. We do have other faculties like pain and pleasure for distress and fulfillment. Kant acknowledges that utilitarians were right in holding that human actions seek to avoid pain and cherish pleasure. What Kant denies is the Bentham's claim that pain and pleasure are supreme masters. Kant argues that only our rational faculty makes us unique, that make us extraordinary, and that separate us from and above sheer animal way of life. Rational faculty makes us

³⁷ Rawls, 1999: 27.

something more than simply bodily individual with appetite. Kant's idea of freedom does not include the absence of obstructions to what we want and doing what we want, though it is one way of thinking about freedom. Kant has a strict challenging idea of what it means to be free. Kant explains that when we like animal look for pleasure and fulfillment of our desires and try to avoid pain we are not acting freely, rather we are acting as slaves of those impulse and desires. He further elaborates that when I act to satisfy a particular hunger or a desire which I didn't choose and act out of natural necessity that is not freedom. Freedom, for Kant, is opposite of necessity. Then the question arises by what way a will can be determined if not by my desires, or my hunger or appetite or by prompting's of nature? Kant answers: to perform freely is to perform autonomously and to perform autonomously is to perform according to a law that one gives to himself not according to laws of cause and effect or laws of nature which comprises one's desire to eat, or to drink or to choose this clothes over that in shopping mall. Now what are autonomous acts and Heteronomous acts? Nomos is common to both autonomous and heteronomous which means law. And both differentiate the law to which we are subjected by saying that in one case, it's an auto-nomos, and in the other case, it's a hetero-nomos. For Kant, to perform autonomously is to perform out of law that one has imposed on himself. One is auto-nomos, means one is subjected to law that come from within. Heteronomy is the word which is opposite of autonomy. Now, what is to be hetero-nomos? When one performs heteronomously, then one is performing out of law that comes from outside or from something that is different from him. That is to say, when one is performing heteronomously one is performing out of desires or inclination that he has not chosen for himself. Kant writes: "on the contrary, when the matter of a volition, which can be nothing else than the object of a desire, is made of the practical law, and represented as a condition prerequisite to its possibility, then Heteronomy (a false principle of morals) results".³⁸ Thus, freedom as autonomy is a strict notion that Kant is adamant on. Now the question arises why is autonomy opposite of dictates of nature? Kant

³⁸ Kant, 1956: 100.

answers that autonomy is achievable only when law to which you validate your actions comes not from the eventualities of the world, but from inside.

Epictetus and Boethius were interested in same sort of questions which Kant is concerned with. Both were deeply interested in question how can human achieve and, for Kant, freedom is possible when one governs his actions on the grounds of what one has decided what one wants to be, norms that one wants to conform to.

Kant reminds natural world is ruled by laws like that of cause and effect. Assume you throw a stone in the sky and it hits to the floor. Can it be said that stone is acting freely? It cannot be said because stone is acting according to law of cause and effect and law of gravity. Concepts of Freedom as autonomy, morality and freedom must be strict in same way, argues Kant. Regarding morality Kant argues: when ends are desired for its own sake it then a person act freely not when best means are desired for some favorable ends. Human beings are capable of much more than a ball. Humans are agents rather than instruments. To act autonomously is to act as an agent and we act autonomously when we act according to the law which we have given to ourselves.

On the other hand, when we act out to chase pleasure or out of inclinations, we act as means to realize some ends which are external to us, these are the situations which makes us instruments rather an agent. To act autonomously is to become and to think oneself as an ends in oneself. We are no more an instrument to purpose given outside us. This ability to act freely as an autonomous being, Kant tells us, gives human life an exceptional Dignity. So, when we regard everyone as ends-in-themselves and not as means we are respecting human dignity. And for this reason it is not right to use people for other people's good. Utilitarianism goes wrong in this way in using one person for other person's happiness, says Kant. So, it is imperative to revere every person and to support their rights. Kant writes: "autonomy is therefore the grounds of the dignity of humanity, and also of every other intelligent nature whatsoever." On must be preventive of utilitarian idea that even in a long run if we revere the pride of an individual we will maximize human happiness because even if it turns out to be true it will still be wrong. Utilitarians would be holding dignity of a person for a

wrong, instrumental and purely contingent reason. It would still be using individuals as a means, no matter even if calculus works out in a long run, rather than as an end-in-themselves. This idea of freedom as autonomy, of Kant, is further connected to his idea of morality. Kant explains it as follows:

Autonomy of will is the alone foundation of morality, and of the duties springing from it; and every other principle whatsoever, not only cannot found laws of necessary obligation and catholic extent, but is in fact subserve of morality. In being independent of the matter of any law (a desired object), and being determinable by the legislative form of his own maxims, consists the ethical nature of man, and that which renders him a subject for morality; that independence is freedom negatively, while this legislation is freedom positively. The moral law expresses, therefore, nothing else that just the autonomy of reason, i.e. of man's freedom or spontaneity; and this autonomy or freedom is a condition which must qualify every maxim, if these last are to harmonize with the moral law itself.³⁹

Thus, an action is morally good, not just when it is done to confirm with the moral law, but when it is done for the sake of moral law. The thought is that the intentions grant the moral worth of an action. And it is the intention of the duty which grants the moral worth of an action.

The second assertion that Kant defends in the Groundwork is that it is not purpose which is to attained, which Greeks would call telos, aims or goals that gives moral worth to an action performed out of duty. Rather the maxim according to which an action is performed. To be exact, what establishes the morality of an action on the Kantian frame is the description under which the action is done.

Duty is the third assertion which Kant makes- duty is the main concept ruling the theory of deontology. Deon in deontology refers to duty. Deontology refers to the “necessity of an action done out of respect for the law”. Obedience to law is demanded here not just to comply with purpose of the law or it is done in a way that our actions fall under moral rule but, because we acknowledge that moral law is

³⁹ Ibid., 99-100.

morally important to us and also, because we recognize that it is what wisdom requires, of us. The moral becomes the guiding light for our actions, also the law which we respect as a rational individual. Conditional forces of the outside world cannot determine the side of our actions on the Kantian frame.

Dignity is a distinguishing feature of an individual from the standpoint of his inner significance, agreement to his own fate. In belief, these are traditional concepts of dignity, attached to the social status of an individual (the higher the dignity, the higher the status). Kant in *Groundworks of Morals* talked about dignity as a moral concept, he talked about “universal dignity” which characterizes the individual as a person that is to say, the origin, riches, education or social position does not determine the dignity of a person, but by his inherent freedom as an individual person and citizen. According to Kant, dignity provides the basis of will and it contrast to any other expedient or to say practical motives.

Kant compares dignity with the price. He says, everything which has price has a value which can be exchanged for something else. But dignity is priceless nothing can be exchanged in return of dignity. It has, thus, an absolute worth. He writes:

Man, as a part of the physical system (homo-phenomenon, animal rationale), is an animal of very little moment and has but a common value with beasts, and the other products of the soil. Even that he is superior to those by force of his understanding, gives him only a higher external value in exchange, when brought to the market along with other cattle, and sold as wares. But man considered as a person, i.e., as the subject of ethico- active reason, is exalted beyond all price; for as such (homo noumenon), he cannot be taken for a bare means, conducive either to his own or to other person’s ends, but must be esteemed an end in himself; that is to say, he is invested with an internal dignity (an absolute worth), in name of which he extorts reverence for his person from every other finite Intelligent throughout the universe, and is entitled to compare himself with all such, and to deem himself their equal.⁴⁰

⁴⁰ Ibid., 250-251.

According to Kant respect and honor that is shown to others must not be given up at all. He writes: “The humanity of our common nature is the object of that reverence exigible by each man from his fellow, which reverence, however he must study not to forfeit”. Kant is not just concerned about the dignity of other but dignity of self too. He acknowledges that one should not consider himself merely as person, but as a man. That is to say, as man he is rational and has dignity and that dignity should not be hampered by the animal instincts, which means he should not give-up on his dignity to favor any other. This dignity is basis for the self- respect and honor. So, the duties which a man imposes on himself in conformity to reasons should create a space for the self- respect too. Self- respect or dignity of one own-self is also a duty which individual has towards oneself. For any ends or duty a person should not give up on this duty which he has towards him. We write:

he has to consider himself not merely as a person, but also as a man, that is, as such a person as has imposed upon him duties put upon him by his own reason, his insignificance as an animal ought neither to impair nor affect his consciousness of his dignity as rational, and he ought not to forget his ethical self reverence springing from his latter nature; that is to say , he ought not to pursue those ends which are his duties servilely, or as if he sought for the favour of any other person: he ought not to renounce his dignity, but always to uphold, in its integrity, his consciousness of the loftiness of the ethical substratum of his nature; and this self- reverence is the duty owed by man to himself.⁴¹

To understand better, what dignity is? Kant discusses the concept of humility. He begins by answering what humility is? He writes:

Humility , understood as a low opinion of one’s self, when compared with other person, is NO DUTY (nor, generally speaking, in comparison with any finite being, although a SERAPH): the active endeavor, in such comparison, to find one’s self equal or superior to others, in the imagination of thereby augmenting his inward worth, is AMBITION, - a vice diametrically opposed to the duty we owe to others; but the studied declinature of all one’s proper

⁴¹ Ibid., 251.

ethic worth, considered as a mean for integrating one's self into the favour of another (be that other who he may), is false and counter feit humility - (HYPOCRISY, FLATTERY)- and a degradation of one's personality, subverting the duty he owes to himself.⁴²

In above passage it is clear that when a man compares himself to others, either to be equal or superior, he is degrading his own personality and humiliating himself. In such case a man is disrespecting the duty he has towards himself. Such comparison, of a man to another man, is humiliation, for Kant. But when a man compares himself with moral law, he becomes capable of inward legislation, and thus results in discovery of inward worth, which further motivates him to have respect and honor for himself. Kant explained this as:

Upon an exact and sincere comparison of a man's self with the moral law (its holiness and rigour), true humility must infallibly result; but from the very circumstances that we can know ourselves capable of such an inward legislation, and that the physical man finds himself compelled to stand in awe of the ethical man in his own person, there results also at the same time a feeling of exaltation, and the highest possible self- estimation, as consciousness of one's inward worth, by force of which he raised far beyond all price , and sees himself invested with an inalienable dignity, inspiring him with reverence for himself.⁴³

Kant moves in detail of how a person can maintain dignity with one self. He gives list as follows:

- 1) One should not become slave of another man.
- 2) One should not create those debts which latter becomes impossible to discharge.
- 3) One should not take favors which cannot be dispensed.
- 4) One should not make a deal of bodily pain, especially when one is aware of the fact that pain is inflicted by his own actions.

⁴² Ibid., 252.

⁴³ Ibid., 252.

- 5) One should not depict himself something as celestial body, or worshipping is own image.
- 6) One should not suffer the loss or harm given by others, by trampling rights.
- 7) One should neither be flatterer nor parasites nor beggars.

With this list he says, “This duty, in respect of the dignity of our humility, can be rendered more sensible by such percepts”.⁴⁴ Kant notes, when man makes himself a worm, should not complain when trampled underfoot. This is the case with caste system in India.

Kant next moves to another level, a set of ‘duties a person has towards others’. And explains how dignity of humanity is maintained in reverence owed to others. According to Kant, the respect we give to others, or that which others may demand from us, is the appreciation and acknowledgment of a dignity in the person of another; that is to say a worth superior beyond all prices, and admitting that there is no equal in barter for which the object of my assessment could be exchanged. Kant notes that every man must be respected by his fellow men and in return he ought to respect them too. He writes : “humanity is itself a dignity; for no man can be employed, neither by others nor by himself, as a mere instrument, but is always to be regarded as an end; in which point, in fact, his dignity.”⁴⁵

Kant continues it by saying that no men should be treated as a means, just as a man himself cannot dispose off his reverence for any price, he has no freedom to derogate the equally important self- respect of other as men, i.e. “he is obliged practically to recognize the dignity of every other man’s humanity and so stands under a duty based on that reverential observance, which is necessarily to be demonstrated towards every other person.”⁴⁶ Kant seems to be very strict regarding application of this concept of dignity. He says if anyone refuse to give respect that one owes to mankind is liable to punishment. He writes: “hence it comes that some punishment are to be reprobated, as

⁴⁴ Ibid., 252.

⁴⁵ Ibid., 281-282.

⁴⁶ Ibid., 282.

dishonoring humanity, which are often more grievous to the unhappy sufferers than the loss of goods and life, on account of the afflicting degradation they import...⁴⁷ For Kant, it is important to make an observer feel ashamed, to discern that he belongs to a race which defy to take care in such a manner.

Kant further talks about vices which undermines the respect and dignity owed by us to others. Those vices are:

1. Pride
2. Backbiting
3. Sneering

Kant uses the word *superbia* which means the thirst to be always uppermost. Kant says pride is a kind of objective where we tend to think that other will think despicably when compared with us. Kant calls it a vice that subverts the respect to which everyone has legal claim. Opposite of pride is *fierte'* which means love and honor i.e. "care to abate nothing of one's dignity as a man when compared with others; and which *fierte'* is on that account often spoken of as noble, for the proud demands from others a reverence which he refuses to return them."⁴⁸ Another vice which hampers the dignity of others, says Kant, is Detraction or Backbiting. Backbiting is causing a verbal injury or speaking ill of other which may be prosecuted before court of justice. In Kant's words backbiting is an eagerness to spread about rumor or information to demean the respect due to others. Thus backbiting is contrary to the dignity and respect owed to mankind in general. So, Kant suggests that:

It is a duty, instead of a malignant joy, in exposing the faults of others, so as thereby to establish one's self in the opinion of being as good, at least not worse than others, to cast, on the contrary, a veil of charity over the faults of others, not merely by softening our judgments, but by altogether suppressing

⁴⁷ Ibid., 282-283.

⁴⁸ Ibid., 285.

them; because examples of reverence bestowed on others may excite the endeavor to deserve it.⁴⁹

Next, vice which Kant elaborates is scorn; according to Webster “it is a harsh criticism that shows a lack of respect or approval for someone or something”. Sneering (*perisiflage*) i.e. “the making the faults of others the immediate object of one’s amusement, is wickedness, and quite different from jesting, where, amid familiar friends certain peculiarities of one of their number are laughed at but not to scorn”.⁵⁰ Sneering, says Kant, aims to put on display the real mistakes of others as the object of mockery or so-called, supposed faults as real with the intention of depriving them the dignity and respect, due to his person. He further points that, the tendency to do so by sharp cynicism is a kind of devilish pleasure. And this is graver infringement of the duty of dignity owed towards other people. So, Kant suggest that : “...so have exposed many points for ridicule and sarcasm, and is also more conformable to the dignity of the matter, and to the reverence due towards humanity, either to make no defense at all against the attack, or otherwise to conduct it with dignity and seriousness.”⁵¹

So, Kant gave two account of dignity as humanity, one holding as duty towards oneself and other holding duty towards his fellowmen, and pointing at the same time, to vices which hamper the dignity and respect of oneself and others. Kant in his book further elaborated on vices which arise from the very notion of reverence towards others. That is to say which law must be respected in-order to make it a universal and unconditionate duty? For the present purpose it is not necessary to go in such detail. Thus we can say that Kantian morality of dignity of humanity and autonomy gives the vision of perfect justice and how this justice ought to be under all circumstances will be concern of next part of the chapter.

⁴⁹ Ibid., 285.

⁵⁰ Ibid., 286.

⁵¹ Ibid., 287.

PART-III

UNIVERSALITY, END-IN ITSELF and KINGDOM OF ENDS

As we discussed in previous parts Kant's principle of justice was meant to legalize and preserve individual autonomy and dignity. But on what basis Kant tried to safeguard those principles? The answer lies in discussion of categorical imperative. Kant in groundwork of metaphysics says that 'law' is something, according to which everything in this world works. A person alone has the privilege of working according the version of laws, i.e. a person alone has a will. Kant calls practical reason as will because reason is required to deduce actions from laws. So, for Kant reason alone habitually determine will. With this, he says, not only actions of an agent are acknowledged as objectively necessary but subjectively too. But if this is not the case, that is to say, if reason doesn't determine the will and the will is, subjected to the internal obstruction and impulse, not always in harmony with the law- then those actions will be subjectively conditional and objectively necessary. Such will, says Kant, is not altogether good. So, reason and the will must tally exactly. To the question what is imperative Kant answers: "the representation of an objective principle, so far as it necessitates the will, is called a commandment (of reason); and a formula expressing such is called an *Imperative*."⁵² "Shall or ought", are the words used to express all imperatives and so an imperative denotes a relation between an objective law of reason, and a will so constituted as not to be necessarily determined by it. So, Kant here seems to say that an action doesn't become good just because it involves reason and will, but when that will accords with that reason (when will and reason tally exactly) only than it become practically good action. This gives birth to *the good* that differs from *the agreeable*. In foot notes, Kant briefly explains; how the will should work in order to become a perfectly good will? He writes: "the dependency of the will on sense is called *appetite* and it always indicates a want or need; but the dependency of the will an principles of reason is called *interest*. This last obtains, therefore, only in a dependent will, not spontaneously conformed to reason"⁵³ Kant distinguished two types of interest first, practical interest in which action itself interest me and second, pathological interest

⁵² Ibid., 25.

⁵³ Ibid., 26.

in which object or end of an action interest me. For Kant first type of interest lays principle in reason (i.e. laws).An imperative writes Kant: “is no more than a formula, expressing the relation between objective laws of volition and the subjective imperfection of particular wills(e.g. the humans)”.⁵⁴

Next, Kant discusses two type of imperative:

- 1) Categorical
- 2) Hypothetical.

Hypothetical imperatives are those in which actions essentially as means aim at some ends. And on the other hand, categorical imperatives are those in which actions are considered to be essential in-itself, i.e. objectively necessary without aiming towards any ends. Kant further explains it as: “If the action be good only for somewhat else, i.e., as a mean, then the imperative is hypothetical; but if represented as good in itself, i.e., necessary according to the principles of a will self-conformed to its own reason, then it is categorical.”⁵⁵ He also writes: “a hypothetical imperative expresses merely the relative goodness of an act, viz., as good for some ulterior end, regarded either *as in posses or in esse*. In the prior case it is a problematic, in the latter as assertive, position.”⁵⁶ Regarding categorical imperative he writes: “the categorical imperative which propounds an act as in itself objectively necessary, independent of every further end or aim, is an apodictic practical position.”⁵⁷

Kant further investigates the nature and constitution of three kinds of imperatives. Third, imperative is the imperative of art. Imperative of art is concerned about how much end is to be effected. That is to say, they are concerned with what is required to reach the end no matter whether the end be good or rational is not a matter of inquiry. Kant explains it my giving the example of how youth is taught multiple things. He says, what we bother is to brush up the skills and activities so as to make possible the practice of various ends, even though no end is fixed it is presumed someone of them

⁵⁴ Ibid., 27.

⁵⁵ Ibid., 27.

⁵⁶ Ibid., 27.

⁵⁷ Ibid., 27-28.

will be his. Thus we get so much concerned in this that we forget to teach our youth how to estimate the worth of things which they have accepted or declined as end.

Second imperative which Kant investigates has to do with Aristotle's eudaimonia and Utilitarianism. He says these theories prescribe one end which they conclude that every finite being has and that aim or end is happiness. "The hypothetical imperative announcing the practical necessity of an act as a mean for advancing one's own happiness is assertive."⁵⁸ According to Kant, the ability to choosing the means aiming to the highest amount of one's personal happiness is prudence.

Thirdly, he says, there are imperatives which has nothing to do with ends or aim and they commands categorically. Categorical imperative "concerns not the matter of actions, nor that flows from it, but its form and principles; and the acts essential goodness consist in the formality of its intent, be the result what it may."⁵⁹ Kant calls it: imperative of morality. Kant distinguishes all the three imperatives as, 1. Rules of art; 2. Dictates of prudence; 3. Laws (commandments) of morality. He also calls first one as technical imperative, second pragmatic and third one as ethical imperatives.

Next, Kant moves on to answer how these imperatives are possible? Regarding imperative of art and prudence he says that whosoever aims or wills the ends, will direct all the means towards it which are within his power. But to answer how the imperative of morality are possible is indeed a difficult question to answer. Kant explains that categorical imperatives are not hypothetical. We cannot even help our self by examples; for experience and observations because that would always leave us in doubt about nature of an imperative (hypothetical or not) although appearing apodictic. So Kant writes:

The possibility of a categorical imperative must therefore be investigated altogether a priori, its reality not being susceptible of illustration by examples; - a circumstance rendering the theory of its possibility requisite, not only for its explanation, but a preliminary indispensable for its

⁵⁸ Ibid., 28.

⁵⁹ Ibid., 29.

establishment. This, however, is plain that the categorical imperative alone announces itself as law; the other imperatives may be principles, but they never can be laws of volition; and what is necessary to attain some given end may yet in itself be contingent, and man may detach himself from the imperative whenever he renounces the end it rests upon, whereas the unconditional command leaves no option to the will, and has alone that necessity which is of the essence of a law.⁶⁰

Kant after discussing all the difficulties in reaching out the possibility of categorical imperative propounds the first formula of categorical imperative i.e.: “act from that maxim only which thou canst will law universal.”⁶¹ This is called formula of universal law. As we have already discussed in above sections that, an imperative is a command which express a necessity of an action. It can command otherwise too, that is to say, it can also command which action is necessary to exclude. A *categorical* imperative expresses the necessity of doing and excluding of an action without considering ends or purposes. Thus from above analysis Kant says that if there is a true categorical imperative, then all it can command is, “conformity to universal law.” Kant has made clear that by conforming to the universal law he did not mean conforming to any particular law that apply for everyone, universally. Kant clears that an action in order to become categorically necessary must conform universally to system of potential actions. That is to say, that an action is morally permissible when everyone could act that way and its maxims could become law in such a way that it conforms to universal law. If not, then the action would be prohibited by the categorical imperative. Thus, the categorical imperative makes it necessary not to act in a way which aims to gain some ends or purposes.

Now we will see how the principle of duty, the formula of universal law, would reject the maxim of: depriving one of life in state of pain and misery second, making a lying promise to borrow money. Kant has discussed more such cases in his books. But for present study we will study these two examples in bit detail. A person who has

⁶⁰ Ibid., 33.

⁶¹ Ibid., 34.

suffered a lot continuously, and is tired of struggling so hard, proposes to commit suicide; but first ask himself if his action would be in conformity to universal law or not. But then he realizes that his inclination to destroy life is from the continuity of the same event in life and will lead to more chaos. Hence such maxims : of depriving life in state of pain and misery can very be fit for an universal law of nature, but is revolting to the supreme principle of duty.

Next, he talks about the situation when a man borrows money and knows that he cannot repay it. But he knows that nothing will be lent to him in future if he does not pay back in given time. He wants to give a promise but doesn't ask to inner-self that if it would be inconsistent with his duty to have way out to such shifts for his aid? When inquire that what if everybody adopts it as universal principle he finds that it is unfit to universal law.

So, Kant again points that a person must consider his actions in way whether they confirm to the universal law or not and also the supreme principle of duty is also not violated. Now, Kant moves to second formula of categorical imperative i.e. formula of humanity.

This one has been more or less fascinating to readers and critics as compared to first formula. To some, in fact, the formula of humanity is an even more interesting phrase of Kant's basic insights in ethics. Kant writes:

“what serves the will for the ground of its self- determination is called end; and such end, if presented by reason only, must extended equally to every reasonable being. What, on the other hand contains no more ground of the possibility of an act, the ulterior effect of which last is the end, is called the ‘mean’.”⁶²

Thus, it can be said that worth of “means” is contingent upon its usage. And worth of its usage is depended further on what we can bring out of it, so it depends upon the worth of an ‘end’. End can have a further use; it can be means to some other end. For

⁶² Ibid., 40

instance: berries are means to berry juice, which is further means to health when prescribed by doctor. Health is means to so many other things in life. The extinction of this chain is ‘final end’ which is also called ‘end-in-itself’. It is then not means to anything else; also it cannot be used for anything else further. It is what everything aims for in the chain. Happiness is taken to be an ultimate aim or an end-in-itself. Everything is worthy eventually for happiness but, happiness is useless apart from its worth. In the chain of above uses, cherries worth is dependent on cherry juice, which is further dependent on health. So, it would be unreasonable to skip the use of health as a means of bringing about cherries, or to trade health for cherries. The value of use is transitive. In above example means are given more value than ends. For Kant, it is mistake to value means more than ends. So the question about what make means more valuable than ends is useless.

Kant uses above explanation of end-in-itself to explain his formula of humanity. He write: similarly “man and every reasonable agent exists as an end in himself, and not as a mere mean or instrumental to be employed by any will whatsoever, not even by his own, but must in every action regard his existence, and that of every other intelligent, as end in-itself”.⁶³ Hence, it is irrational to use humanity as means for some other end. When we take humanity as an end-in-itself, we acknowledge that all other ends is worthy because it is same as humanity and, this includes happiness too. Kant explains formula of humanity beautifully by explaining what constitute of person and what constitute of things which are used as means, he writes:

Even those external things whereof the existence rests not on our will, but depends on nature, have, as irrationals, a relative value only, and are used as means and instruments for our behoof, and are therefore the things; whereas on intelligent is called a person, he being by the constitution of his system distinguished as an end in himself, i.e. as something which may not be used as mere mean, and as restraining to this extent the arbitrary use which other wills might make of him, and becoming by force of such restraint , an object of reverence. Persons are therefore not subjective ends, whose existence is valued

⁶³ Ibid., 41.

by us as an effect resulting from our active exertion; but are “objective ends, whose very existence is itself an end, and that too of so eminent a sort, that no other end can be assigned to which they could be subordinated as means”.⁶⁴

Hence by treating humanity as an end-in-itself we create authority of categorical imperative. Categorical imperative should prohibit any action that treats humanity merely as means. Kant expresses categorical imperative in another way that is: “*So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means*”.⁶⁵

Following the new categorical imperative, known as the “formula of humanity” Kant tallies the four examples of perfect and imperfect duties to oneself and others, to show how these same duties can be derived from the idea of treating humanity as an end.

(1) The example of Suicide (it is the case of duty which a person owes to himself): the man who wants suicide, “has to ask himself if his action be consistent with the idea of humanity as an end in itself. The man who destroys his organic system to escape from misery, makes use of his person as a means toward the supporting himself in a state of comfort and ease until the end of life.”⁶⁶

(2) The example of the lying promise is the case of duty owed to others it shows that to cheat someone is to treat his humanity merely as a means, since

he who intends to promise deceitfully, must at once perceive that he makes use of his neighbors as a mere mean, not regarding him as an end in himself; for he who is thus misused to a private and by end, cannot possibly approve of such a line of conduct, nor can he contain in himself the end of such promise.⁶⁷

(3) Kant’s example of neglecting natural talents presents a man whose action would not; it is in respect to indeterminate duties we owe to our self. He writes, “Every person possesses sundry dispositions and endowments capable

⁶⁴ Ibid., 41-42.

⁶⁵ Ibid., 42.

⁶⁶ Ibid., 43.

⁶⁷ Ibid., 43.

of being indefinitely perfected, and which obviously belong and conduce to the end aimed at by nature, in constituting the humanity of our person”.⁶⁸

- (4) Another end of every human being is his or her own happiness. To harmonize one’s conduct with this end of humanity is to contribute toward realizing the happiness of others: “...but then this would be a mere negative, and no positive coincidence of actions with humanity as an end in itself, so long as no one endeavored to advance the ends and interests of others; for the ends of that subject who is in himself an end.”⁶⁹

Derivation of the formula of humanity: This formula of humanity as an end is not derives by any observation or experience because;

first, from generality by which we have extended it to every rational whatsoever; and, second, because humanity was exhibited, not as a subjective end of mankind (i.e. not, as an object which it stood in their option to pursue or to decline), but as their objective end, which, whatever other ends mankind may have, does, as law, constitute the supreme limiting condition of such subjective ends, and which must consequently take its rise from reason a priori.⁷⁰

Next, Kant comes to third formula i.e. formula of kingdoms of end. This hypothetical state of life includes rational people who are capable of moral reflection and who follows law which are absolutely necessary. This formula is derived from the principle of autonomy. Kant writes:

This principle, that every Intelligent ought to regard himself as legislating (by his maxim) throughout the universe of Intelligents, in order, from this vantage- ground, to pass judgment upon himself and his own actions, leads to this very important and fruitful consideration,- the representation of all things whatsoever, under this character of ends, constituting one vast whole of ends,

⁶⁸ Ibid., 43-44.

⁶⁹ Ibid., 44.

⁷⁰ Ibid., 45.

which, from its analogy to what we call “the realm of nature,” may be styled “the realm of ends”.⁷¹

According to Kant realm means organized union of all rational people under one common law. Realm of ends is possible and cognizable only when all people leave behind their personal ends and personal differences and at the same time accept collective ends in systematic union. Principle which is applied when people stand under common law is “never to employ himself or others as a means, but always as end in himself.”⁷² For this common objective law arises a organized union of people i.e. realm, though exist in ideas, and everyone in this realm see each other as in relation to one other as ends and not as means to their personal ends, be called realm of ends.

According to Kant it is duty of everyone to conform to the principles, it is practical necessitation i.e. duty. Duty is not asserted by the sovereign in the realm of ends; but it is of every member. “the practical necessity of acting conformably to this principle of duty rests not on feelings, interests, or inclinations, but singly on the relation between peoples, where the will of each must be regarded as universally legislative...”⁷³ Kant quotes, “Everything in the realm of ends has either “price” or a “dignity”. Kant puts dignity above everything as discussed earlier too, he says there is no equivalent of dignity which can price it. Dignity has no relative value it is end in itself and has inward worth. So, for Kant morality alone can make a person lawmaker in realm of ends because it is the only condition which alone helps a person to build himself as end in himself. Thus humanity to the extent that it is suspected as morality is alone considered as that which has dignity. This dignity of humanity has autonomy as it ground.

Thus we can say that kingdom of ends is a thought experiment or a hypothetical state of affair which presupposes a perfect kingdom that is both present and upcoming. We are to perform as if we were in such a realm even though, empirically, we are enclosed by group of people who do not obey the rules to that realm or kingdom. Kant’s idea was that the moral duty for humanity was to labor towards the realization

⁷¹ Ibid., p.47.

⁷² Ibid., p.47.

⁷³ Ibid., p.48.

of such a society of shared regard. So, the Kingdom of Ends is the moral principle of the perfect society, as understood by Kant. It is Kant's philosophical insight into perfect justice that has been carried forward by John Rawls by modifying social contract theory⁷⁴ and by reformulating the principles of justice to be applied to the institutions. Next, I will be discussing Rawls theory of distributive justice in detail by exploring concepts of impartiality, nepotism, fairness, veil of ignorance etc.

⁷⁴ Sterba writes, "... unlike the social contract theory that uses the device to explain the origins of the state and the nature of sovereignty, Rawls revived it to explain principle of justice". 2003: 94.

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CHAPTER-3

RAWLS ON DISTRIBUTIVE JUSTICE

Rawls advances a theory of justice by examining the social contract tradition of articulating justice related with the 17th and 18th century philosophers such as Locke, Rousseau and Kant. Locke was of opinion that legal political power originated, from the open and chosen consent of the ruling party, also from the agreement between ruler and ruled person. Rawls aimed to take the idea of social contract to a advanced stage of thoughts. Rawls argues that, justice is what liberated and alike people would consent to as fundamental expression of social collaboration in circumstances that are reasonable for this motive. This is what he meant by justice as fairness. The most suitable situation for the selection of principle of justice for Rawls comprises of “original position”.

It was social order regulated by the public notion of justice and members of which realize and offer devotion to this public notion, was inferred by the Rawls along with, the task of selecting principles for a “well-ordered society”. Furthermore, another clause is that it is a general knowledge among each and every member of society that other two are embraced. Rawls believed before arriving in a situation where we start thinking about the ills that happen when institutions are not fair of just and where some individuals are not inclined to comply with the necessities of justice, we should acquire a apparent clearness about social contract theory which is also the first- best theory. John Rawls lays down some essential moral principles of justice which a legitimate democracy should satisfy. These principles will be discussed in coming section. Rawls writes,

For us the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principal economic and social arrangements. Thus the legal protection of

freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions.⁷⁵

Rawls was dissatisfied with the traditional philosophical point of view concerning what is that which make a social society fair or just and what validate political or institutional actions and guiding principles. The utilitarians were of the opinion that societies should follow “greatest good for the greatest number”. This utilitarian notion has many difficulties, including, chiefly, that it seems to be reliable with the notion of the oppression of marginal or minority by the majority. Rawls argue that utilitarians fail to perceive justice as more important than any other moral concept and lands up viewing justice as a branch of morality. In particular, utilitarians imagine that we should endorse goodness, and a lot of think that goodness can be establish in a particular good; such as happiness, wish, well-being, pleasure, desire or flourishing. Utilitarian notion of justice attach morals to the law, economic distribution, and politics. The intuitionist argument affirmed that humans by some inborn moral sense can know what is right or wrong. This becomes difficult as utilitarianism fails to compact with lots of opposing human feelings, because it simply explicates away justice by arguing that people “know it when they see it”.

For clarity and precision, I shall divide the present chapter into three parts. In Part- I; I will discuss Kant’s philosophical insight into perfect justice that has been carried forward by John Rawls by modifying social contract theory. In Part- II; I will talk about veil of ignorance and inequalities and impartiality which may open the avenues of nepotism within institutional structure. In Part-III; I will discuss concept of justice as fairness.

Rawls has revived social contract theory not with aim to explain the beginning of the state and its sovereignty or autonomy of the individuals, but as transcendental mechanism to explain the principle of distributive justice with reference to institutions. Just individual and just actions, for Rawls are those which obey to the

⁷⁵ Rawls, 1999: 6.

demands of just institutions. He is of the opinion that ‘just institutions’ reduces injustices and inequalities and help to create efficient institution, therefore, Rawls prime concern is not ‘just individuals’ or ‘just societies’ but ‘just institutions’. Thus, apprehension of justice is not a affair of evaluating principles, rules or institutions but evaluating societies itself also.

Rawls approach in *Justice as Fairness* is summarized by Samuel Freeman as “Rawls applies the idea of a hypothetical social agreement to argue for principles of justice. These principles apply in the first instance to decide the justice of the institutions that constitute the basic structure of the society. Individuals and their actions are just insofar as they confirm to the demands of just institutions. How (these institutions) are specified and integrated into a social system deeply affects people’s characters, desires, and plans and their future prospects as well as the kind of persons they aspires to be”⁷⁶. Partiality and inequalities violate principle of fair equality of opportunity. Submissive hereditary features of ruling class and hierarchical social structure are important for social good, according to some writers but, some says it will lead to nepotism within social institutions. The specification and integration of these social institutions into a social system profoundly influence person’s wishes, strategies, character, and his or her future prospects as well as the kind of person he or she aspires to be. The question arises: does society concerns with society or it is just a realization of rules, principles or institutions only? I will attempt to vindicate Rawls’ position on justice and bring out its shortcomings in two fold manner. First the way Rawls has criticized his own earlier position in his later work and secondly the way his successors like Sen, Martha Nussbaum and others have criticized both the positions of Rawls *A Theory of Justice* brings out moral philosophical side of justice and as a result every citizen who is equal and free shares a particular view of justice. And this leads to ignorance of reasonable pluralism. Pluralism seemed to have less scope in Rawls theory of justice. Keeping in mind such shortcomings Rawls latter revised and wrote political liberalism which acknowledges pluralism, and elucidates

⁷⁶ Freeman, 2003: 3-4.

justice as fairness through political idea rather than moral. Once more, Rawls got occupied in setting up legitimate and stable institution by looking into stances where public consensus could be formed to deliver social justice. Though he recognized pluralism within society but he never dealt with problem of cultural, gender, historical circumstances of people.

PART-I

RE-VISITING SOCIAL CONTRACT THEORY

Rawls narration of original position is an account of hypothetical social contract theory. Rawls in the very beginning writes:

I present...a theory of justice that generalizes and carries to a higher level of abstraction the traditional conception of the social contract. The compact of society is replaced by an initial situation that incorporates certain procedural constraints on arguments designed to lead to an original agreement on principles of justice.⁷⁷

Interestingly, Rawls has used hypothetical social contract theory as an expository device to structure the hypothetical preference, and then offers some information to select certain end. Unless, the end is alone desirable the fact that this thought experiment escorts to; is of no importance. Rawls points to the case by asking: what a fair way to cut a cake is. He says think of the simple case of just distribution. "A number of men are to divide a cake; assuming that the fair division is an equal one, which procedure, if any, will give this outcome? Technicalities aside, the obvious solution is that the person with knife gets the last slice, the others being allowed their pick before him."⁷⁸ A person with the knife will split the cake evenly, while making sure that he gets the biggest piece possible for himself. There are two assumptions here: first: even when cake gets equally divided it does not prove, with this example, that equality is a good thing; it just assumes that it is a good thing. Next, is

⁷⁷ Rawls, 1999: 3.

⁷⁸ Ibid., 74.

assumption that people will behave self interestingly? It is for both the reason the cake cutting example shares same structure with Rawls original position.

Rawls hypothetical choice situation i.e. original position lead us to distributive outcome for which he wasn't to persuade us that it is a good thing rather; it doesn't establish itself that it is a good thing. Rawls original position, which is his account of hypothetical social contract theory, based on our above example goes like this, it says, envisage you have to plan a contract, a society, a social order, which in larger sense of a word comprises, a social, economic and political system and you have no information about your status, class, gender, sex, race, religion no particular information at all about yourself. Hence, the social order is such that rules are chosen while being ignorant of, what Rawls calls, particular factual details about situations.

According to Rawls, to reach to the advanced stage of understanding of social contract theory as set up by Locke, Rousseau and Kant; we need not to think "original contract as one to enter a particular society or to setup a particular form of government."⁷⁹ But Rawls idea is that principles of justice must be objects of original agreement in basic structure of society. We write:

They are the principles that the free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association. These principles are to regulate all further agreement; they specify the kinds of social cooperation that can be entered into and forms of government that can be established. This way of regarding the principles of justice I shall call justice as fairness.⁸⁰

Rawls is of opinion that there is equality in initial situation that match upwith the state of nature in the traditional social contract theory. According to Samuel Freeman,

The original position develops the basic idea underlying the liberal and democratic social contract traditions stemming from Locke, Rousseau and Kant that just laws, constitutions, or principles are those that could or would

⁷⁹ Ibid., 10.

⁸⁰ Ibid., 10.

be agreed to among free persons from a position of equal rights. Like his predecessors, Rawls's social contract is Hypothetical, it is not an actual agreement made at some point in history; rather it is kind of thought experiment where hypothetical people, described as fairly situated as free, equal and rational, are given the task of coming to a unanimous agreement upon principles of justice that are to be applied within their on going society.⁸¹

But Rawls didn't think of original position as historical state of affair but as purely hypothetical condition defined so as to escort to a constructive notion of justice. The rules of society are selected while being unaware of what Rawls calls particular information about situations. You one is aware of minor common things like, there is moderate scarcity in this world as there is no abundance and one does not live in a developing country. And any knowledge about self which help you buy things in your favour is denied by Rawls.

Rawls list out some of the essential features of original position like:⁸²

- 1) Nobody is aware of his position in society.
- 2) Nobody is aware of his social status and class rank.
- 3) Nobody is aware of his chance and destiny in the distribution of natural resources, capabilities, aptitude, power and the like.
- 4) No one even knows their conceptions of the good or their special psychological propensities.

Thus, in Rawls's 'original position' to ensure in the selection of principle that no one is privileged or underprivileged due to social circumstances or natural chance, the principles of justice are selected behind 'veil of ignorance'. This is fair agreement to design principles of justice since particular circumstances or situations are not favored. In this sense Rawls is being Kantian and he calls his principle a procedural expression of a categorical imperative. Hence Rawls calls his theory as "justice as

⁸¹ Freeman, 2003: 142.

⁸² Ibid., 11.

fairness” because principles of justice are chosen in fair way by being at the back of veil of ignorance. Consequently, Rawls argues that justice is discovered via impartiality.

The whole scheme of original position is to compel us to think about the society as a whole, to discern what we would be asking for regardless of knowledge about who we turned out to be while acknowledging at the same time that we are self-centered. Rawls justice and fairness thinks that people in original position are rational. As said earlier original position is just like cake cutting example of Rawls which highlights few points about rational people who deliberate on principle of social cooperation like: first rational persons work in self interested way, that is to say, they will care more to advance his own interest, second rational persons will be equal and third this equality is basis of their alliance. Since rational agents are all equal no one can design principles in their own favour, hence justice and fairness or to say hypothetical social contract in Rawls is a fair agreement or bargain.

There are certain points of difference in Rawls hypothetical social contract and historical social contract of Hobbes, Locke and Rousseau. But before coming to those differences let us first see what does the term “contract” mean for Rawls? In Rawls opinion many words have misleading connotation and word “contract” is one of them to which an objection can be raised. For example utility and utilitarianism are often confused. The term contract is likely to confuse when used in moral theories. Rawls argue the contract implies a certain level of abstraction. Contract, as mentioned before, means to accept moral principle but it does not mean to enter into a given society or to give away natural rights to a form of government in power. Rawls, on the other hand, makes it clear that these moral principles are accepted in a well-defined starting situation.

Some of the advantages of using the word contract are:⁸³

⁸³ Ibid., 15.

- 1) It conveys the idea that rational people are involved in making principles of justice, principles which are explained and justified.
- 2) It suggests that upon the benefits won by social cooperation in accordance to principles accepted to all parties the principles of justice pact with inconsistent claims.
- 3) The Contract terminology also connotes the circumstances of advertising principles of justice.

Rawls remark that *Justice as Fairness* is not an inclusive contract theory because: “Contractarian idea can be extended to the choice of more or less an entire ethical system, that is, to a system including principles for all virtues and not only for justice”.⁸⁴ Let us now, discuss the difference between the Rawls hypothetical contract theory and classical contract theories. Rawls has revisited social contract theory not to explicate origin of the state and its sovereignty, but as an expository device to explain distributive justice with indication to institutions.

“The contractual approach exemplifies consent and voluntarism by trying to show how self- interested persons, with legitimate competing claims arrive at naturally accepted social arrangements. Unlike the social contract theory that uses the device to explain the origins of the state and nature of sovereignty, Rawls revived it to explain principle of justice.”⁸⁵

For Rawls rational people in original position are equal in terms of right. He writes: “it seems reasonable to suppose that the parties in the original position are equal. That is, all have the same rights in the procedure for choosing principles; each can make proposals, submit reasons for their acceptance, and so on.”⁸⁶ On the other hand, Hobbes considers life in state of nature to be nasty, brutish, poor, thus pointing to the society of unequals. Locke and Rousseau though considered people as equal in state of nature and having natural rights but when they entered into society these rights

⁸⁴ Ibid., 15.

⁸⁵ Sterba, 2003: 32

⁸⁶ Rawls, 1999: 17.

were given for safety and security. This difference is because Locke considered state of nature as pre political and for Rawls it is not.

Another, important point of difference is: parties in original position are considered to be rational but in classical contract theories like that of Hobbes people are considered to be in state of war.

Also, objective of historical contract differs from that of Rawls. The hypothetical social contract intended to demonstrate what sorts of governments are politically legal, and establish the political obligations for peoples. The assumption is that it is acceptable to everyone in general if all rational people come collectively to a form of government in a state of nature, including us too, thus it is legal and source of political obligation. but, Hobbes disagree to this by saying that all rational people in an initial situation would consent to a supreme, independent ruler, while Locke on the other hand argues that challenging that absolute rule would be discarded in errand of legal kingdom. Correspondingly, the social contract is a way to explicate General Will for Kant and Rousseau. On the other hand Rawls hypothetical social contract intends to develop principles of justice which are not just applicable in political and constitutional realm but in social and economic realms i.e. in distribution of income and wealth, power and position attached to offices, education and work opportunities.

Lastly, as we know by now that principles are selected in original position to work out justice as fairness on the other hand on Hobbes, Locke and Rousseau's contract theory citizens promise to comply with an authority and surrender the entire or piece of their civil rights and liberty to a authority. So, in classical social contract authority is created rather than principles.

Now, first principle which Rawls put to test is utilitarian principle. He writes:

It may be observed, however, that once the principles of justice are thought of as arising from an original agreement in a situation of equality, it is an open question whether the principle of utility would be acknowledged. Offhand it hardly seems likely that persons who view themselves as equals, entitles to

press their claims upon one another, and would agree to a principles which may require lesser life prospects from some simply for the sake of a greater sum of advantages enjoyed by others. Since each desires to protect his interests, his capacity to advance his conception of the good, no one has a reason to acquiesce in an enduring loss for himself in order to bring about a greater net balance of satisfaction. ...a rational man would not accepts basic structure merely because it maximized the algebraic sum of advantages....thus it seems that principle of utility is in compatible with the conception of social cooperation among equals for mutual advantage.⁸⁷

According to Rawls if we ask people that whether they would like to be govern their shared lives on utilitarian principle of “greatest good for greatest number”. The answer would be ‘no’ because in real life all of us would want to be treated with respect once the veil goes up. We would reject utilitarianism and would adopt it as our first principle because even if we come out as the member of least privileged group we don’t want to be dominated or subjugated. Freedom of assembly, speech, conscious, religious liberty, equal basic liberties, fundamental rights and many more like them would not be given away by us by being member of least privileged group and majority ruling us. And it is for this reason rawls argue that rational individuals under original position will reject utilitarianism and its principles.

Further, this rejection of principles of utility reduces the possibilities for one to elevate the possibilities for another without giving any plausible reason to do so. Utilitarians make mistake, says Rawls, for forgetting and not taking sincerely the difference between the individual. For this reason, Rawls thinks, the quest of utility is doubtful because it lacks credible reasons to be established. Also, Prof. R.P. Singh in *Morality and Social Justice* writes, “each of us would reject the utilitarian theory of justice that we should maximize welfare because of the risk that we might turn out to be someone whose own good is sacrifices for greater benefits for others”.⁸⁸

⁸⁷ Ibid., 13.

⁸⁸ R.P.Singh.,2010: 54.

Another reason which Rawls lists while criticizing utilitarianism is that unlike justice as fairness utility principle is teleological which looks at outcome of an action rather than action as whole. Rawls says,

Utilitarianism is a teleological whereas justice a fairness is a deontological...which does not specify the good independently from the right, or does not interpret the right as maximizing the good... it does not characterize the rightness of institutions and acts independently from their consequences.⁸⁹

Rawls is of opinion that teleological theories embodies the idea of rationality, so it is obvious to think that “rationality is maximizing something and that in morals it must be maximizing good...it is essential to keep in mind that in a teleological theory good is defined independently from the right.”⁹⁰ For Rawls this means two things: first, theory defines ‘good’ at first place, independently and then defines ‘right’ by maximization of the ‘good’. Second, goodness can be judged without any reference to right. Here the problem is that teleological doctrines differ when good is defined differently for example: when good is defined as happiness we have doctrine of eudemonia, when defines as pleasure, we have hedonism, also when defined as distribution of goods than theory demands to produce more goods. But the problem of distribution of goods falls under concept of right. So, we can say that teleological theories lack sovereign description of the good. And, utility principle defines good fulfillment of some desire or rational desire.

Rawls contract theory not just differs from classical contract theories, but also from utilitarianism. One point of difference has already been discussed. Next, Rawls mention that justice as fairness as a “contract doctrine accepts our convictions about the priority of justice as on the whole sound, utilitarianism seeks to account for them as a socially useful illusion.”⁹¹ Third, principle of social choice is considered as an

⁸⁹ Rawls, 1999: 26.

⁹⁰ Ibid., 22.

⁹¹ Ibid., 25.

object of initial agreement in justice as fairness rather than choice for one man. Rawls writes:

There is no reason to suppose that the principle which should regulate an association of men is simply an extension of the principle of choice for one man. On the contrary: if we assume that the correct regulative principle for anything depends on the nature of that thing, and that the plurality of distinct persons with separate systems of ends is an essential feature of human societies, we should not expect the principles of social choice to be utilitarian.⁹²

Rawls seems to be against the conception of impartial spectator i.e. to concur for the social order as a one the principle of coherent preference for single individual. Rawls notes, “It is this spectator who is conceived as carrying out the required desire of all persons into one coherent system of desire; it is by this construction that many persons are fused into one.”⁹³

For Rawls it is the most natural way to come into utilitarianism. As impartial spectator is thought to be rational in a sense that he can understand and experience the wishes of others just as his own wishes and, will try to maximize it by adjusting the rules of social order. Thus “the nature of the decision made by the ideal legislator is not, therefore, materially different from that of an entrepreneur and consumer deciding how to maximize his profit or satisfaction by producing or purchasing this or that commodity, respectively.”⁹⁴ To think of society, by utilitarians, in this way seems that they have not acknowledged difference between people gravely.

So, what kind of principle rational persons under original position will agree to?

Thus, Rawls then moves to define two principles of justice which will establish the permanent cooperation of common advantage. First principle is one which requires equality in the application of fundamental rights and duties and second “social and

⁹² Ibid., 25.

⁹³ Ibid., 24.

⁹⁴ Ibid., 24.

economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society.”⁹⁵ These two principles rules out the principle of utility i.e. they do not reduce the possibilities of some in order to elevate the aggregate. Rawls further explain that:

The two principles mentioned seem to be a fair basis on which those better endowed, or more fortunate in their social position, neither of which we can be said to deserve, could expect the willing cooperation of others when some workable scheme is a necessary condition of the welfare of all. Once we decided to look for a conception of justice that prevents the use of the accidents of natural endowments and the contingencies of social circumstances as counters in a quest for political and economic advantage, we are led to these principles. They express the result of leaving aside those aspects of the social world that seem arbitrary from a moral point of view.⁹⁶

Rawls lists several conditions under which principle of justice must be chosen. He claims that knowledge of natural luck or social conditions can tailor the principles to the conditions of one’s own favor, but that shouldn’t be the case in choosing the principles in original position. It should be insured that particular preferences and ambitions, and personal notion of the good do not influence the principles agreed to. For instance, if a person knows that he was deprived, he may discover it normal to proceed with the principle that subsidies in all the (private and public) sectors must be given; on the other hand if a person is aware that he is wealthy, he would suggest the contrary principle. Thus information of any wealth would lead to different set of principles and would lead to conflicts which will be irreconcilable and no knowledge of wealth would lead to original deliberation. Thus to avoid any conflict it is fair to draw a veil of ignorance.

Another important condition which Rawls claim is that rational people acting in original position are equal i.e. they has equal rights in choosing the principles. Actors

⁹⁵ Ibid., 13.

⁹⁶ Ibid., 13-14.

are considered to be equal moral persons who have conception of good and capable of sense of justice. Rawls writes: “the basis of equality is taken to be similarity in these two respects. System of ends is not ranked in value; and each man is presumed to have requisite ability to understand and to act upon whatever principles are adopted.”⁹⁷

All these condition of veil of ignorance, equality and rationality define the principles of justice. Finally, Rawls comment that original position can be seen as an expository tool which “sums up the meaning of these conditions and helps us to extract the consequences.”⁹⁸ The instinctive notions of Original position help us to foresee our purpose from far and wide.

Rawls original position has been considered as a rational choice of a person’s rather than a social contract by critics. Rawls answers them by saying that “justice as fairness” is social because it provides social foundations of justice.

To say that justice is predominantly social does not mean that people do not have “natural” moral rights and duties outside society or in non-cooperative circumstances—Rawls clearly thinks there are certain human rights and natural duties that apply to all human beings as such. But whatever our natural or human rights and duties may be, they do not provide an adequate basis for ascertaining the rights and duties of justice that we owe one another as members of the same ongoing political society. It is in large part due to “the profoundly social nature of human relationships” that Rawls sees political and economic justice as grounded in social cooperation and its reciprocity.⁹⁹

Another way in which principles of justice are shown as deeply social is by focusing on “the basic structures of society”. The “basic structure of society” includes basic social institution which is regulated by principles of justice which comes first. Rawls notes “The primary subject of justice is the basic structure of society, or more exactly,

⁹⁷ Ibid., 17.

⁹⁸ Ibid., 19.

⁹⁹ Freeman, Samuel, "Original Position", *Stanford Encyclopedia of Philosophy*.

the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation”.¹⁰⁰ He further argues:

The basic structure is the primary subject of justice because its effects are so profound and present from the start. The intuitive notion here is that this structure contains various social positions and that men born into different positions have different expectations of life determined, in part, by the political system as well as by economic and social circumstances. In this way the institutions of society favor certain starting places over others. These are especially deep inequalities. Not only are they pervasive, but they affects men’s initial chances in life; yet they cannot possibly be justified by an appeal to the notion of merit and desert, it is these inequalities presumably inevitable in the basic structure of any society, to which the principles of social justice apply.¹⁰¹

These principles of social justice which are applied to basic institutions take account of the political structure, which clearly specifies how laws will be enforced, what will be the procedures of legislating and the system of trials in case of disputes. So it is role of principles of justice to provide a way of “assigning rights and duties in the basic institutions of society and they define the appropriate distribution of the benefits and burdens of social cooperation.”¹⁰² This is where social institution in basic structure of society differs from social institution in religion because for Rawls social institution in religion doesn’t promote social cooperation between members of society. And social cooperation plays important role at each level of social arrangement i.e. socio-economic, political and institutional. Rawls says:

A society is well- ordered when it is not only designed to advance the good of its members but when it is also effectively regulated by a public conception of justice. That is, it is a society in which (1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social

¹⁰⁰ Rawls, 1999: 7.

¹⁰¹ Ibid., 7.

¹⁰² Ibid., 4.

institutions generally satisfy and are generally known to satisfy these principles.¹⁰³

Another reason which can be given to say the original position is contract theory is that it discovers moral conception of the justice. All people in the formation of principles are considered to be free and equal. They are morally free and equal; they have sense of justice and notion of moral good. Moral person in sense of Rawls means that they are rational and have moral power (capacities). And since they have moral power they can be held accountable for their actions. Another important question that needs to be addressed here is that whether original position is like historical contract? No it is not like historical contract rather it is purely hypothetical social contract.

Rawls contract view emphasis on basis of distributive justice and equality. Distributive justice is one of the essential parts of Rawls theory of justice. Rawls discusses about it in the second principle. But before coming to distributive justice he talks about concept of equality which is applied at three levels; first at administration of institutions, second at substantive structure of institutions and on moral people who are permitted to equal justice. Rawls talk about moral persons in some details by distinguishing them has having 2 features they are “capable of having a conception of good; and second they are capable of having a sense of justice”.¹⁰⁴ These are described as having moral personality which is essential for having equal justice. He argues that equality does not presume an evaluation of the inherent value of person or relative assessment of their notion of good. Rawls asserts that minimal capability for the justice assures that each person has same rights. This is Rawls account of the basis of equality.

Now, these moral personalities will make an individual independent i.e. equal and free. The idea of autonomy is compatible with the idea of objectivity (all the principles are objective) in contract theory. Acting autonomously means an individual is acting from principles which he has consented to as equal and free rational being. In

¹⁰³ Ibid., 4.

¹⁰⁴ Ibid., 442.

a well ordered society moral person will select principles of fair equality of opportunity. This principle of fair equality of opportunity is a “way of releasing men’s energies in the pursuit of economic prosperity and political dominion... it means an equal chance to leave the less fortunate behind in the personal quest for influence and social positions.”¹⁰⁵ This principle narrows the scope of nepotism in the democratic social order. I will discuss about it in detail in next section of the chapter.

Rawls distributive justice is a type of pure procedural justice. This pure procedural justice is obtained when there is no self-determining criterion for the right results, but there exist a correct and fair process which results in correct and fair conclusion, no matter what it is provided that the process has been sincerely followed. To apply this procedural justice to distributive shares institutions just be set up and administered without prejudice. The function of principle of fair opportunity is to assure that the system of mutual aid is one of pure procedural justice. This Contractarian approach to justice has been criticized because the actors of social contract are jointly disinterested in identifying just institutional arrangement for perfectly just society. As Sen has pointed out that “it focuses on “identifying fair institutions arrangement in the basic structure of society and can be called transcendental institutionalism”.”¹⁰⁶ He writes:

There is a strong case, I have argued, for replacing what I have been calling transcendental institutionalism — that underlies most of the mainstream approaches to justice in contemporary political philosophy, including John Rawls’s theory of justice as fairness — by focusing questions of justice, first, on assessments of social realizations, that is, on what actually happens (rather than merely on the appraisal of institutions and arrangements); and second, on the comparative enhancements of justice (rather than trying to identify perfectly just arrangements).¹⁰⁷

Sen criticizes Rawls contract theory majorly on two points which according to him are distinctive features of the social contract tradition. “First, it concentrates its attention on what it identifies as perfect justice, rather than comparisons of justice and

¹⁰⁵ Ibid., 91.

¹⁰⁶ Sen, 2009: 7.

¹⁰⁷ Ibid., 410.

injustice...Second, in searching for perfection, transcendental institutionalism concentrates primarily on getting institutions right, and is not focused directly on the actual societies that would actually emerge".¹⁰⁸ In place of this leading social contract tradition which Sen described as transcendental institutionalism, he urges the social choice or *realization-focused* approach that he has pioneered, which takes the actual behavior of people as object of evaluation, and which focuses on injustices of the world rather than identifying an perfect state of affairs.

Though Rawls in his *A Theory of Justice* concentrates on establishing perfectly just institutions but he also explores in a very elucidating way – the convention of right conduct in institutional, political and moral contexts and provides apprehension into the demands of a 'just society'. Therefore Rawls social contract plays important role in construction of well-ordered society where he considers justice to be first virtue of social institutions. Social contract in form of original position is relevant for the reasons:

First, it models what we regard- here and now- as fair conditions under which the representatives of citizens, viewed solely as free and equal persons, are to agree to the fair terms of social cooperation whereby the basic structure is to be regulated.

Second, it models what we regard- here and now- as acceptable restrictions on the reasons on the basis of which the parties (as citizens representative), situated in those fair conditions, may properly put forward certain principles of justice and reject others.¹⁰⁹

PART-II

VEIL OF IGNORANCE AND CRITIQUING INEQUALITY (NEPOTISM)

Rawls explains that it is through hypothetical contract that principles of justice are superlatively derived and what it is important is that the contract is made in original

¹⁰⁸ Ibid., 5-6

¹⁰⁹ Rawls, 2001: 80.

position of fairness at the back of, ‘Veil of Ignorance’ according to Rawls. Rawls designed the concept of veil of ignorance in a way to justify these principles of fairness. In this approach to impartiality by being behind veil of ignorance rational agents are denied certain type of self-knowledge. Significant question that arises here is that by what method Rawls create impartiality in his book *A Theory of Justice*. Veil is a tool which, Rawls uses to create condition for impartiality in his thought experiment. He created a ‘veil’ of ignorance and assumed that rational agents are situated behind it to evaluate various principles. To be behind veil of ignorance means everyone is barred from the knowledge of his position in the social order, his category, situation, public status; his intellect, potency, likes, nor does anyone know his rational plan for life or conception of his own good, no one knows the societal and political circumstances of their own social order or the generation they belong. In such a way one arrives at the principles which are not obtained through individual conception of good, talent, disposition, life plans, aims etc. Such veil of ignorance compels rational agents to form principles which are fair. This is what justice demands: fair principle. The principles which would be chosen behind the veil are:

First: each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be everyone’s advantage, and (b) attached to positions and offices open to all.¹¹⁰

Second principle is concerned with social and economic disparities. What would we consent to? The idea is that when we don’t have basic knowledge about our self like: which family we belong to whether we are poor or rich, unwell or healthy etc, we might stand for the equal distribution of income and wealth. It is then possible that we comprehend that we can do better than that even if we are at the base. If we agree to principles of fairness and equality we can land up doing better things. Economic and social inequalities that advantage the poor section of the society are allowed by Rawls

¹¹⁰ Ibid., 53.

principle. Thus, all inequality of income wealth won't be rejected. Behind the veil of ignorance only those inequalities are acknowledged which work to advantage everyone including those at the base or bottom, this would be the test once social and economic inequalities are allowed. Thus, inequalities which work to advantage least worst off are just, argues Rawls. Thus, in a strict sense difference principle, suggested by Rawls, will be selected behind veil of ignorance.

Rawls in his discussion of original position have discussed various distributive theories like libertarians, meritocratic, democratic conception. To answer the fundamental questions like: how income and wealth, opportunities, good things in life should be distributed, we look on to first, the answer given by liberals. According to them formal equality held that jobs and career are open equally for everyone as against just system of distribution which is system of free exchange of free market economy. Rawls is of opinion that this represents development over caste system and other aristocratic system because anyone can struggle to have any job and career open to aptitude. Further, just distribution as said above is result of voluntary transactions, free exchange, nothing beyond.

As of now, Rawls does not seem to be in favor of formal equality as suggested by liberals because it would not be fair if jobs are open to all. It will be biased as it might favor those who are born in wealthy and prosperous families who happen to have advantage of advanced knowledge, opportunities and advantages and opportunities that exist in the birth is not the just or fair foundations for allocating opportunities and distributing resources and everyone notice this unfairness and injustice. Hence, this argument leads Rawls to embrace the system of fair equality of opportunity that escorts to meritocratic structure within society. Rawls brings us to profound question where he asks even when everyone is placed at same starting point in the race who is going to come first? He answers: Obviously, the one who runs fast. Hence, when we face a situation where we are troubled by the morally biased possibilities and distributing shares we should explain it through democratic conception, more

egalitarian conception of distributive justice which Rawls describes it by difference principle.

Now, Rawls point to another possibility to deal with natural contingencies because he is not of the opinion that leveling equality or a certain equality of result is the only way to compensate for the differences in the capabilities and innate talents. This possibility is that people may advantage from their luck but only on condition that work to the benefit of least privileged. Now to check how this theory work in real life we can think of some paid disparities that occur in our society. For example: suppose a teacher earns few thousand rupees as a salary per month and Mukesh Ambani earns in millions. Is that fair, that Mukesh Ambani makes that such money than a school teacher? Rawls answer this question in a following way he says: if basic structure of society takes away part of Mukesh Ambani earnings by taxation and some of that earning is spent to benefit the condition of poor or least privileged section of the society than there is nothing wrong, also, it depends on how the structure of the society is designed.

Before coming to discussion of second principle let's discuss various difficulties which arise due to veil of ignorance:

- 1) The exclusion of nearly all particular information makes it difficult to grasp what is meant by the original position.
- 2) It is protested that the condition of veil of ignorance is irrational; principles should be chosen in the light of all the knowledge available.
- 3) There is no assurance that veil of ignorance is to their advantage.¹¹¹

Rawls deals with these objections in details and justifies veil of ignorance in this *A Theory of Justice*. His emphasis is that if knowledge of particulars is available to the agent then outcomes will be partial. Random situations and conditions of different agent may force them to make biased decisions. And this randomness can be corrected by adjusting the situations in original contract situation. The veil of

¹¹¹ Rawls, 1999: 119-121.

ignorance is a strong figure of speech which set up the course of reflective equilibrium and constructs constitutional discussions reachable to common community to apply veil of ignorance at the risk of reducing the descriptive strength of original position, it thus requires a watchful deliberation. Subsequently, what needs to be inspected is that whether the inconsistency can be empirically observed or there is difficulty in the theory causing a logical inconsistency between its descriptive strength and practical interpretation, or there is possible alteration of the theory which corrects this discrepancy.

Since, second principle of justice i.e. the difference principle is the straight result of veil of ignorance it requires a heedful deliberation.

And, thus it is disallowed all knowledge of private state of affairs and moral convictions. (Only knowledge which moral agents have is that their society is subject to situation of justice and they have common information about human society. Common information like: laws of human psychology, basis of social organization, knowledge of political affairs and principles of economic theory. This kind of general information is allowed in original position). Rational agents who compose themselves consciously ignorant of individual conditions require difference principle. Any disparity (i.e. disparity of riches, revenue and opportunity are permissible) in the private shares of the public goods which are neither autonomous nor self-worth is just, if this disparity profits the deprived in accessing public goods, the do so to evade an injury made to themselves. Owing to the veil of ignorance, there is no knowledge and no acquaintance as to side of the social agreement rational agents may take up, thus they fear an impending damage from the disparity in riches, profits and opportunity. *In the situation where agents are trying to settle for equality, with full information about the individual conditions, validation of differences is subject to an excess of opposing claims and beliefs.* A reward of advantage of a disparity or lack of any knowledge thereof is just, in principle, when clashing parties agree to it. In the same manner under the original negotiation any disparity which comes out to be advantage for all can be well thought-out as a transaction which is just, according to difference

principle, say Rawls. Difference principle then holds to the same diction like Rawls's 'second principle' of justice, but its substance shifts. The acknowledgement of the disparity of the riches, profits, and opportunities and henceforth negotiations made by equals' stresses that they are conscious also of the advantages this disparity honors them in expression of basic goods. Also, the parties should be skillful to sanction or consent to these diverse social conditions. Rawls's 'second principle' of justice checks and respect this informed sanction or consent. The principle also guides and saddle, those who are blessed with fortune of riches, income and opportunity, with a responsibility to validate their share with rest of the public by providing considerable honor in terms of basic goods.

We reach to the conclusion that:

- (1) A knowledgeable sanction is just.
- (2) There is an equal right to liberties which everyone has access to.
- (3) Advantages of disparity are known to underprivileged.

Lexical order of the principles of justice becomes evident in this way of thinking. The difference principle confirms to impartiality as the informed consent is its foundation. Also, in a just structure equal rights to liberties is the cause for cooperation, and the awareness of the exchange in significant profits leads to a provisional fulfillment to disparities. Lexical order based on impartial principles of negotiations set up the provisional agreement with the structure of cooperation, and this order can be employed without veil of ignorance as it encompasses principle of justice. Lexical order stresses that least privileged (are ones who lack in riches, opportunities and income) are conscious of the huge profits this disparity gives them; thus, under the superior principles of justice an honor from disparity is just only if sanctioned to by all.

Now let us consider two examples of this original position i.e. one with veil of ignorance and other where impartial principles are made without veil of ignorance.

Suppose a man known that he is rich and consent to those principles of justice which will benefit them or take fewer shares or no share of his wealth after reallocation of resources. Such man on the grounds of self- knowledge and class awareness in the society may behave self- centered, egoistically, self-interested, or out of passion to privilege only oneself to the fruits of his work. On the other hand, a man who is poor and aware of his life situation will attempt to consent to those principles of justice which will enhance his fundamental liberties. A poor, in order to recover his situation will try to stress to higher taxation to rich and redistribution of resources. When people are behind veil of ignorance they consent to difference principle because they have no basic knowledge of their real position or situation. There can be a situation where the partial fulfillment of the negotiation between equals may threaten the parties to leave the negotiations. A rich will not give up his position where poor party threatens to walk out of negotiations in difference of opinion because a rich party can also walk out of negotiation because no one is captive to disorder and lawlessness. Apparently, neither profits when they decide to move out of union, and also both try to find a just resolution of disagreement, in their given conditions. In such case, apparently, none of them is living in a state of nature rather in a state. Thus, informed consent is the only way left out to deal with the existing disparity in riches, income and opportunities and this informed consent would be fair and impartial. Both the parties need to work out on the principles to which both will agree. Either rich party will have to, in this type of case, give away his part of wealth for poor, to be able to consent to the natural disparity or, should rework on disparity by coming to a satisfying exchange for the poor by consent. Therefore it will create a society where poor, under the knowledgeable sanction, has no reason to damage the wealthy neighbor when rich is promising, might be rationally, that his wealth will create fresh opportunities for the poor. To this point, the veil and the negotiation give in same results: i.e. reallocation of riches on the grounds of fair and impartial contract.

Let us now take up the second case where adhering to the moral principles in John Rawls original position becomes difficult. Suppose a person is in moral dilemma of

being a public servant and to value Rawls's difference principle i.e. to execute his duties, power and responsibilities selflessly in the concern of others and his additional moral duties as father in making sure his children get everything best to be successful in life. Now, according to difference principle, covered in the veil of ignorance, a man should step aside from the duties of a father towards the well being and advantage of least privileged rather by being accidentally renowned father who is a powerful bureaucrat. The option is professed to be straightforward for the father to favor his public responsibilities and duties to his familial ones. According to Rawls theory of justice, it is just and fair, that a public servant who is powerful is not misusing his power to back up his children until there are other deserving candidates who are not as much empowered as their own children due to accidents of birth. In the original negotiation things won't be easy for a father. It is true that a man cannot hide from the veiled disparities when he faces incompatible demands of duties. It is certainly not possible in real world situation to reasonably divide incompatible moral duties to two moral individuals within one authentic individual. This is the perfect case when two version of original position come together in one result: one where person is behind veil of ignorance, second where a person acts as an arbiter. Now the question is which of these two versions of original position are more reasonable? Or to say what if father decides to favor his son by using his power forgetting about his public duties? In such circumstance, according to Rawls's original position, the father has failed to give himself to the difference principle. Such man is unjust and raptures the principles of justice. But, the father does not clearly go on for reasons of disapproving justice. On the contrary, what happens when a man discharges his parental obligation to his public obligations? In such case Rawls explains that faithfulness to the familial duties (reflective equilibrium) fails to motivate the father who acts against the principles of justice as fairness.

Rawls account cannot clarify the typical actions without taking into concern a clear verdict of disadvantage on all which it takes as infringement of assurance to uphold a

family duty. His version of original position does not even confess violation of civil obligation.

Let us now, look into the prospects of these two accounts of original position in a nepotistic society. A man who is more inclined towards his family finds himself in conflict with the moral principles which can take place at any moment of time, and this conflict can be resolved by keeping up with familial obligations. John Rawls theory gets threatened if nepotism is found as it perpetually reckon the system non-liberals or affected those as failing to endorse liberty.

John Rawls never used the word ‘nepotism’ in any of his work whether it is *Theory of Justice* or *Justice as Fairness* or *Political Liberalism*. Now, I would like to attempt to genuinely rebuild Rawls view on ancestral values and fondness of kin which has foundation in his discussion about family and correlations which he sketches of mother-father and Childs affiliation to clarify the theory.

In discussion of what kind of social structure would be suitable for principle of fair equality of opportunity Rawls favors the democratic version of society where principles are selected behind veil of ignorance. Rawls acknowledges that inequalities infringe the principle of ‘fair equality of opportunity’. Some writers, Rawls quotes:

...hold that some sort of hierarchal social structure and a governing class with pervasive hereditary features are essential for the public good. Political power should be exercised by the men experienced in, and educated from childhood to assume, the constitutional traditions of their society, men whose ambitions are moderated by the privileges and amenities of their assured positions.¹¹²

Burke and Hegel shared similar conception on familial rule in political structure. Rawls write that Burke was of opinion that “the great families of the ruling stratum contribute by the wisdom of their political rule to the general welfare from generation to generation”¹¹³. Again, in same line of thought Hegel thought that “restrictions on equality of opportunity such as primogeniture are essential to insure a landed class

¹¹² Ibid., 264.

¹¹³ Ibid., 264.

especially suited to political rule in virtue of its independence from the state, the quest for profit, and the manifold contingencies of civil society.”¹¹⁴ Rawls points that fortunate family and property provision take a clear examination of the general concern for the advantage of whole society by preparing their favored ones. Certainly, one need not favor something like a firmly stratified structure; one may uphold to the converse that it is important for the vitality of the governing group that people of extraordinary talents should be able to build their way into it and be completely acknowledged. But this principle is well-suited with refuting the principle of fair opportunity. In Rawls opinion the principle of fair opportunity holds that a large amount of many desirable options is open to least advantage group to make them better off. And, family may be hurdle to equal probability between persons because of its nepotistic traits. So, to deny the principle of fair opportunity of equality is to favor nepotism or to say other way round nepotism means rejecting to the principle of fair opportunity if equality. John Rawls is of opinion that if people living in a society plan their moral values, plans in keeping with the principles of justice than those values or plans are reasonable but if those values or a plan does not keep in with the principles of justice than they are unreasonable. Thus this tells us that familial values and love becomes inferior to the principles of justice and justice as fairness and these familial values can be given importance inside the boundary which is permitted by the justice. Rawls affirms that sometimes there is a persuasion to act unfair by being biased towards familial values but, this deviation from the principles of justice and its violation to keep up the familial values is unjust. There are certain familial values that, Rawls believe, connect to justice. For example feeling of association and attachment, which are nurtured in family, can give rise to the feeling of guilt when one harms the general public in a society or act opposite to ones sense of justice. The person might feel as hurting his own family. Rawls writes:

Imagine someone who cheats or gives in to cowardice and then feels both guilty and ashamed. He feels guilty because he has acted contrary to his sense of right and justice. by wrongly advancing his interest he has transgressed the

¹¹⁴ Ibid., 264.

right of others, and his feeling of guilt will be more intense if he has ties of friendship and association with injured parties...Thus while the principles of right and justice are used to describe the actions disposing us to feel both moral shame and guilt, the perspective is different in each case. In the one we focus on the infringement of the just claims of others and the injury we have done to them and on their probable resentment or indignation should they discover our deeds...Moral shame or guilt, it is clear, both involve our relations to others and each is expression of our acceptance of the first principles of right and justice.¹¹⁵

Now, this guilt which is care based work as catalyst to work in agreement with principles of justice. The exaggeration of duty always crops up when one is working to promote good of his family only. It also helps us to understand why it is difficult for a person to combat its public and familial duties. According to Rawls, if a person is guilty of harm done to others or feels ashamed of his immoral behavior toward others then these are the sign of his approval of principle of justice, thus we observe that in this say Rawls limits authority of feeling. Rawls writes:

Thus while the principles of right and justice are used to describe the actions disposing us to feel both moral shame and guilt, the perspective is different in each case, in the one we focus on the infringement of the just claims of others and the injury we have done to them, and on their probable resentment or indignation should they discover our deed. Whereas in the other we are struck by the loss to our self-esteem and our ability to carry out our aims: we sense the diminishment of self from our anxiety about the lesser respect that others may have for us and from our disappointment with ourselves for failing to live up to our ideals.¹¹⁶

But, we can notice that public and familial values are in clash in Rawls's account because value of morality and felling of guilt is less connected to principles of justice and more attached to affectionate attachments. Guilt results only when one behaves in a partial way toward individuals to whom he is not much emotionally attached. Now

¹¹⁵ Ibid., 391.

¹¹⁶ Ibid., 391.

since there is guilt involved on both the sides, that is to say whether you act in favor of familial duties or act according to principles of justice, then what motivates a person to act according to principles of justice. This presence of fright of guilt on both sides will persuade a person to act unfairly in favor of his loved ones that is to say that they are convinced to implement nepotistic actions. In Rawls theory of justice phrase of demanding ‘faithfulness to family’ can be taken as a nepotistic action which goes against the phrase ‘faithfulness to the society’ planned according to principles of justice. This leads us to terminologies of familial values, created by Rawls, which broaden the situation created above. According to Rawls, phrase like being ‘good son or daughter’ is a phrase of virtue and it get into the complete theory of good. He writes: “as the child becomes older he is taught the standards of conduct suitable for one in his station. The virtues of a good son or a good daughter are explained, or atleast conveyed by parental expectations as shown in their approvals and disapprovals”.¹¹⁷ At this point, Rawls builds a parallel with a ‘judge good’ who in order to bring justice must act impartially, make sensible decisions, and must have strong aspiration for justice. Doctrine of what is right is held in advance in the idea of ‘good son and daughter’ for Rawls.

Rawls assumed that the family in some form is part of basic structure of the well-ordered society. And it is for this reason that children are subject to the lawful authority of their parents. For Rawls there is no impartiality in cases where child lacks the concept of justification and needs parental injunctions but, “since we are assuming that the society is well-ordered we may suppose, so as to avoid needless complications, that these percepts are on the whole justified. They accord with a reasonable interpretation of familial duties as defined by the principles of justice”¹¹⁸. On the other hand, “The monogamous family is a major social institution, for Rawls, at par with private property, competitive markets or liberty of conscience”¹¹⁹. It has been observed that the presence of family does not allow to apply the principle

¹¹⁷ Ibid., 409.

¹¹⁸ Ibid., 405.

¹¹⁹ Ibid., 6.

of fair opportunity perfectly, and thus it is an eventuality to be counterbalanced by the veil of ignorance since we cannot abolish it. Thus he notes: “furthermore, the principle of fair opportunity can be only imperfectly carried out, at least as long as some form of family exists”.¹²⁰ Rawls mentions three contingencies which makes underprivileged least favored, he writes: “thus this group includes persons whose family and class origins are more disadvantaged than others, whose natural endowments permits them to fare less well, and whose fortune and luck in course of life turn out to be less happy...”¹²¹ Here Rawls quote one of three most important types of eventualities distressing the underprivileged are family and class origin. “The ‘fortunate family’ is than Rawls’s expression which exemplify an undeserved entitlement. “Superior character depends in good part upon fortunate family and social circumstances in early life for which we can claim no credit.”¹²² However, in families members try to promote each other’s interests by not giving primacy to self-interest and respecting the dignity of others. Thus, for Rawls, family can be seen as a sheer case where difference principle is enforced in real life situation, that with complete awareness of personal situation. “The family, in this ideal conception and often in practice, is one place where the principles of maximization the sum of advantages are rejected. Members of a family commonly do not wish to gain unless they can do so in ways that further the interests of the rest.”¹²³

According to Rawls, if political engagement does not ensure self-respect, another way to ensure it is to build his/her self esteem from their ancestral association. This advocates that the family holds the important place in person’s realization of self-worth, self-reverence the principal of social good which Rawls’s theory think highly of very much. There is no reason says Rawls to give away the significance of a family in person’s realization of self-worth, “even if family may pose as an obstacle to like chances between people in a well-ordered society. He writes: “it seems that even when fair opportunity is satisfied, the family will lead to unequal chances between

¹²⁰ Ibid., 64.

¹²¹ Ibid., 83.

¹²² Ibid., 89.

¹²³ Ibid., 90.

individuals. Is that family to be abolished then? Taken by it and given a certain primacy, the idea of equal opportunity inclines in this direction.”¹²⁴ This decisiveness is explained at the level of “Rawls’s principles of moral psychology when he claims that if ‘family institutions’ are just, loving parents can bring their child to love them”¹²⁵. Ancestral justice seem self- sufficient if family can supply as a foundation of self-worth without hinting to a well-ordered just structure and it does not necessitate depending on principles of justice or, if familial values confirm to the principles of justice then they are considered to be just. But, due to moral psychology, kids of loving parents would not be able to find out to adore their parents, which work opposite to the principles. A logical account of affection of kin is then called for when neither of these alternatives seems kind to Rawls’s theory, and each case points to a mistake irrespective of how remarkable his principles of justice may appear.

So, we come to the conclusion in the light of Rawls’s *Theory of Justice* that nepotism is a behavior initiated by a moral principle of faithfulness or truthfulness to family or a parental commitment to amplify the benefits of children. Rawls veil of ignorance, that motivates impartiality, forbids truthfulness to family associations from the impartial and unjust way of viewing the principles of justice and supporting Rawls’s principles to succeed dominance over such truthfulness or faithfulness, by definition.

PART-III

JUSTICE AS FAIRNESS

In Rawls’s *Justice as Fairness*, the straight interest is on ‘just institutions’ instead of concentrating on ‘just persons and societies’ which facilitate effective intuitions and reduce injustices and inequality as well. Thus, realization of the justice is to judge societies rather than judging principles, rules or institutions. Samuel freeman summarized Rawls approach in *Justice as Fairness* as follows:

¹²⁴ Ibid., 448.

¹²⁵ Ibid., 429.

Rawls applies the idea of a hypothetical social agreement to argue for principles of justice. These principles apply in the first instance to decide the justice of the institutions that constitute the basic structure of the society. Individuals and their actions are just insofar as they conform to the demands of just institutions. How (these institutions) are specified and integrated into a social system deeply affects people's characters, desires, and plans and their future prospects as well as the kind of persons they aspire to be.¹²⁶

A Theory of Justice brings out moral philosophical side of justice and as a result every citizen who is equal and free shares a particular view of justice. And this leads to ignorance of reasonable pluralism. Pluralism seemed to have less scope in Rawls theory of justice. Keeping in mind such shortcomings Rawls later revised and wrote political liberalism which acknowledges pluralism. And explain *Justice as Fairness* through political notion instead of moral conception. Again, Rawls got occupied in setting up legitimate and stable institution by looking into stances where public consensus could be formed to deliver social justice. Though he recognized pluralism within society but he never dealt with problem of cultural, gender, historical circumstances of people which lead to the criticism of his theory. Amartya Sen and Martha Nussbaum are major opponents whose position will be discussed in coming chapters.

Rawls assert that the phrase *Justice as Fairness* is derived from investigation made by people in the original position. Rawls argues, "The original position is, one might say, the appropriate status quo, and thus the fundamental agreements reached in it are fair"¹²⁷. Principles of justice get their backing from the contract which is agreed by the rational people in original position.

Structure of Original position guarantees that judgment thus made will be fair. The suggestion of distributive justice in Rawls requires that the courts should take a moderate view of the sites of law and so understand them as to distribute profit to the largest number of citizens so that the ruthless effects of the procedures of law are limited within the narrowest limits. Distributive justice worries about institutions in

¹²⁶ Freeman, 2003: 3-4.

¹²⁷ Rawls, 1999: 15.

the social order. If institutions abide by the principles of justice then it will create a just society. Institutions are center of attention of Rawls theory of justice as fairness. Rawls argues that principles of justice are concerned with institutions. He writes:

We have seen that these principles are to govern the assignment of rights and duties in these institutions and they are to determine the appropriate distribution of the benefits and burdens of social life. The principles of justice for institutions must not be confused with the principles which apply to individuals and their actions in particular circumstances.¹²⁸

Rawls illustrates an institution as that which as number of offices and positions, positions which define what is allowable and what is not. Thus, it is 'public system of rules'. The system helps its associates accountable by directing their work and also directs what institution will do. Rawls states two ways in which institutions can be thought of:

The first of these is that of an abstract object. The second is that of the abstract object established or concretized in a society. Rawls says, it seems best to say that it is the institution as realized and effectively and impartially administered which is just or unjust. The institution as an abstract object is just or unjust in the sense that any realization of it would be just or unjust.¹²⁹

Rawls is apprehensive mainly of actual institutions. Rawls has frequently acknowledged that the theoretical sight is repeatedly hard for general people to comprehend. But Rawls gives new precision and vigor to one of the most precious heritage of the liberal political convention. He affirmed that a person has self-respect and value that social arrangements should not be allowed to breach. Both in *A Theory of Justice* and in succeeding work, Rawls has apprehended that the moral decisions of common people are an important opening point for superior political reflection. But he has also pointed the importance of philosophical custom and argument in classification to what we believe, chiefly by putting alternatives before us with enough severity and lucidity that we fully realize how to opt among them. Subsequent

¹²⁸ Ibid., p. 47.

¹²⁹ Ibid., p. 48.

quote of Rawls disclose what his methodology is—John Rawls notes, "well-ordered people have a duty to assist burdened societies"¹³⁰

Rawls points that political concept of justice is not a simply *Modus Vivendi*, because it represents an overlapping consensus by stating the just terms of assistance between people that are considered as free and equal. This consensus includes the concept of primary goods: essential right and liberties, supremacy and privileges of office; profits and riches; the basis of self-worth. It also covers the "difference principle": in which economic disparities are permissible until it helps everyone especially under privileged to improve its situation. The overlapping consensus, Rawls further assumes, is not a consensus simply in agreeing a certain authority, or simply as conformity with certain institutional measures. "For all those who affirm the political conception start from within their own comprehensive view and draw on the religious, philosophical and moral grounds it provides"¹³¹ It is true that:

Justice as Fairness fits our considered judgments on a whole range of more concrete topics in moral and political philosophy, such as the idea of the rule of law, the problem of justice between generations, and the justification of civil disobedience. Consistent with the idea of reflective equilibrium, Rawls suggests pruning and adjusting those judgments in a number of places. One of the thorniest such issues, that of tolerating the intolerant, recurs in *Political Liberalism*. In addition to serving its main purpose of facilitating reflective equilibrium on Justice as Fairness, Part Two also offers a treasure trove of influential and insightful discussion of these and other topics in political philosophy. There is hardly space here even to summarize all the worthwhile points that Rawls makes about these topics. A summary of his controversial and influential discussion of the idea of desert (that is, getting what one deserves), however, will illustrate how he proceeds.¹³²

Rawls was intensely conscious of the moral uncertainty of destiny. He was of opinion that no one earned the social status into which one is born or the corporeal personality

¹³⁰ Rawls, 2001: 15.

¹³¹ Rawls, 1996: 147.

¹³² Henry S. Richardson, "John Rawls", *Internet Encyclopedia of Philosophy*.

with which one is gifted since birth. He also apprehended that no one earned the personality qualities one is born with, such as power for firm slog. As he wrote, “The natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts.”¹³³

According to Rawls, the moral randomness of fortune is to be seen with careful judgments about merit, according to which merit is significant to claims of distribution. For instance: we have mindset that hard work must be rewarded for the effort that has been instilled. Keeping with this notion we further argue that brilliants ought to be recognized for their talents without considering, at first place, whether they are worthy to have those talents. Rawls, react to these commonsensical percepts of justice, dialectically, as he is in disagreement with them. According to him, one should question if their common- sense claims about the basic institutions of society are just. For Rawls, merit is not the basis of distribution claims in unfair social and economic structures. For rawls such claim is unreasonable that the compensation one can control in the job market place should depend on the fairness of the basic social institution. There should be an apt connection between endeavor and incentive and this form of justice in the fundamental structure is that with which Rawls is concerned with.

The presumption of the common-sense percept about the desert that the basic structure of the social order is itself fair is Rawls’s alternative claim. When common-sense percepts are proficient with this assumption Rawls supports them. And to end the useless and the useful claims from being puzzled with each other, however, Rawls uses the term ‘legitimate expectations’ as the art to express the claims of merit appropriately so useful. The vital idea of *Justice as Fairness* is that the primary principle of justice should allow the free act of the market to decide people’s lawful expectations. This can only happen when they are valued for the policy of social cooperation to be just. This dialectical elucidation of the moral significance of desert, though, did not convince all critics.

¹³³ Rawls, 1999: 87.

Amartya Sen, criticizes the original position and ‘veil of ignorance’ of Rawls’s theory. Sen has also criticized the utilitarianism of Bentham and Mill on the ground that act utilitarianism and rule utilitarianism along with hedonistic calculus cannot help us much either in minimizing injustices or enhancing happiness. Sen ‘retreat justice’ by focusing on *realization- focused approach* which is concerned with highlighting and removing injustices from the world instead of focusing on institutions which he calls as *transcendental institutionalism* (it focuses on getting institution right). Sen gives primacy to concept of impartiality which according to him is important to understand justice and to evaluate social structures. Avenues of Nepotism become clear in impartial and unequal social structures. Sen argues that Kant and Rawls were interested in transcendental institutionalism to develop perfect justice, in doing so they lose their focus from actual lives people live in society.

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CHAPTER-4

AMARTYA SEN ON JUSTICE AS WELFARE: AN EXPOSITION AND EXAMINATION

In this Chapter, I will discuss Amartya Sen's ideas on justice based on capability theory to improve people's well-being, development and freedom. Justice as welfare through capability approach tackles these issues by highlighting human beings having dignity and with their ability to pursue their own ends. But they have divergent views on the concept of capability to promote human welfare. For Sen, capability is a comprehensive moral doctrine. In *The Idea of Justice*, Sen criticizes the original position, i.e. 'veil of ignorance' of Rawls' theory of justice. Sen has also criticized the utilitarianism of Bentham and Mill on the ground that act utilitarianism and rule utilitarianism along with hedonistic calculus cannot help us much either in minimizing injustices or enhancing happiness. Instead of transcendental institutionalism, Sen proposes *realization – focused comparison* which is primarily interested in removing the manifest injustice from the world and hence he goes to 'retreat of justice.' Sen proposes that the place of impartiality in the assessment of social justice and social arrangements is essential to the understanding of justice. Unequal and partial social structure opens the avenues of nepotism. Sen argues that Kant and Rawls have developed perfect justice to concentrate largely on getting the institutions right with transcendental institutionalism and, it is not honestly paying attention on the real societies that would eventually surface. He has distinguished between *niti* and *nyaya*¹³⁴, both concepts give the vision of justice but the notion of *nyaya* underlies relative justice in terms of individual's suffering and with this, I will formulate and understand justice in broader sense for the sake of entire humanity. I will bring out the discrepancies and the implications between well-being (collective) and happiness (individualistic) to substantiate minimizing injustice in Sen.

¹³⁴ Sen, *The Idea of Justice*, p.20.

In order to make the presentation precise, I'll divide the Chapter under following Parts:

- I) Freedom and Well-being
- II) Capability and Re-visiting Impartiality (Nepotism)
- III) Public Enlightenment: Re-visiting Goodness

It may be emphasized that institutional choice and arrangement focused approaches to justice are not sufficient conditions because society consists of people who are outside of the institutions and the latter gets affected by the former. The notion of minimizing injustice is very necessary wherein less people are capable to use their freedom, rights and toleration. More importantly, the search for perfect justice could distract us from tackling real-life, immediate injustices such as discrimination relating to education, skill, health, environment, etc. for women, tribal people and marginalized community who are deprived of all these.

In recent times, Amartya Sen and Martha Nussbaum have developed justice as welfare through capability approach. There is an attempt to tackle the issues of minimizing injustices by highlighting that human being has a dignity with their ability to pursue their own ends. Sen's notion of minimizing injustice is a dynamic departure in the debate on justice which concentrates on the well being of each and every individual. It does not concentrate on the means of primary goods and just institutions but minimizing injustices by removing obstacles in actual opportunities in day to day life. Sen has discussed a new notion of justice as welfare through freedom, capability and public enlightenment. Instead of institutional mechanism which governs collective choices, Sen's minimizing injustices make each and every individual to act on his/her own preferences.¹³⁵

¹³⁵ Paul Anand, Graham Hunter, Ron Smith write in "Capabilities and Well-Being: Evidence Based on the Sen-Nussbaum Approach to Welfare", "We should start from a conception of what makes a good life for a human being, and build up from this to a theory of the social good. That it is the opportunity to live a good life rather than the accumulation of resources that matters most for well-being, and that opportunities result from the capabilities that people have. This so-called 'capability' approach thus focuses more on people and less on goods. In it resources do not have an intrinsic value; instead their value derives from the opportunity that they give to people". 2005: 9-55.

The notion of minimizing injustice is very necessary in age of enlightenment wherein less people are capable to use their freedom, rights and toleration. In this age, institutional choice and arrangement focused approaches to justice is not sufficient for the reason that societies full of genuine human beings will never consent on an absolute, perfect set of institutions and rules. More significantly, the hunt for perfect justice could divert us from tackling real-life, pressing injustices such as right of entry to enlightenment chances like education, skill, etc. for women, tribal and marginalized community who are deprived. Absolute justice could be possible when each and every individual becomes enlightened and are equally capable to use social opportunities.

He has distinguished between *niti* and *nyaya* in *The Idea of Justice*, One important distinction between two different concepts of justice in early Indian jurisprudence between *niti* and *nyaya*.

“The former idea, that of *niti*, relates to organizational propriety as well as behavioral correctness, whereas the latter, *nyaya*, is concerned with what emerges and how, and in particular the lives that people are actually able to lead, both stands for justice but *niti* is an arrangement focused and *nyaya* is concept of realized notion of justice”¹³⁶.

Though both concepts are related to the notion of justice but the notion of *nyaya* gives the vision of relative justice that we have to understand justice in broader sense for entire humanity.

Sen has conveyed a fresh idea of justice as welfare through freedom, capability and public enlightenment. The notion of justice in Kant and Rawls has been helpful to construct a just society to eradicate inequality but it was failure to recognize human agency and their freedom. But for Sen’s notion of justice surrounded with human agency to choose that thing that is valuable for them and this is one of the important of well being and their enlightenment. Sen’s notion of justice tried to minimize injustice in terms of welfare mechanism through enhancement of individual and collective quality of life in the form of freedom, capability and public enlightenment.

¹³⁶ Sen, 2009: 15- 20.

Freedom as wellbeing is the alternative approach to justice which emphasized that people instead of resources are the real wealth of a nation. So, the function of just society is to build an enabling society for well being of the poorest of the poor. Freedom is one of the important keystones in minimizing injustice. In *The Idea of Justice*, Sen said, “In assessing our lives, we have reason to be interested not only in the kind of lives we manage to lead, but also in the freedom that we actually have to choose between different styles and ways of living. Indeed, the freedom to determine the nature of our lives is one of the valued aspects of living that we have reason to treasure”¹³⁷. Human freedom especially positive freedom is an essence or *telos* of living well in any enlightened society wherein every individual has right to choose their life what they value. But now what kind of freedom minimizes injustice and brought well being of each and every individual. For that it is very necessary to distinguishes between means of freedom and process aspect of freedom because both are the essential ingredient to assess the well being of any just society. As said he, “Freedom is valuable for at least two different reasons. First, more freedom gives us more *opportunity* to pursue our objectives – those things that we value. It helps, for example, in our ability to decide to live as we would like and to promote the ends that we may want to advance. This aspect of freedom is concerned with our ability to achieve what we value, no matter what the process is through which that achievement comes about. Second, we may attach importance to the *process* of choice itself. We may, for example, want to make sure that we are not being forced into some state because of constraints imposed by others”¹³⁸. The former aspect of freedom assumes that each and every individual is free to make choices and social arrangement must represent their choices. Latter aspect deals that freedom to choose what he/she value and should not restricted and curtailed by others. “The opportunity aspect of freedom, involve the ability to fulfill all the vital human capabilities, from the capability of a child to drink clean water or have elementary medical care, and the capability of a young woman to have the education which will enable her to hold a job and attain

¹³⁷ Ibid., 227.

¹³⁸ Ibid., 228.

independence, to the capability of a scientist or an artist to carry out their work”¹³⁹. It is true that person’s sufficient freedom is an urgent need to lead their life what the value. For instance, Sen often distinguishes between a starving child and fasting monk, both have same level of functioning because both are kept away from food. Though starving child does not have freedom to eat while monk has, but does not eat. In one case starving child does not have freedom of opportunity and other hand opportunity as well as agency freedom to choose what he wants. So, well being freedom is person’s freedom to attain those things that are essential for their well being and from this freedom capability approach has evolved which focus human being and their welfare.

Justice as welfare through capability is one of an endeavor to grow a large normative structure for the assessment of individual wellbeing and social arrangements. Just as justice as fairness tries to evolve just society through the principle of distributive justice that each individual should get equal liberty and equality, capability as one of the principle of minimizing injustice in Sen’s view. “In contrast with the resource-based lines of thinking, individual advantage is judged in the capability approach by a person’s capability to do things he or she has reason to value. A person’s advantage in terms of opportunities is judged to be lower than that of another if she has less capability – less real opportunity – to achieve those things that she has reason to value. The focus here is on the freedom that a person actually has to do this or be that – things that he or she may value doing or being”¹⁴⁰. This approach moves away from the income-led evaluation to people's capability to accomplish the things that they value. So that wellbeing can be calculated by evaluating people's liberty and preferences rather than resources. For him, focus on utility or resources has been misleading us because justice is not sum total of resources but what and how people use these resources. “The concept of capability is thus linked closely linked with the opportunity aspect of freedom, seen in terms of comprehensive opportunity. It points to an informational focus in judging and comparing over all individual advantages and

¹³⁹ Vivian, 2007: 60.

¹⁴⁰ Sen, 2009: 232-33.

does not propose any formula about how that information may be used”¹⁴¹. Freedom and well being focus that capability approach recognizes and is familiar with the situation that everyone differs in their capability to alter goods into valuable accomplishments due to personal and social factors. “Capability approach broadens the informational space for making evaluative judgments by acknowledging the multidimensional nature of human wellbeing. In the field of development, many other approaches have been moving away from the income-led definition of poverty by including people's perceptions and accepting the multiple facets of poverty”¹⁴². Its main concern is to eradicate inequality of capability means those who are less capable to lead their life in dignified manner so that justice in terms welfare can achieve. This approach is a paradigm shift in the notion of justice which constitutes a significant contribution to brought public enlightenment.

Public enlightenment is one of the important ingredients of justice as welfare through freedom based capability approach. Instead of institutional mechanism which governs collective choices. Sen’s minimizing injustice makes each and every individual to act on their own preferences. Paul Anand, Graham Hunter, Ron Smith writes in *Capabilities and Well-Being: Evidence Based on the Sen-Nussbaum Approach to Welfare*,

“We should start from a conception of what makes a good life for a human being, and build up from this to a theory of the social good. That it is the opportunity to live a good life rather than the accumulation of resources that matters most for well-being, and that opportunities result from the capabilities that people have. This so-called 'capability' approach thus focuses more on people and less on goods. In it resources do not have an intrinsic value; instead their value derives from the opportunity that they give to people”¹⁴³.

Through freedom based capability approach makes each and every individual capable and decides what makes their life in well being and that enabling environment brings public enlightenment. As Jonathan Makuwira writes in, “Whose Development and

¹⁴¹ Ibid., 232.

¹⁴² Apsan Frediani, 2010: 173-187.

¹⁴³ Paul Anand, Graham Hunter and Ron Smith, 2005: 9-55.

Freedom?”, four important elements that encourages an enabling atmosphere: Wakefulness of the problems poor people face and ways of mitigating them; access to all the resources required to enhance the quality of their lives; affordability of the resources required for people to improve their welfare; and, accountability of those in positions of power, and who claim to represent the interests and welfare of ordinary people”¹⁴⁴. The enabling society promotes an attitude that facilitates enlightenment in local people endeavours. Public enlightenment has brought out an enabling attitude in the form of capability to create choices about matters that affect the and minimize injustice to that that extent.

PART-1

FREEDOM AND WELL-BEING

Idea of freedom and more specifically substantive freedom is a fundamental concept of capability approach. Substantive freedom to be able to achieve important things in life, and term substantive is used to contrast it with negative freedom or liberty. Sen in his book “development as freedom” asserts that freedom has a positive and a causal relationship to development. Also, absence of freedom has some positive relation to poverty. He argues that technological or economical perspectives are not better basis for evaluating the level of development of any society. All institutions whether social, economic or political should work to enhance individual freedom since it is crucial to the development. Amartya Sen argues that “it is very important to see freedom in a sufficiently broad way”.¹⁴⁵ This is because “freedom is an inherently diverse notion”.¹⁴⁶ For Sen, Freedom has many layers which acquire meaning with passage of time. Individual freedom is very important for Sen, he in his book “Development as Freedom” writes “freedom is the basic building blocks which helps in analyzing the development. Meaning of this ambiguous word “freedom” can only be understood in term of individual freedom, and their capabilities.

¹⁴⁴ Makuwira, 2006: 193-200.

¹⁴⁵ Sen, 1999: 17.

¹⁴⁶ Ibid., 298.

Development being crucial requires a coordinated understanding of roles of different institutions in enhancing individual freedom. Agency plays important role in accomplishment of development in individual. Capabilities hold central place in Sen's notion of freedom. Capabilities are a type of freedom. Sen argues, that capabilities refer to the:

Person's real freedoms or opportunities to achieve functionings. Thus, while travelling is a functioning, the real opportunity to travel is the corresponding capability. The distinction between functioning and capabilities is between the realized and the effectively possible, in other words, between achievements on the one hand and freedoms or valuable opportunities from which one can choose, on the other.¹⁴⁷

According to Sen, end of freedom should be conceptualized in terms of person's capabilities. Coming back to our discussion of the role of 'agency' in accomplishing of development in individual, Sen in his book "Development as Freedom" understands human agency as the practice of constitutive freedom, though practicing it is not dependent on individual capability itself. For example: a physically handicapped person who has capability to work but is brewed by the lack of public infrastructure facilities for instance. For Sen, this is the scenario of capability deprivation and according to Sen the person is placed in a condition of un-freedom. With passage of time this situation will lead to unemployment due to lack of basic public infrastructure. With passage of time this situation will lead to unemployment due to lack of basic public infrastructure. This can also be translated as deprivation of income or economic of infrastructural poverty. This whole situation is due to interplay of different political, social and economical institutions and forces with which individuals are attached somehow. So, Sen wants to point that freedom and capability are also dependent on such factors which are outside individual because these factors gives space for the agency to exercise and thus instrumentally causes the proliferation and contraction of individual.

¹⁴⁷ Robeyns. Ingrid, "The Capability Approach", *The Stanford Encyclopedia of Philosophy*.

Sen is of opinion that “individual freedom must be seen as a social commitment. Social institutional arrangements can enhance the individual capabilities. But development of these social institutions and arrangements is influenced by the practice of individual freedom through participating in social choice democratically. Thus when we view individual freedom as social commitments it implies a responsibility of the individual towards improving social structures and institutions obliging individual freedom as well as outing the wheels of economic, civil, political and social structures towards guaranteeing the freedom of individual agency. Sen writes:

The alternative to an exclusive reliance on individual responsibility is not, as is sometimes assumed, the so- called nanny state. The difference between nannying an individual’s choices and creating more opportunity for choice and for substantive decisions for individuals who can then act responsibly on that basis. The social commitment to individual freedom need not, of course, operate only through the state, but must also involve other institutions: political and social organizations, community- based arrangements, non – governmental agencies of various kinds, the media and other means of public understanding and communication , and the institutions that allow the functioning of markets and contractual relations. The arbitrarily narrow view of individual responsibility- with the individual standing on an imaginary island unhelped and unhindered by others- has to be broadened not merely by acknowledging the role of the state, but also by recognizing the functions of other institutions and agents.¹⁴⁸

Sen moves on to discuss about two important aspects of freedom i.e. opportunity aspect and process aspect. He writes:

“Freedom is valuable for atleast two different reasons. First, more freedom gives us more opportunity to pursue our objectives- those things that we value...this aspect of freedom is concerned with our ability to achieve what we value, no matter what the process is through which that achievement comes about . Second, we may attach importance to the process of choice

¹⁴⁸ Sen, 1999: 284-285.

itself. We may, for example, want to make sure that we are not being forced into some state because of constraints imposed by others”¹⁴⁹

In the opportunity aspect development has something to do with easing the exercise of freedom as means while the process aspect sees development as easing the acquisition of freedom as an end. As said above freedom can be understood in terms of capabilities let us see what does Sen Mean when we describes capabilities as positive freedom. Sen has discussed about positive and negative freedom which was first mentioned by Isaiah Berlin. Berlin introduced positive freedom as freedom to be one’s own. He articulates this notion of positive freedom as follows:

“I wish to be the instrument of my own, not of other men’s acts of will. I wish to be a subject, not an object, to be moved by reasons, by conscious purposes, which are my own, not by causes which affect me, as it were, from outside. I wish to be somebody, not nobody, a doer-deciding not being decided for; self-directed and not acted upon by external nature or by other men as if I were a thing, or an animal, or a slave incapable of playing a human role, that is, conceiving goals and policies of my own and realizing them”.¹⁵⁰

Berlin’s conception of positive freedom had nothing to do with capabilities of individual. Sen’s notion of positive freedom is very different from Berlin’s notion. Capabilities are kind of freedom which Berlin’s notion of positive freedom does not capture. It was Sen who clearly described his own understanding of positive freedom. In his arrow lecture, Sen wrote:

Positive freedom has also been variously defined, varying on one side from the general freedom to achieve in general, to the particular aspect, on the other side, of freedom to achieve insofar as it relates to influence working within oneself (a use that is close to Berlin’s conceptualization of positive freedom). In my own attempts in this field, I have found it more useful to see ‘positive freedom’ as person’s ability to do the things in question taking everything into account (including external restraints as well as internal limitations). In this interpretation, a violation of negative freedom must also be- unless compensated by some other

¹⁴⁹ Sen, 2009: 228.

¹⁵⁰ Berlin, 1969: 131.

factor, a violation of positive freedom, but not vice versa. This way of seeing positive freedom is not the one preferred by Isaiah Berlin.¹⁵¹

One drawback which Sen points of defining capability as positive freedom is that violation of negative freedom will lead to violation of positive freedom. To clarify the nature of positive freedom, Sen has made many important distinctions. For example he has distinguished between the constitutive and instrumental role in development. (which is aim of public policy more so at times of poverty, famine etc) constitutive role of the freedom is concerned with the well-being, that is to say whatever well being be freedom is part of it. Sen had in mind the rights of an individual in political participation, actively at both higher and lower levels, in ascertaining the shape of one's social and economic environment.

Sen has listed five important freedoms which play instrumental role in making positive freedom possible. He argues that we should not think that there is just one of them.¹⁵²

1. Political freedom- “broadly conceived (including what are called civil rights), refer to the opportunities that people have to determine who should govern and on what principles, and also include the possibility to scrutinize and criticize authorities, to have freedom of political expression and an uncensored press, to enjoy the freedom to choose between different political parties and so on.”
2. Economic facilities- “refer to the opportunities that individuals respectively enjoy to utilize economic resources for the purpose of consumption, or production, or exchange. The economic entitlements that a person has will depend on the resources owned or available for use as well as on conditions of exchange, such as relative prices and the working of the markets.”
3. Social opportunities- “refer to arrangements that society makes for education, health care and so on, which influence the individual's substantive freedom to live better. These facilities are important not only for the conduct of private lives (such as living a healthy life and avoiding preventable morbidity and premature

¹⁵¹ Sen, 2005: 586.

¹⁵² Sen, 1999: 8-39.

mortality), but also for more effective participation in economic and political activities.”

4. Transparency guarantees- “deal with the need for openness that people can expect: the freedom to deal with one another under guarantees of disclosure and lucidity. When that trust is seriously violated, the lives of many people- both direct parties and third parties- may be adversely affected by the lack of openness. These guarantees have clear instrumental role in preventing corruption, financial irresponsibility and underhand dealings.”
5. Protective security- “is needed to provide a social safety net for preventing the affected population from being reduced to abject misery, and in some cases even starvation and death.”

According to Sen, general capability of a person is highly developed with the help of these distinct types of freedom. These instrumental freedoms are distinct but interrelated they can foster human capabilities and substantive freedom by working along public policy. He adds:

These instrumental freedoms tend to contribute to the general capability of a person to live more freely, but they also serve to complement each other. While development analysis must, on the one hand, be concerned with the objectives and aims that make these instrumental freedoms consequently important, it must also take note of the empirical linkages that tie the distinct types of freedom together, strengthening their joint importance¹⁵³

These instrumental freedoms lead to individual freedom. A concern of individual freedom is often linked to concern of wellbeing and both the concerns are together called ‘wellbeing freedom’ by the philosophers. ‘well-being freedom tries to integrate the concern of individual freedom and well-being. Wellbeing is a very broad term, since its use changes its meaning. It is about how well the life of a person is going ‘for that person’. Well being is concerned with personal value rather than institutional value. Institutional value is that we have to consider when we think about how to

¹⁵³ Ibid., 38.

organize our collective life. Well-being is a personal value and it is different from other values like justice or efficiency which are public. In the book *The Idea of Justice*, Sen writes that well-being has mostly remained utilitarian in character. Well being has been defined as utility. Utility is defined as happiness and happiness is understood as desire fulfillment.

Desire fulfillment theories of wellbeing argue that wellbeing is the point to which our desire are contented. These desires possibly are our existing un- inquired desires. There is another theory of well being that is: objective list theory, “these theories are accounts of well-being that lists items that make our lives better, independent of our views on this. The claim of objective list theories is that there is an irreducible plurality of issue that makeup well-being. Well-being is plural and cannot be reduced to a single thing”.¹⁵⁴ Secondly “those items are objectively good for us, whether or not we attach any value to (or desire) those items. Hence items such as being healthy, or having friend or feeling well, are all good for us, whether we personally value them or not”.¹⁵⁵ This account of wellbeing is important for policy and political purposes. “If wellbeing is used for purpose of institutional design or policy making, those principle used, need to be capable of being known by all to be satisfied in society”.¹⁵⁶

Capability approach theory used the objective list theory, as functioning and capability are plurals. When Sen question the theory of subjective utility and revealed preference he is of opinion that a substance account of wellbeing, not a formal one, can be given which allows us to study closely the individuals behavior and choices eloquently. He writes here:

“It is fair to say that formal economics has been very interested in that plurality of focus in judging a person’s states and interests. In fact, often enough the very richness of the subject matter has been seen as an embarrassment. There is a powerful tradition in economics analysis that tries

¹⁵⁴ Robeyns, 2017: 124.

¹⁵⁵ Ibid., 124.

¹⁵⁶ Ibid., 124.

to eschew the distinction and make do with one simple measure of a person's interest and its fulfillment. That measure is often called 'utility'.¹⁵⁷

What Sen wants to do here is to perplex the concern by making distinctions- that is, by fragmenting the rigid/harsh conception about choice that are most easy to economist:

I would distinguish broadly between two ways of seeing a person's interests and their fulfillment, and I shall call them respectively 'well-being' and 'advantage'. 'Well-being' is concerned with a person's achievement: how well is his or her 'being'? 'Advantage' refers to the real opportunities that the person has, especially compared with others. The opportunities are not judged only by the results achieved, and therefore not just by the level of wellbeing achieved. It is possible for a person to have genuine advantage and still to 'muff' them or to sacrifice one's own well-being for other goals, and not to make full use of one's freedom to achieve high level of well-being. The notion of advantage deals with a person's real opportunities compared with others. The freedom to achieve well-being is closer to the notion of advantage than well-being itself.¹⁵⁸

The above passage sets important distinction between capabilities and functionings. "Functionings are realized form that capabilities take when they are fully cultivated. "A functioning is an achievement of a person: what he or she manages to do or to be". It is worth noticing that the idea of freedom comes into this formulation in an important way. One of the important ideas which Sen's work express is that: well-being is the sum of the individual's collection of functionings. "It is possible to argue that well-being of a person is best seen as an index of the person's functionings."

Sen's approach to well-being is far more appealing than of established approaches as it replaces 'utility' with more granulated conception of functioning. And allows more substantial discussion of person's life activities and a improved way of calculating his /her overall wellbeing.

¹⁵⁷ Sen, 1985: 121.

¹⁵⁸ Little.Daniel, 2011: 12.

As already mentioned in the beginning of the chapter, Justice as welfare through capability is one of an attempt to develop a broad normative framework for the evaluation of individual wellbeing and social arrangements. Just as justice as fairness tries to evolve just society through the principle of distributive justice that each individual should get equal liberty and equality, capability as one of the principle of minimizing injustice in Sen's view. Let us discuss this approach in next part of the chapter in detail.

PART-II

CAPABILITY: REVISITING INEQUALITY (NEPOTISM)

Capability approach makes a difference for thinking about concepts like freedom, wellbeing, distributive justice; human rights etc. Capability approach provides an overarching framework that binds its specific uses in different disciplines and fields. As we have discussed in above section that capability approach provides a theoretical approach to public values like wellbeing, freedom to achieve wellbeing, justice, rights. We also discussed that as a conceptual framework or an approach it assess the wellbeing at individual level, and wellbeing, and wellbeing and freedom is assed at institutional and social level by designing policies. The capability approach signifies freedom in the sense in which achieving well-being is a matter of 'what people are able to do and to be'. As a normative framework capability approach gives account of justice. a range of public values can be assessed by this approach. Capability approach can be used for various purposes for example: deriving some policy, measuring poverty, theorizing about values, developing a theory of social justice. Sen Idea of justice uses this approach to develop a theory of social justice.

One important point to be discussed here is that Sen in his book *The Idea of Justice* has relied on capability approach than any capability theory. There is a distinction between 'capability theory' and 'capability approach' which is important. Ingrid Robeyns in his book *Well-being, Freedom, and Social Justice* writes:

One reason why this distinction between ‘capability approach’ and ‘capability theory’ is so important, is that many theories with which the capability approach has been compared over time are specific theories not general open frameworks. For example, John Rawls famous theory of justice is not a general approach but rather a specific theory of institutional justice...another reason why the distinction is important is that it can help provide an answer to the ‘number of authors [who] complain that the capability approach does not address questions they put to it’. That complaint is misguided, since capability approach cannot by its very nature; answer all the questions that should instead be put to particular theories.¹⁵⁹

Theory of justice is discussed through the device of capability approach in normative theory moral and political philosophers often theorize capability approach normatively. For example: minimal theory of social justice developed by Martha Nussbaum, defends some basic capabilities which every person is entitled to, as a matter of human dignity. It must be noted here that capability approach is not a theory of social justice or distributive justice it is used as a device to theorize the concept. “The capability approach specifies what should count for interpersonal evaluations and thus provides an important aspect of a theory of social and distributive justice, yet more is needed.”¹⁶⁰ Same could be said for Nussbaum’s work; that it closely offers us a capability theory of justice, “but her theory too doesn’t amount to a full theory of social justice. Nussbaum’s theory of social justice is comprehensive, in the sense that it is not limited to an account of political justice, or to liberal democracies.”¹⁶¹ Not justice being analyzed or developed by capability approach but other values too fall under scrutiny of capability approach. for example AmartyaSen developed and analyzed concepts of freedom and rights using capability approach.

Capability approach has moral, normative or evaluative framework. It is simply not focused on impact but on evaluation. Central idea is that social arrangement should be primarily evaluative according to the extent of freedom that people have to promote or

¹⁵⁹ Robeyns, 2017: 30.

¹⁶⁰ Robeyns, Ingrid, “The Capability Approach”, *The Stanford Encyclopedia of Philosophy*

¹⁶¹ Robeyns, Ingrid, “The Capability Approach”, *The Stanford Encyclopedia of Philosophy*

to achieve functionings they value. In his book *Inequality Re-examined* he writes: “Capability are the various combinations of functionings (being and doings) that the person can achieve. [It] is, thus a set of vectors of functioning reflecting the person’s freedom to lead one type of life or another...to choose from possible living.” Let us take an analogy from the budget set. Suppose we have 500 Rupees in a pocket, what could we do of it? They could do number of different things which we can concretely do today like we can buy a meal, or a movie ticket, or gift, or buy a book, or it can be used for a transport, that is our budget set. Budget set is a very concrete option that we can do with 500 Rs. The capability set is a set of the vectors and the functionings that we very concretely could do. The time is unspecified and boundaries are unspecified they become specified when we focus on particular problem but intuition is very similar for those to think in terms of budget set. In *The Idea of Justice* while describing the capability approach Sen wrote: the focus here is on freedom that a person actually has to do this or be that- things that he or she may value doing or being”¹⁶²

So, this contrasts it, and this contrast is stressed again and again, by Sen, with concepts of opportunity or freedom which are notional. On paper I might have the freedom from hunger there is no law against dying of hunger. For Sen, the paper freedom we might have that infact mean nothing. Sen is interested in stressing real freedoms, the freedom the person actually has to do this or to be that. So the vector of functioning is actually things that you could choose and enjoy. Sen Formulation of capability has two parts freedoms and functionings and one of his distinctive contributions is to unite the two concepts although in different way the Martha Nussbaum does. Same words have different meanings for these two authors. Functioning is a point in space, it is something that a person may value and have reason to value doing or being. So what does gibberish mean, it means well nourished, or it means being able to visit your aunt, being able to eat rich sweets, or attend a summer class. So, although the language is very abstract, it’s intuitive. For example we can say that a group of women in Lahore discovered that carrot is as

¹⁶² Sen, 2009: 232.

nutritious as apple but the fact that carrot is less expensive. This is piece of knowledge, it is functioning, it is something that they learnt which added to their learning which was previously unknown. In Bhutan a community speaking about the poverty, than social connectedness of the community as children were playing a game and saying that is really what gives identity or gives us strength. So, people when they speak about their lives will often list different functionings related to their health, education, work, relationships; dimensions discussed earlier. Their key feature is they have to be intrinsically valuable to the person. So, for example, I could value learning the way to use a particular command because I have to do it. But I could value learning poetry because it just somehow enriching it is beautiful to know some lines of poetry to be able to reflect on them, to be able to get carried where the images take you.

So there is some kind of learning which has intrinsic value than it is a functioning. But what is this value and have reason to value? What this phrase mean? I could value something, my value set includes learning, walking around garden, torturing small kids. Now, these are sets of things which I have reason to value. And those include eating broccoli, walking around garden, being able to go to summer school etc. But I don't value broccoli as I don't want to eat it so, the functioning is intersection of those two sets; it is what I value and have reason to value.

Who decides which of my preferences are reasonable? That's a question Sen does not answer. It is part of his framework to ask, to scrutinize one's own reason, to allow our preferences to change, to allow our public debate to challenge our preferences, and are it is evident values but he doesn't specify how and who as authority to decide what we have reason to value. Sen only discusses it because it is evident the case that some of us value things we don't have reason to value, then on further reflection if we further scrutinize our preferences or values we might shift them. The space we want to focus is on doing's and beings, in a sense that texture of a person's life; what a person is able to do actively and how they are able to be and that would include

feature like being serene, enjoying serenity that is being, being nourished that is being, being includes activities.

So, in a sense this is identification of space we are working on, space that human lives become clearer as we contrast it with other spaces. Let's consider an example of a bicycle. We have big black bicycle, a bicycle is a resource it could be any resource that we have. It is a resource and we could have a bicycle, it is something that we can measure, most of us have indicators, reflect resources rather than functioning. The hope that bicycle will give us the capability to move around, so if I measure bicycle what is in my mind, bicycle is a proxy for human ability perhaps. And functioning is that we would indeed ride around. And then if we are interested in utility 'riding around' would make us happy. These are different focal spaces, resources are on spaces; capability and functioning are same space.

Capabilities are set of vectors and functionings. This is one particular functioning point in a space and utility is different space all together. It is space of our mental or psychic utility. Now, when we focus are try to evaluate certain arrangements which is task of capability approach, Sen argues we should not focus and limit ourselves to resources. So, the question here is why not? Sen writes:

That income or wealth is an inadequate way of judging advantage was discussed with great clarity by Aristotle in *Nicomachean Ethics*: 'wealth is evidently not the good we are seeking; for it is merely useful and for sake of something else', wealth is not something we value for its own sake. Nor is it invariably a good indicator of what kind of lives we can achieve on the basis of our wealth. A person with serve disability cannot be judges to be more advantaged merely because she has larger income or wealth than her bodied neighbor. Indeed, a richer person with disability may be subject to many restraints that the poorer person without physical disadvantage may not have. In judging the advantages that different people have compared with each other, we have to look at the overall capabilities they manage to enjoy. This is

certainly one important argument for using the capability approach over the resource-centered.¹⁶³

Suppose, I have a bicycle but I have no legs or I have no sense of balance or I am terrified of traffic. So, I have a bicycle but it does not give me the capability to move around and I am not happy unless, I am happy simply by owing a bicycle and bragging to my friends that I own a bicycle. It is not necessary that having this resource produces this capability or this functioning. And it is also necessary that I could be happy without a bicycle, or I could be happy although I don't have a bicycle. It is not the bicycle which makes me happy. To give other example: this is one which Sen Uses most of all is food. Each of us have same kilo of rice to eat but one person is pregnant, one is old, another is young, another is a day labor and one have high metabolism. So, what is the nutritional status, of having same rice, of pregnant women? Pregnant women might have less, young and old may have way too much, and day laborer might not have enough calories. A person with high metabolism also might need more. So the same amount of commodity or resources and this could be income, food this could be any other resources might go along with different levels of capability and different levels functionings and Sen calls it ability of different people to convert resources into functioning. So disabled person might require more resources to convert mobility to simply get around because they require wheelchair or need assistance to move around. Utility is slightly problematic, I could be happy for umber of different reason which may or may not reflect my material state.

Functioning Allows For Different Interpersonal Conversion Factors:			
Resources	Capability	Functioning	Utility
Bike	Able to ride around	Ride around	Happy
Food	Able to be nourished	Nourished	Happy

Sen is quite troubled by the poor widow who is happy although she doesn't has material circumstances because she has accustomed herself to being content and

¹⁶³ Sen, 2009: 253.

grateful to small mercies. So, she is happy. But if we took utility and observe her happiness and we did not realize that she actually was also destitute then we might be content and not feel that we should look at any of her functioning because utility in a sense was sufficient so there is a problem that he observe with only looking at the psychic states of people and using them as proxy for their wellbeing more fully. So, there are different spaces, space we can and do measure, we will be looking at the measure we have created, used and blended and assumption that we make about how achievement in one space translate the achievement in other space. These are the fact that a set of assumption about people ability to convert resources into capabilities or capabilities into utilities or assumptions about how sufficient utility is a measure of achievement in other spaces. So, if we ask which are direct indicators of functioning, for example, directly amongst:

- 1) Asset index- It is a resource.
- 2) Access to schooling- It could be many of the variables that we have, it say nothing about the quality of the schooling, if I am discriminated or if I can actually afford to go. It does not give us real information about the people real ability to go to school. So, we have to look indicator to figure out is it a capability or it is a resource that may or may not have access to.
- 3) Body mass index- (which is per meter kilogram squared) it is functioning.
- 4) Income- It is resource.
- 5) Self- reported health- Again , it is difficult to define it as which variable it could be self reported health is how satisfied are you with your health overall. So, the question Sen is asking about the satisfaction. He is asking in the space of psychic utility. It is used to proxy achievements in health space. Aarino Stefan, for example, used it. Sen does it by demonstrating a strong relationship between self reported health in America and objective functioning. It is not always the case, Sen in his 2002 BMJ article *Heath: Perception Versus Observation* gives example of widows in Kerala: wealthy sate in India which has low mobility and

long life expectancy, and whereas in Bihar a poor state which has high mobility and low life expectancy. And people in Kerala said the opposite but their life expectancy is longer and mobility is lower. So, there is opposite relationship between self reported health and objected functioning indicators. This is very commonly known in case of fear of violence. Where those with least probability of the victims of being afraid. Carol Graham in his book *Happy Peasants and Miserable Millionaires*. Also documents that self reported health of people in Kenya is equal to self reported health of people in America. So, self reported health particular in context of lower education of frame of reference exhibit adaptation may not be an adequate objective proxy for health of functioning.

- 6) How many per-weeks you can consume an egg: It is a Resource! It is like Kilogram rice per week. So, the impact of an egg will depend if you are allergic to eggs, if you like eggs or if you are opposing eggs for dietary reasons or how much proteins you need given your body. Thus, it is a resource just like rice.

We have already discussed earlier that capability is made of two parts: functioning and freedom. Freedoms are doing and beings you value or have reason to value. The intersection of those two sets freedom is ‘the real opportunity that we have to accomplish what we value’. In this way it is not a paper freedom but it is an actual freedom and Sen, describes it in many different ways and at different times. One is ‘the good life is partly a life of genuine choice and not one which the person is forced into a particular life- however rich it might be in other respects’. It is authentic self direction- the ability to shape one’s own destiny as a person and a part of various communities. Opportunity freedom is the capability, is one of the component of freedom. The difference between the opportunity freedom and process freedom is more clearly made in Sen’s *Rationality and Freedom*.

There are many things which need clarification first; *freedom has to be an effective freedom and freedom is not maximization of choices without regard to their value*. This was enthusiastically debated by Jerry Collin in *Quality of Life* where he give the example of washing powder and different types of washing powder and if you

multiply different kinds of washing powder you have to choose between, it may or may not make your life more meaningful. Infact as Sen writes more choices can confuse and befuddle and may make one's life more rigid. What we want really is choice of wants in our functioning sets not only for the things that we value but for choices that we value. In this way we may have meta-preferences about how many choices are, those will depend upon personality, some people like to live quite and regular life. and , it also depend on culture, so some people like to come home and make choices made for them by their family members and others who need to be in control of their choices for themselves.

Second misunderstanding is *freedom as control*. Political philosophers have laid lot of emphasis on control by a person as being constituted of their freedom. Sen, gives many examples where it is not the case: For example there is threat of malaria and government chooses to spray ponds to kill the malaria mosquitoes. Our freedom might have grown up because of freedom to live without threat of malaria but, we were not personally in control of that decision, hopefully made by the democratic procedure which we could have engaged had we wish to. But, still it is a collective choice. Other example he gives is of a person who is a friend of yours, who just got on run over a car and is bleeding badly and who is a witness which means they don't want blood transfusion so you gather up and take him up to the hospital and say, please do anything for him but don't give me blood transfusion. So, in a sense you have been advancing his freedom although he is unconscious at the moment. In this way you have been helping his preferences, his functionings to be advanced. Similarly, freedom does not need to be in direct control. It can either come from public action or action of others on behalf of somebody.

Already mentioned above, for Sen, there are two parts: opportunities aspect and process aspect which is related to agency freedom or systematic freedom. Opportunity aspect is our set of vectors or functioning which you could achieve and process aspect is your ability to act on what matters. I would go into details of it later in my next chapter but for now it is to be mentioned that in Sen 1985 lecture

‘*Wellbeing, Agency and Freedom*’ and it is differently configured from Martha Nussbaum who does not have concept of agency in her writings. For Sen, “what a person is free to do and achieve in pursuit of whatever goals and values he or she regard as important is their agency”.¹⁶⁴ Again, “An agent is someone who acts and brings out change, and whose achievements can be judged in terms of her own values and objectives, whether or not we assess them in terms of some external criteria as well.”¹⁶⁵ So, what we will observe is the opposite definition from the principle agent, whether principle is the active person. Here, the agent is the person who brings about change. And, again there are number of things which are distinctive about Sen’s concept of agency which I have tried to bring out in the various places in the definition of agency itself, as definition contain some assessment of value. So, the person is an agent insofar what he or she pursue something the value or have reason to value. And, so this constrains it.

We might say for example that Osama –bin –laden was super powered individual but perhaps not an agent from his prospective if we debated or considered whether not objectives were one that he has reason to value and that is debate worth having, for Sen, before we identify someone as agent. Were as again, many of the definition of empowerment which are active now are value neutral as they simply say; if a person has a power whether it is power to do ill or power to do good they are empowered, so not more could be said about agency it is not the focus here.

Capability approach in more recent articulation puts both agency and capability as people centric here is quote from Dreze and Sen:

The approach...is essentially a ‘people-centered’ approach, which puts human agency (rather than organization such markets or government) at the center of the stage. The crucial role of social opportunities is to expand the realm of human agency and freedom, both as an end in itself and as a means of further expansions of freedom. The word ‘social’ in the expression of ‘social opportunity’ (...) is a useful reminder not to view individuals and their

¹⁶⁴ Sen, 1985: 203.

¹⁶⁵ Sen, 1999: 19.

opportunities in isolated terms. The options that a person has depend greatly on relations with others and on what the state and their institutions do. We shall be particularly concerned with those opportunities that they strongly influenced by social circumstances and public policy...¹⁶⁶

Thus we began with capability approach and then saw capabilities have two parts functioning and freedoms and very lightly introduced those terms and there is lot more in depth both written about them and we could get into if we wish. When Sen speaks of process freedom, he includes not only individual freedom (expansion of agency hence) but also process freedom which is personal, systematic and political. And regularly trying to evoke a mover in sense of collective actions by different groups whether social movements, NGO's on issue of concern. Thus when we look at the title of his various books we see that end chapter is on, in a sense calling for collective response to different kinds of tragedies.

Here is a quote book, *On public action and hunger* which is expressing a disappointment because persisting deprivation doesn't seem to be in general kind a shock. they are quite reasonable to expect given the normative tragedy. Sen says that the subject often generates cynicism and irresponsibility. Sen is not interested in talking about irresponsibility but addresses cynicism. He writes:

The fact that so many people...go perishing from persistent deprivation on a regular basis, is a calamity to which world has, somewhat incredibly, got coolly accustomed. It does not seem to engender the kind of shock and disquiet that might be reasonable to expect given the enormity of the tragedy. Indeed, the subject of ten generates either cynicism ('not a lot can be done about it') or complacent irresponsibility. ('Don't blame me- it is not a problem for which I am answerable')¹⁶⁷

The term 'inequality' has been discussed by Sen in sense of capability deprivation. For example poverty, unemployment and gender trouble are defined as capability

¹⁶⁶ Drèze J, Sen A, 2002: 6..

¹⁶⁷ Drèze J, Sen A, 1989: 275-276.

deprivation by Sen. Let's look into poverty factors in detail and discuss how it lead to inequality and what can be done to deal such type of injustice.

Poverty is scarcity of basic capability that that will represent the criterion of recognition of poverty it is not just based on the measure of lowness of income. The inadequate income is a strong prompting factor for deprived life. Lack of income is main reason for a person's capability deprivation, along with other cause such as low income. The inadequate earning is a strong prompting cause for poor and deprived life. The capability approach to poverty is not concerned with scarcity of income as income is not the only device in creating capabilities and the influence of capabilities and income shows discrepancies between families, communities and even individuals. The strong influences of capability and income are gender, age, location, social role, and others of an individual. People will illness, old age, disability and physical challenges are not capable to earn income as well as not convert income into capability. So this brings about the "real poverty" in expression of capability deprivation. Income approach to poverty further raises distribution complication within families, they are sex biased.

Income is a significant source to capabilities and therefore improved capabilities will help in leading life in more productive manner and further earning a higher income. When person is able to increase his ability to earn a income and eliminate income poverty completely, only then a person move towards better quality of life, not just having a better health services and basic education would do.

Another reason for inequality is impartiality prevalent in social structure. Sen talks about two kinds of impartiality i.e. open impartiality and closed impartiality. Closed impartiality is the procedure of making impartial judgments which appeals only to the members of a given society or nation for whom judgments are being made. Sen writes: By contrast open impartiality is the procedure of making impartial assessment which can appeal to judgments, among others, from any group outside to evade provincial bias. A judgment can come from insider or outsider to broaden the scope of ethical enquiry. Sen writes:

The liberating role of open impartiality allows different types of unprejudiced and unbiased perspective to be brought into consideration, and encourages us to benefit from the insights that come from differently situated impartial spectators. In scrutinizing these insights together, there may well be some common understanding that emerges forcefully, but there is no need to presume that all differences arises from distinct perspective can be settled similarly.¹⁶⁸

Sen, proposes that the place of impartiality in the evaluation of social justice and social arrangements is central to the understanding of justice. Unequal and partial social structure opens the avenues of nepotism. Nepotism is based on loyalty not freedom, what Sen is interested in is freedom not loyalty. Any nepotistic social or political structure will be partial and hinder the path of justice and prevent from minimizing injustices. Nepotistic social framework conditioned the basic liberties and rights of the people and hampers impartiality. This nepotistic society can be dealt with Sen idea of open impartiality. This idea of open impartiality in rooted in universalistic approach. He writes: “that broad framework of impartiality makes it particularly clear why considerations of basic human rights, including the importance of safeguarding the elementary civil and political liberties need not be contingent...”¹⁶⁹.

Public enlightenment is one of the ways to deal with injustices of these types. Let’s discuss about public enlightenment in next part of the chapter.

PART- III

PUBLIC ENLIGHTENMENT: RE- VISITING GOODNESS.

Eighteenth century was marked as period of Enlightenment. But what does enlightenment means? According to Kant "Enlightenment is the coming out of man from his self-imposed immaturity. Immaturity is the incapacity to serve one’s own understanding without direction from another. This immaturity is self-imposed;

¹⁶⁸ Sen, 2009: 144.

¹⁶⁹ Ibid., 144.

Reason itself languishes, not because it lacks understanding; what it lacks is resolution and courage; it is unwilling to serve itself. Take courage to serve your own understanding! This is therefore the Motto of the Enlightenment."¹⁷⁰ Until enlightenment, society was dominated by the church. The integrating intellectual principle was the belief in God. It was in theology that all human problems in experience were integrated. A combined tyranny of rulers and popes sheltered the society. It was in 18th century that some people stood up to challenge the authorities of church and break the shekels of superstitions and authority with device called 'reason'. Now the enlightenment threw out that integrating principle - the religion as the matrix of thought process. In that place enlightenment put the human reason which could integrate everything. A war emerged in Europe for religious and political freedom. So, we can say that Enlightenment was marked by freedom; freedom from superstitions but not from royal absolutism.

Rationalist philosophers defined period before enlightenment as that which did not lie in the realm of rational knowledge. John Locke is known as founder of this movement in philosophy. Enlightenment was in this sense a rationalist movement where reason was more important than faith. But Rousseau enlightenment was marked by anti-rationalist movement. His motto was to go back to nature to regain natural rights of man. And, those were liberty, equality and fraternity. Rousseau wanted to return to nature and escape from tyranny of reason that is to say to have blind faith in the almightiness of human reason. Rousseau has anti – rationalist attitude because:

First, Rousseau defines humankind by its instincts and not by its rational talents, leading one to understand Rousseau's categorization of humanity as a part of the animal kingdom, rather than emphasizing its unique characteristics as elevating members of that species above other living creatures. Second, Rousseau emphasizes that the principle underlying all human actions - whether good or bad; rational or irrational - is not a function of reason but rather derives from an emotion: the emotion of love. Having defined human beings by their instincts rather than by their cognitive abilities, it follows

¹⁷⁰ Kant, 1996: 55.

logically that Rousseau would similarly align the basic motivation for their actions under the category of emotion.¹⁷¹

Inequality is due to private possessions and development of agriculture. The freedom and equality of state of nature was killed by the institution of inequality and constraints. Thus Rousseau quote, “Man is born free, and everywhere he is in chains. Many a one believes himself the master of other, and yet he is a greatest slave than they.”¹⁷² Thus we can say that Enlightenment movement was marked by the concept of freedom, equality, fraternity, liberty etc. public enlightenment comes from the consensus of values which is generated by institutions. Such institution was dreamt by John Rawls in ‘A Theory of Justice’ his classic thought experiment, the ‘original position’ in which we are to imagine individuals cut off from any knowledge of their specific identities and talents by a ‘veil of ignorance’ while attempting to define the nature of a just society, has come in for particular negative attention. For Rawls, the veil of ignorance was an essential element of an attempt to understand the demand of justice as distinct from the demand of self-interest. Rawls, bluntly thought that of denied knowledge of one’s place in society, his class, position, social status; his intelligence, strength, likes, or of rational plan for life or conception of one’s own good, the social and political situation of their own society or the generation they belong. Since, nobody would wish the establishment of a state in which sexism, racism, or other discrimination might be tolerated, because they might become victim.

Communitarian like Michael Sandel has criticized Rawls original position by saying that individual enlightenment gets threatened by this. Once we have taken out the entire specific or culturally –particular aspect of an individual, we are not left with seeker of justice, but with not individual at all. Rawls assumed according to communitarians that these particular facts about individual are contingent. It is not the case it is rather what constitutes an individual.

¹⁷¹ Morgenstern, 2000: 370.

¹⁷² Rousseau, 1998: 5.

The issue of the relationship between public and individual is central question of political philosophy. According to liberal philosopher individual are very important. It is individual which is capable of suffering. Before moving ahead, let it be clear that public and private enlightenment refer to freedom of group and of individual. In a state there has always been tension between individual and group interests. Institutions need to be so formed that it moderates that conflicts. Individual would want to promote his or her well-being and interest and on the other hand, group will try to promote the welfare as a whole. But public enlightenment is not possible without individual enlightenment or we can say that without individual enlightenment there really can never be public enlightenment. Social contract theorist generated public enlightenment through the approach called transcendental institutional which has two distinctive features according to Sen. they are:

First, it concentrates its attentions on what it identifies as perfect justice, rather than on relative comparisons of justice and injustice. It tries only to identify social characteristics that cannot be transcended in terms of justice, and focus is thus not on comparing feasible societies, all of which may fall short of ideals of perfection. Second, in searching of perfection, transcendental institutionalism concentrates primarily on getting the institutions right, and it is not directly focused on the actual societies that would ultimately emerge...¹⁷³

Modern political philosopher like John Stuart Mill and Jeremy Bentham justify the suppression and restriction on individual freedom by claiming a desire for the ideal or perfect vision of just institution. But this alleges victimization of minorities and women. Amartya Sen in his book *The Idea of Justice* has contrasted his approach (which looks into advantages of individuals) with two other types of approaches. These two approaches talk about individual happiness, income, wealth and resources but not about individual enlightenment. They are utility based approach and resource based approach. Sen explains:

¹⁷³ Sen, 2009: 5-6.

That income or wealth is an inadequate way of judging advantage was discussed with great clarity by Aristotle in *Nicomachean Ethics* ‘wealth is evidently not the good we are seeking; for it is merely useful and for the sake of something else’. Wealth is not something we value for its own sake. Nor is it in itself a good indicator for what kind of lives we can achieve on the basis of our wealth. A person with severe disability cannot be judged to be more advantaged merely because she has a larger income or wealth than her able-bodied neighbor. Indeed, a rich person with disability may be subject to many restraints that the poorer person without the physical disadvantage may not have. In judging the advantages that different people have compared with each other, we have to look at the overall capabilities they manage to enjoy. This is certainly one important argument for using the capability approach over the resource-centered concentration on income and wealth as the basis of evaluation.¹⁷⁴

Sen further explains that “resources are only instrumentally important as means to other ends? Since resources are ‘merely useful and for the sake of something else’ (as Aristotle puts it)...”¹⁷⁵ He contrasted these two approaches with his freedom based capability approach. Sen is interested in individual enlightenment through capability approach. He writes:

In contrast with utility-based or resource-based lines of thinking, individual advantage is judged in the capability approach by a person’s capability to do things he or she has reason to value. A person’s advantage in terms of opportunities is judged to be lower than of others if she has less capability-less real opportunity- to achieve those things that she has reason to value. The focus here is on the freedom that a person actually has to do this or to be that –things that he or she may value doing or being. But the idea of freedom also respects our being free to determine what we want, what we value and ultimately what we decide to choose.¹⁷⁶

¹⁷⁴ Ibid., 253.

¹⁷⁵ Ibid., 265.

¹⁷⁶ Ibid., 231-232.

Moving to utility, Sen argues that this as well is the incorrect metric in which to connect in interpersonal assessment because of its pure compliance, particularly in the face of difficult circumstances. In passage, Sen noted that:

the fulfillment of a person's desires may or may not be indicative of a high level of well-being or of standard of living. The battered slave, the broken unemployed, the hopeless destitute, the tamed housewife, may have the courage to desire little, but the fulfillment of those disciplined desires is not a sign of great success and cannot be treated in the same way as the fulfillment of the confident and demanding desires of the better placed.¹⁷⁷

Freedom-based approach of Sen, is a way of being perceptive towards social justice in terms of handling persons not solely distribution of goods. The developmental notion of person is the answer to this concern for justice, which is flawlessly articulated by Elizabeth Anderson: "justice should be considered "as a relationship among people rather than merely as a pattern in distribution of divisible goods... injustices may be better remedied by changing social norms and the structure of public goods than by redistributing resources."¹⁷⁸

The idea in utilitarianism is that an action is morally worthy if it is capable of providing happiness or pleasure to all conscious beings. In this way it ignores individuals as a person. Any action which produces maximum amount of happiness to large number of people is considered as good. But what is this good and how can it be defined? Before, we come back to discussion of Sen's individual enlightenment, through capability approach. Let us look in concept of goodness.

According to classical utilitarianism, an agent should perform the action that satisfies the requirement of a relationship only when her doing so would result in the greatest sum of pleasure over pain-is defined independently of the requirement of any relationship, so it sets out a criterion for goodness that

¹⁷⁷ Sen, 1987: p.11.

¹⁷⁸ Ege.Ragip.and Igersheim, Herrde. *The Individual and the Other in Economic Thought.Part -1.*

can tell us, among other things, when it would be good for people to comply with a any particular rational requirement.¹⁷⁹

Political philosophers at large have defined ‘good’ in sense of public good rather than individual good. Utilitarian define good in terms of happiness, egalitarians define good in terms of equality. Libertarians define ‘good’ in various ways like freedom, fairness, justice etc. For Amartya Sen ‘good’ is having a capability, capability ‘to do’ or ‘to be’. Sen, in his book *The Idea of Justice* has given specific features of this approach:¹⁸⁰

First: the capability approach points to an informational focus in judging and comparing overall individual advantages, and does not, on its own, propose any specific formula about hoe that information may be used. The capability approach, in general approach, focusing on information on individual advantage, judged in terms of opportunity rather than specific design for how a society should be organized,

Second: capability perspective is inescapably concerned with a plurality of different features of our lives and concerns (...) It focuses on human life, and not just on some dethatched objects of convenience, such as income and commodities that a person may possess...the capability approach is particularly concerned with correcting this focus on means rather than on opportunity to fulfill ends and the substantive freedom to achieve those reasoned ends.

At this point it should be clear that individual enlightenment which is part of our discussion has nothing to do with individual selfishness or self- centeredness of human nature. Individual enlightenment through capability approach focuses on well-being of an individual rather than self- interest of an individual. Here, Amartya Sen seem to be influenced by the Buddhist conception of enlightenment. According to Buddhism,

¹⁷⁹ Hussain, Waheed., “Common Good”, *The Stanford Encyclopedia of Philosophy*

¹⁸⁰ Sen, 2009: 232-234.

...wellbeing presupposes distinction between what may be call unenlightened well-being and enlightened well-being. Human beings ordinarily find themselves in an unenlightened state...enlightenment involves a superior form of well-being...the well-being of unenlightened person is understood largely in terms of participation in at least many of the ordinary goods such as life, health, pleasure, and absence of pain, marriage, children and reputation. These goods are portrayed as having instrumental value...it was largely supposed that the goods just mentioned were not features of well-being...for Buddhism, people may have more or less wellbeing in terms of participation in ordinary goods, but their lives are always fundamentally problematic until enlightenment is attained, at which point a form of well-being is achieved that is superior to any level of well-being. That is available to unenlightened...enlightened well-being is said to be a superior kind of well-being atleast in part because all forms of it are free from suffering...enlightenment is certainly the highest form of well being in Buddhism.¹⁸¹

Amartya Sen, description of well-being regarding individual enlightenment thus appear to be an objective approach. The similarity between Sen and Buddhist conception of individual enlightenment is the achievement of central human capabilities or capacities. In this respect, Sen and Buddhist conception is based on analysis of the human conditions. So for many reasons, Sen's account is not an Aristotelian- nature fulfillment theory. Sen is not emphasizing the fulfillment of our nature as rational agent in a way that Aristotle does. For Sen, in conception of capabilities the place of individual as a person or as member of community is important to discuss Sen writes:

A person belongs to many different groups (related to gender, class, language group, profession, nationality, community, race, religion and so on), and to see them merely as a member of just one particular group would be a major denial of the freedom of each person to decide how exactly to see himself or herself. The increasing tendency towards seeing people in terms of one dominant 'identity' ('this is your duty as an American', 'you must commit

¹⁸¹ Christopher, W. Grams, *Buddhist Well-being*. Fordham University.

these acts as a Muslim’, or ‘as Chinese you should give priority to this national engagement’) is not only an imposition of an external and arbitrary priority, but also the denial of an important liberty of a person who can decide on their respective loyalties to different groups (to all of which he or she belongs).¹⁸²

Thus Sen asserts that:

Individual human being with their various plural identities, multiple affiliations and diverse associations are quintessentially social creatures with different types of societal interactions. Proposals to see a person merely as a member of one social group tend to be based on an inadequate understanding of the breadth and complexity of any society in the world.¹⁸³

According to Sen, individual enlightenment comes from ‘thinking, choosing and doing’ but Sen acknowledges that society has major role or influence on our ‘thinking, choosing, and doing’. He explains: “when someone thinks and chooses and does something, it is, for sure, that person- and not someone else- who is doing these things. But it would be hard to understand why and how he or she undertakes these activities without some comprehension of his or her societal relations.”¹⁸⁴ Sen makes us aware that there are schools of thoughts which gives primacy to individual thought, action and choices, detached from their surroundings or society in which they exist. But for Sen capability approach goes bit ahead of these schools of thought as “it not only does assume such detachment, its concern with people’s ability to live the kind of lives they have reason to value brings in social influences both in terms of what they value (for example, ‘taking part in the life of community’) and what influences operate on their values.”¹⁸⁵ According to Sen, Uses of Capability approach “have been quite unequivocal in not assuming any kind of a detached view of individuals from the society around them”.¹⁸⁶

¹⁸² Sen, 2009: 246-247.

¹⁸³ Ibid., 247.

¹⁸⁴ Ibid., 245.

¹⁸⁵ Ibid., 244.

¹⁸⁶ Ibid., 245.

Let us now come back to well-being conception of Enlightenment. As already mentioned, for Sen, individual enlightenment and their well-being is on top priority which ensure that people instead of resources, are the utmost important and real wealth. Marianne T .Hill has pointed out in *Development as Empowerment* about Sen’s capability approach to human welfare which is alternative to traditional welfare theory, “The capability space- that is, the matrix of all attainable functionings- in turn is the proper evaluative framework for measuring a person’s advantage, or the capability to achieve well-being. It can also used in evaluating social arrangements”.¹⁸⁷

The capability approach takes into account the uniqueness of each person. A young child, for example, needs fewer calories than an adult, a disabled person may require more than usual economic resources to attain a given level of mobility. Since each individual has different needs and abilities, a given set of goods and services will result in a different outcome relative to the set of functionings attainable by each person. What Sen Stresses is the outcome in terms of valued functioning, including the ability to choose. Only valued functioning contribute well-being.”¹⁸⁸

Sen moves on to discuss various difficulties which arise in individual enlightenment due to fact of human diversity. Individuals differ because of their gender, disability, age, sex, special talents; proneness to illness etc. these diversities make people different from each other and thus lead to “quite divergent opportunities of quality of life even when they share exactly the same commodity bundle.”¹⁸⁹Sen Lists five different difficulties in his book *Development as Freedom* they are:¹⁹⁰

1. Personal heterogeneities: people have disparate physical characteristics connected with disability, illness, age or gender, and these make their needs diverse. For example, an ill person may need more income to fight her illness...a disabled person may need some

¹⁸⁷ Marianne.T.Hill, 2003: 132.

¹⁸⁸ Ibid., 113.

¹⁸⁹ Sen, 1999: 69.

¹⁹⁰ Ibid., 70-71.

prosthesis, an older person more support and help, a pregnant woman more nutritional intake, and so on.

2. Environmental diversities: variation in environmental conditions, such as climatic circumstances (temperature ranges, rainfall, flooding and so on), can influence what a person gets out of a given level of income. Heating and clothing requirements of the poor in colder climates cause problems that may not be shared by equally poor people in warmer lands. So do pollution and other environmental handicaps.
3. Variations in social climate: the conversion of personal incomes and resources into the quality of life is influenced also by social conditions, including public educational arrangements, and the prevalence or absence of crime and violence in the particular location. Aside from public facilities, the nature of community relationships can be very important, as the recent literature on “social capital” has tended to emphasize.
4. Differences in relational perspectives: the commodity requirements of established patterns of behaviour may vary between communities, depending on conventions and customs. For example, being relatively poor in a rich community can prevent a person from achieving some elementary “functioning” even though her income at which members of poorer communities can function with great ease and success.
5. Distribution within the family: incomes earned by one or more members of a family are shared by all- no earners as well as earners. The family is thus the basic unit for consideration of incomes from the stand point of their use. The well-being or freedom of individuals in a family will depend on how the family income is used in furtherance of the interests and objectives of different members of the family.

So now, we can say that public enlightenment which has integral relation with well-being concept is not dependent on material comfort people have. Individual freedom and well being also depends upon non- material things since human are social, political and psychological beings so, the prime attention of Public as well as individual enlightenment should be on people as humans, Public enlightenment should not be measured in terms of GDP growth. It means moving away from the narrow resource driven ‘economic development. Too wider well-being based ‘public enlightenment. The concept of enlightenment has a deep relation with the concept of

development too. According to Sen. Loss of capabilities occur when there is loss of freedom, having freedom gives the space to enhance capabilities. Sen explains: “the appropriate “space” is neither that of utilities (as claims by welfarists), nor that of primary goods (as demanded by Rawls), but that of substantive freedoms – the capabilities- to choose a life one has reason to value.”¹⁹¹ Therefore, every development for Sen is development of human capabilities in the enabling environment of freedom. Goal of development, for Sen, is public Enlightenment. And enlightenment is means to development. There development as means removes the major sources of constraints to public enlightenment such as different forms of discrimination – gender, religious, communal, racial, unreliable public facilities etc. Enlightenment gives the necessary space to make choices to make one’s life better the way one desired.

Individual enlightenment in the capability perspective faces backlash in prevalence of poverty because poverty is seen in terms of a shortfall of ‘basic capabilities’. Sen defines poverty as ‘capability deprivation’. In *Development as Freedom* public enlightenment is understood as the ability to choose what one values. Sen has discussed various kinds of freedom which increases people’s capabilities and reduce poverty. And development is defines as increasing these freedoms. Unemployment is another factor which affects Public enlightenment.

For Sen, ‘gender inequality’ is not the natural human condition. But the idea that somehow women have to be in an inferior position – or not quite such dominant position- is really wholly artificial. According to Sen the issue of enlightenment and agency are two main causes of gender inequality. Out of the two issue of agency can be addressed easily.

¹⁹¹ Ibid., 74.

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CHAPTER-5

MARTHA NUSSBAUM ON GENDER JUSTICE

Martha Nussbaum considers the quest for justice and equality of opportunities between genders. She tries to establish an inclusive society and the possibility of feminist perspective on justice. In order to minimize social injustice, we must incorporate the historical and cultural circumstances of different peoples. For Nussbaum, “the need to recognize that the lives of women are highly varied, that women live within a variety of traditions, and that the best account of human justice is not one that merely projects western values onto groups with different concerns”¹⁹². Her main concern is to pay attention to the actual experiences and circumstances of individual women. The majority of women across the world fail to enjoy the legal, political, social and economic status enjoyed by men. This discrimination and their deprived situation is due to their cultural traditions and practices that mould their lives. The conflict between cultural practices and women's rights has been prevalent as a social phenomena and it has to be interrogated. The question arises – are we going to minimize women's injustice and bring gender equality under the purview of human rights or let the culture or tradition decide their lives?

Carrying further the notion of minimizing injustice, Martha Nussbaum, considers the quest for justice and equality of opportunities between genders. She tried to establish an inclusive society and the possibility of feminist perspective on justice. In order to minimize social injustice we must incorporate the historical and cultural circumstances of different peoples. For Nussbaum, “the need to recognize that the lives of women are highly varied, that women live within a variety of traditions, and that the best account of human justice is not one that merely projects Western values

¹⁹² Nussbaum, 1999: 6-8.

onto groups with different concerns”¹⁹³. Her main concern is to paying attention to the actual experiences and circumstances of individual women.

Women’s rights in the form of human rights are often spoken of as entitlements that belong to all human beings simply because they are human and deserve equality and protection regardless of their gender. As Nussbaum writes, “Women in much of the world lack support for fundamental functions of human life. They are less well nourished than men, less wealthy, more vulnerable to physical violence and sexual abuse. They are much less likely than men to be literate and still likely to have professional or technical education. Should they attempt to enter to the work place to face greater obstacles including intimidation from family or spouse, sex determination in hiring and sexual harassment in the workplace- all frequently without effective legal resources”¹⁹⁴. They should get full opportunities and liberties so that they would be able to live their lives that are worthy of dignity of human being. “The world contains inequalities that are morally alarming, and we need to know about how the most deprived people in the world are doing. Women, for example notoriously lag behind men in education, employment opportunities, and even in basic life chances”¹⁹⁵. The majority of women across the world fail to enjoy the legal, political, social and economic status enjoyed by men. This discrimination and their deprived situation is due to their cultural traditions and practices that molding their life. The conflict between cultural practices and women's rights has been prevailing since a society has evolved. Now the question arise ether we minimize women injustice and brought gender equality under the purview of human rights or let the culture or tradition decides their lives.

Martha Nussbaum has developed a theory of human capabilities to understand rights and social justice. Its concern is to realize human potentialities rather than emphasizing on distribution social and public goods to all people. She has developed ten capabilities namely, “Life, Bodily health, Bodily integrity, Senses, imagination

¹⁹³ Ibid., 6-8.

¹⁹⁴ Nussbaum, 2000: 1.

¹⁹⁵ Nussbaum, 2006: 224-25.

and thought, Emotions, Practical reason, Affiliation: friendship, respect, other species, Play, Control over one's environment includes political and material"¹⁹⁶. As she says, "Thinking well about care means thinking about wide range of capabilities on the side of both the cared-for and care-giver. Good care for dependents whether children, elderly, women etc, on support for capabilities of life, health, and bodily integrity. Care plays in the lives of the cared-for; we have to say that it should address the entire range of the central human capabilities"¹⁹⁷. Good care recognizes all the needs which any individual lacks. Minimizing injustice with capability and good care in the form of public policies incorporates all the aspects of person's incapability.

Nussbaum uses capability approach to minimize inequality and gender discrimination from feminist perspective because women have been facing discrimination at every stage. She tried to bring equal opportunities of all human being through human capability irrespective of their gender and brought feminist notion of justice. As Hillary Charlesworth writes in *Feminist Internationalism*, "From evidence of the second-class status of women across the developing and developed country divide and their consistently lower quality of life when measured by access to health, education, political liberty and participation, employment, self respect, and life itself"¹⁹⁸. Women's rights are depriving day by day and it is due to utilitarian and liberal conception of justice which overlooks individual potentialities and their problems.

Nussbaum's reaction to the unfairness of situation is an account of the 'capabilities approach to the measurement of the quality of women's life. It emphasized on how women becomes capable to lead their lives in dignified manner. Nussbaum writes in *Sex and Social Justice*, "Women's capabilities approach pays heed to women's capability to do and to be certain things considered worthy. This approach concerns with capability to function, rather than functioning itself, as it lay emphasis on the function of practical motive and preference in making the most of the capability"¹⁹⁹. It

¹⁹⁶ Ibid, 168.

¹⁹⁷ Ibid, 168.

¹⁹⁸ Charlesworth, 2000: 64-78.

¹⁹⁹ Nussbaum, 1999: 39-44.

is a paradigm shift in the notion of justice that focuses on human needs rather than resources. It helps to evolve an equitable just society to evaluate gender disparity and the curtailment of women's capability imposed by family, culture and tradition and nation. Thus, the capability approach is not as procedural but as an outcome-oriented approach that provides us a vision of women welfare in terms of their capability to do certain things which secure justice up to a suitable threshold. I will divide the chapter into three parts which are as follows:

- I. Women and Human Rights
- II. Poverty and Gender Inequality
- III. Capability and Gender Justice

PART-I

WOMEN AND HUMAN RIGHTS

Hillary Rodham Clinton remarked in U.N's women conference that:

“Even today there are those who try to silence women's words but the voice of this conference and the women must be heard loudly and clearly. It is a violation of human rights when babies are denied food, or drowned or suffocated or spines broken simply because they are born girls. It is a violation of human rights when women and girls are sold into the slavery of prostitution for human greed and kinds of reason used to justify this practice should no longer be tolerated. It is violation of human rights when women are doused with gasoline, set on fire and burned to death because they are married dowry are deemed too small. It is violation of human rights when individual women are raped their own community and when thousands of women are subjected to rape as a price of war. It is a violation of human rights when a leading cause of death worldwide among ages 14 to 44 is the violence they are subjected to in their own homes by their own relatives. It is a violation of human rights when young girls are brutalized by the painful practice of genital mutilation. It is violation of human rights when women are denied the right to find their own families and that includes being forced to

have abortions for being sterilized against their will. If there is one message that echoes from this conference, let it be that human rights are women rights and women rights and human rights for once and all.”

What Madame Clinton said in her speech was loud and clear that in human rights men and women are equal. Human rights are same for both of them as human rights are women rights. There is no difference, in degree or ranks at all. She continues to talk about how human rights get violated when women are suppressed in different ways.

When we talk about difference of degree or ranks, difference of gender there infact we talk about the biological, physical, physiological differences these are natural. Of course there are differences and because of these differences both of them have assigned different responsibilities. But what about the differences created by society which are not natural? It is here where concerns about women rights get in the universal declaration of human rights Article 1 state that “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”. Here the concept of ‘dignity is very important we have already discussed Kant conception of dignity in chapter -2. Let us revise it for further understanding.

Dignity, for Kant, is a distinguishing feature of an individual from the standpoint of his inner significance, agreement to his own fate. In belief, these are traditional concepts of dignity, attached to the social status of an individual (the higher the dignity, the higher the status). Kant in *Ground works of Morals* talked about dignity as a moral concept, he talked about “universal dignity” which characterizes the individual as a person that is to say, the origin, riches, education or social position does not determine the dignity of a person, but by his inherent freedom as an individual person and citizen. According to Kant, dignity provides the basis of will and it contrast to any other expedient or to say practical motives. Kant is not just concerned about the dignity of other but dignity of self too. He acknowledges that one should not consider himself merely as person, but as a man. That is to say, as man he is rational and has dignity and that dignity should not be hampered by the animal

instincts, which means he should not give-up on his dignity to favor any other. This dignity is basis for the self- respect and honor. So, the duties which a man imposes on himself in conformity to reasons should create a space for the self- respect too. Self-respect or dignity of one own-self is also a duty which individual has towards oneself. For any ends or duty a person should not give up on this duty which he has towards him. We write:

...he has to consider himself not merely as a person, but also as a man, that is, as such a person as has imposed upon him duties put upon him by his own reason, his insignificance as an animal ought neither to impair nor affect his consciousness of his dignity as rational, and he ought not to forget his ethical self reverence springing from his latter nature; that is to say , he ought not to pursue those ends which are his duties servilely, or as if he sought for the favour of any other person: he ought not to renounce his dignity, but always to uphold, in its integrity, his consciousness of the loftiness of the ethical substratum of his nature; and this self- reverence is the duty owed by man to himself.²⁰⁰

Kant seems to be very strict regarding application of this concept of dignity. He says if anyone refuse to give respect that one owes to mankind is liable to punishment. He writes: “hence it comes that some punishment are to be reprobated, as dishonoring humanity, which are often more grievous to the unhappy sufferers than the loss of goods and life, on account of the afflicting degradation they import...”²⁰¹ For Kant, it is important to make an observer feel ashamed, to discern that he belongs to a race which defy to take care in such a manner.

So we can say that actions which hamper dignity of a women or rights of women are liable to punishment. It's is thus an injustice done. Liberal enlightenment was concerned with terms like dignity, rights, self-respect, and autonomy. Liberalism has been criticized by feminist to be a political approach which is insufficient to the wants and aims of women. Feminist have criticized and rejected liberalism and have

²⁰⁰ Kant, 1956: 251.

²⁰¹ Ibid., 282-283.

defines liberalism to some extent in enmity of it. Nussbaum listed three charges levied by feminist on liberalism and then explains how these charges do not work. But before that she summarizes what liberalism is, she writes:

Liberalism is opposed, first of all, to any approach to politics that turns morally irrelevant differences into systematic sources of social hierarchy. It is opposed, then to the naturalizing of hierarchies...It is opposed, second, to forms of political organization those are corporatist or organically organized- that seek a good for the whole group without focusing above all on the well-being and agency of individuals group members. Finally, it is opposed to a politics that is ideologically based, in the sense that it turns one particular conception of value into a mandatory standard imposed by authority on all citizens.²⁰²

Feminist charged liberalist theory to be too individualistic “that it focus on the dignity and worth of the individual slights and unfairly subordinated the value to be attached to community and to collective social entities such as families, groups and classes”²⁰³ Second, liberalist are charged of being too abstract and formal in their ideal of equality. Finally, they are charged that liberalism goes wrong with its complete focus on reason and diminishing the role of care and emotion in realm of moral and political life.

In a long discussion Nussbaum defends liberal individualism as one which is good and must be embraces by feminist. She argues:

Liberalism of a kind can be defended against the charges that have been made. The deepest and the most central ideas of the liberal tradition are ideas of radical force and great theoretical and practical value. These ideas can be formulated in ways that incorporate what is most valuable in the feminist critique- although feminism needs to learn from feminism if it is to formulate its own central insights in a fully adequate manner²⁰⁴

²⁰² Nussbaum, 1999: 55.

²⁰³ Ibid., 58.

²⁰⁴ Ibid., 56.

One must note that Nussbaum says “liberalism of a kind can be defended”. She points to the fact that there are many positions in liberalism. Kantian liberalism is different from utilitarian liberalism. And both of these positions are different from neo classical economic utilitarianism. Nussbaum asserts “many critiques of liberalism are really critiques of economic utilitarianism, and would not hold against the views of Kant or Mill”²⁰⁵ Nussbaum mentions list of what liberalism opposes, first: any approach which relate irrelevant differences to social hierarchy, and naturalizing of social hierarchy- feudalism, caste system, hereditary monarchy. Second: it opposes organizations which are formed to benefit a particular group rather than thinking about well-being and agency of individuals in group. Lastly it opposes politics which has rigid ideology based on either religion or tradition or utopia. Thus Nussbaum writes: “liberalism so conceived is centrally about the protection of spheres of choices- not, I claim, in a purely negative way, maximizing the sheer number of choices people get to make for themselves but rather in a way closely tied to the norm of equal respect of personhood.”²⁰⁶ Nussbaum discusses three charges which are made against liberalism by feminist they are: liberalism is too individualistic; second, ideal of equality is too formal and abstract. Lastly, liberalism focuses more on reason and misses out importance of emotion and care. Nussbaum deals with all charges in depth. With respect to first charge she clears why individualistic approach to women condition was necessary:

For it is clear that women have too rarely been treated as ends in themselves, and too frequently treated as means to the ends of others. Women’s individual well-being has far too rarely been taken into account in political and economic planning and measurement. Women have very often been treated as parts of a larger unit, especially the family, and valued primarily for their contribution as reproducers and caregivers rather than as sources of agency and worth in their own right...when there is violence in the family, women and girls are overwhelmingly likely to be victims...many of the world’s women do not have the right to consent to a marriage, and few have

²⁰⁵ Ibid., 57.

²⁰⁶ Ibid., 58.

any recourse from ill treatment within it. When we reflect that a large numbers of the world's women inhabit traditions that value women primarily for the care they give to others rather than as ends, we have all the more reason to insist that liberal individualism is good for women.²⁰⁷

Nussbaum has discussed in length the arguments which are levied against liberalism demand for equality. What feminist fears with liberalistic conception of equality but she answers them all with explanation that: "liberalism standardly grant that the equality of opportunity that individuals have a right to demand from their governments has material prerequisites, and that these prerequisites may vary depending on one's situation in society."²⁰⁸ She further explains that her own way of expressing liberalism is that which aims at equality of capabilities rather than as something which seeks to distribute resources. Liberalism aiming for equality of capabilities also earnestly work to promote the capacity of people so have a life they wish to have.

Many Feminist feel that subjecting emotions and care to a rational appraisal is a mistake. But Nussbaum argues that in name of care and emotion self- giving away idea is very awful, especially for women. This attitude serves male and harm women. Even in family, Nussbaum argues that there seems no point why women should plainly offer themselves away without demanding a fair distribution of resources. She writes:

What liberalism ask, however, is that the woman distinguishing her own well-being from the well-being of others, noticing what tensions might exist between the two, even if they are bound up in one another. Liberalism ask, further, that woman reflect and choose for herself that extent to which she will indeed sacrifice her own well-being for others-that she do so not out of habit or convention but as result of an individual decision, freely made. But in circumstances of traditional hierarchy and limited information, we surely should not assume that the sacrifice of well-being a woman makes are freely chosen, whatever account of free choice and autonomy we ultimately prefer.

²⁰⁷ Ibid., 63.

²⁰⁸ Ibid., 68.

And this does matter. As smith and mill advise: let her love others and give herself away- provided she does so freely and judiciously, with proper critical scrutiny of social norm.²⁰⁹

One must celebrate the contribution that women make in every aspect of life, whether it is a job, home, and neighborhood, as daughters, mothers, wives, sisters, leaders, citizens, workers, learners etc. Everyday women come together, everywhere across the globe. They gather in various places like markets, gardens, offices, fields, workplace, boardrooms, factories, where ever women come together whether it at office or a playing with their children in a garden, women talk about desires, aims, anxiety and apprehensions, every now and then women talks turn to their families and kids. No matter how different women appear from one other there more which unites them then divides them. They share same expectations what is need to be done is to look for new grounds so that we may bring, women all over the world, a new respect and dignity. By this means, we can bring new constancy and power to families. What matters most to women is access to education, safety and security, healthcare, job, participation in political life of a country, enjoyment of fundamental legal and human rights etc. there are ample of people who question about women rights.

There is a speculation regarding the importance to women and girls lives in the spectrum of political and economic progress of the world. World most disturbing problem reaches to ears of authorities and society when laws and principles are made on women rights. Domestic violence against women came into government notice for the very first time after the conference held in Nairobi in 1985. Families flourish when women are healthy, families flourish when women are free from violence, when women have chance to earn and work as full and equal partners in society when women are educated. And when families flourish nations and communities flourish as well. It is because of this reason every person on this planet whether a child or me or women have a right in the discussion on why there is need of women rights? It is a great challenge to give voice to women whose voice go unheard, whose experience go

²⁰⁹ Ibid., 77.

unnoticed. It is surprising to acknowledge that women comprises $\frac{1}{2}$ of the world's population and 70% of the world's poor, $\frac{2}{3}$ of those who are illiterate. Women are the prime care takers for most of the world's elderly and children, yet much of the work done by them goes uncounted and unappreciated by all whether economist, government leaders, historians and by society. Women all over the world are, producing children, doing domestic work, working outside and inside house at same time, running companies, running countries, women are dying due to diseases that should have been treated and prevented. Because of poverty and deprivation they are watching their children into starvation and undernourishment. Women are forced into prostitution and are denied education and by their own fathers and brothers. It is our liability to stand for those who would not.

Women is trying to survive against the threat of violence in their own homes, women are surviving in situations of in low or no health care facility , with minimum wage women is trying to raise their children. We need to stand for women who is struggling for younger women, older ones, school for the kids, widows, safe neighborhood, clean environment, women who work at night shifts as nurses, hotel workers, at call center so that they can stay with their children during day, women who experience devaluation of their skills and experience in market after raising children and families and for women who merely have no time to do everything they called to do each and every day.

Necessity is the reason due to which women work both inside and outside home and we need to understand that there is no fixed rule or way of life which describes how women should lead lives. This is enough reason for society to respect the choices women make for herself and her family. Every woman deserves the opportunity to discover her own given prospective. One must acknowledge that women will never attain full dignity and respect until their human rights are protected and respected. Already mentioned above that societies and families gain strength and power when women are empowered to take control over their destiny but this cannot be achieved until all government all over the globe accept their responsibility to promote and

protect internationally recognized women rights. The global society has long recognized and lately reaffirmed at Vienna that both men and women are entitled to a variety of safeties and individual liberties from right of personal security to right to determine freely the number and spacing of the children they bear no one should be forced to remain silent for the fear for religious and political prosecution, arrest, abused or tortured. Sadly, most of the human rights are violated from the sphere of women. Even in today's world rape of women is used as an instrument by politicians. Large number of world's refugees comprises women and children. Women become more vulnerable to exploitation, abuse and violence, once excluded from political process. It is high time to recognize that women's rights are not separate from human rights and thus world must hear their voice. This ill-treatment has sustained for too long, a history of women has ban 'history of silence'.

Women have right to be heard and right to speak freely, as these rights are human rights and women's rights are not different from human rights. If we wish freedom and democracy to continue and flourish then women must have right to participate completely in social political lives of their country. Many women who desire to participate in political lives of their country are prohibited from doing so and this is indefensible. Right to debate, organize, and assemble openly by the people means freedom. It means regarding the outlook of those who may differ with the outlook of their government. Peaceful expression of ideas and opinions should not lead to jailing people, denying them their dignity and freedom, mistreating them, taking them away from their families. A philosophical battle which alleviated women to reap its just share of right has not very old account. It is not a violent war, but a battle of thoughts and attitude. It results inapprehension of excellence that comes when both men and women come together to make a better world.

WE have escaped world war but we have not solved the profoundly fixed problem which persist to reduce the prospects of $\frac{1}{2}$ of the world's population. Now, it is time that we should act on behalf of women everywhere in the world. Every step taken towards the betterment of women will lead to betterment of families and children as

families and kids rely on women for care and emotional support. Families depend on women for all kinds of work on the home and mostly everywhere families depend on women for money needed to raise healthy children and other relatives. As long as prejudice and etiquettes continues around the world, as long as women are fed less, valued less, fed last, under payed, not schooled, subjected to brutality in and outside homes, the prospective of human families to make harmonious and peaceful world will not be realized.

There are some basic human rights which every government should ensure to women. These basic rights are important for women to carry out important life plans. These are like list of primary goods of John Rawls. Every government should try to politically recognize these rights especially in the pluralistic society to ensure better life. They are:

- Right to employment
- Right to bodily safety and integrity
- Right to health care
- Right to education
- Right to political voice
- Right to free religious exercise
- Right to property
- Right to nationality
- Reproductive rights.

Right to Employment- Women all over the world are creating their incredible presence in each and every region worldwide. To encourage women for public and financial freedom, the government has taken project and executed many employment rights that can help women at place of work. Women have worked all over the world in all times and ages, but only in unskilled, basic or tedious jobs for very little or no

pay. During World War I, women got into the labor force in advanced figures due to the scarcity of men. It wasn't until World War II that they went to employment in strength. During this time, women acquired positions previously reserved only to men; millions of women got into the labor force, millions of women got into heavy industry. They still had no proper workplace rights until the employment rights were introduced by the government. Employment right states that owner may not differentiate against people on the basis of race, sex, color, national origin or religion.

The Women's Employment Rights help women get a healthier atmosphere at their place of work and it makes sure that the rights of women are not negotiated at any cost. These embrace rights to get equal imbursement for same kind of job, strict working hours, safeguard against nuisance and lots more. Below is a list of some most vital employment rights that each woman should know.

Article 23.1 of the Universal Declaration of Human Rights states:

(1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.-*Universal Declaration of Human Rights, United Nations General Assembly*

The International Covenant on Economic, Social and Cultural Rights states in Part III, Article 6:

- (1) The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
- (2) The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes', policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

International Covenant on Economic, Social and Cultural Rights, United Nations General Assembly

The African Charter on Human and Peoples' Rights also recognizes the right, emphasizing conditions and pay, i.e. labor rights. Article 15, states:

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

— African Charter on Human and Peoples' Rights, Organization of African Unity

Apart from all these International Human Rights, Indian government has formed acts to ensure Safety of a woman they are: Factories Act 1948, Equal Remuneration act 1976, Maternity Benefit Amendment Act, 2017, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 all these Acts secures the rights of workers. Martha Nussbaum pointed out how women employment faces injustice in some of the places of the world where religion dominates. She writes:

Religious discourse is prominently used to oppose women's effort to seek and retain employment outside the home. In the Rajasthan inhabited by Metha Bai, in the Bangladeshi village described by Martha Chen, in Islamic Iran, in the contemporary Chinese workplace- in all these places, religious norms about women's proper place are working to deny women equality and in many cases totally to deny them access to employment. At the time of Iran's Islamic revolution, the regime fired more than 40,000 women working as elementary fell in five years by 50% and reached a low point of 6.2%.²¹⁰

Thus we can say that because of employment rights, women enjoy freedom to work in almost any place they desire. They join the military, work as public servant, own corporate houses and become executives in big companies. As the economic status of women enhances, so does the welfare of their families, children and the nation.

Right to bodily safety and integrity- It is one of Martha Nussbaum's ten principle capabilities. Nussbaum defines bodily integrity as: "Being able to move freely from

²¹⁰ Nussbaum, 1999: 43.

place to place; being able to be secure against violent assault, including sexual assault ... having opportunities for sexual satisfaction and for choice in matters of reproduction".²¹¹ Bodily safety and integrity of a women according to Nussbaum is violated when women suffers rape including marital rape, domestic violence, genital mutilation or other sexual abuse. Nussbaum has discussed each of these violations in detail in her book *Sex and Social Justice*. Nussbaum has pointed out that every society has tried to control the body of women it is mostly the preoccupation of religion. These controls, says Nussbaum are biased and uneven from the point of view of justice. In wide range to cases, they violate the most basic human rights of individuals.

Right to Health Care-Article 25 of the United Nations' 1948 Universal Declaration of Human Rights states that "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services." The Universal Declaration makes supplementary space for safety in case of physical disability, and makes exceptional mention of heed given to those in maternity or infancy.

Right to Education- Education smooth the progress of our learning, gives knowledge and facilitates skill. It absolutely changes our mind and behavior and helps us to achieve the positive attitudes. Education must be fist focus of every individual than any other targets in life as it is the only foundation of actual bliss in our life. Attaining education is the basic human right of every individual. Higher education not only increases the opportunities of employment but also increases the income. For Nussbaum, "nothing is more important to women's life chances than education."²¹² Education also enables women to educate her children and support household poverty. Lack of education results in poverty because education not only gives financial assistance, but also gives wisdom to know good and bad which helps further to make better choices in life. Nussbaum listed the advantages of being literate women they

²¹¹ Ibid., 88-90.

²¹² Ibid., 100.

are: women can shape her future, can consider options, can question tradition, can know how women in other parts of world manage their work, enter trade, can read her bill and important document etc.

Right to Political Voice- Right to have political view and to participate in political activities have great affect on women and helps their families and their societies. Every nation is trying to increase the women representation in parliament. But women are still absent from the civil society and political parties. They are excluded from national and local decision making. Though women represent half of worlds but very less percentage of women make it to world's legislations. It is due to various discrimination that women faces. There are countless challenges on path of women before entering political life which includes lack of support and resources. Women representation can be improved by providing proper training in skill building and leadership activities. Also, by increasing women participation in jurisdiction and representation in parliaments and political parties conditions can be improves. Nussbaum points "all countries that impede women from going back outside the home create barriers to women's literacy".²¹³

Right to free religious exercise- Religion is matter of faith. What is one's faith is his personal matter and no one has right to question about it, though religious practices can be questioned. Everyone is free to practices which every religion one's concise feels connected to. But In country like Indian and in all most all parts of world religion is matter of birth. A person follows family religions. Women are even forced to change their religious faith after marriage in cases of inter-caste marriages. Nussbaum acknowledges that: "...individuals must be classified at birth into one of the religious system...conversion to a religion of one's choice is therefore greatly impeded by the legal structure...the women free exercise of the right to worship was indeed infringed, with appeal to majority religious norms."²¹⁴

²¹³ Ibid., 53.

²¹⁴ Ibid., 54.

Right to Property- right to property empowers women financially, emotionally and physically. With such right women say in household decision making increases. In many parts of the world women are denied such right even though they work maximum hours of the day in comparison to men. Without such right women often becomes prey to poverty, violence and subjugation at various levels of life hence struggle for other basic rights like: education, health care, livelihood etc. In current years, international agreements have constantly restated the significance of women's property rights.

- The Beijing Platform for Action declared that women's right to heritage and possession of property should be acknowledged.
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has drawn attention to property rights, suggesting to rural women's rights to like treatment in property and agrarian improvement procedure.

United Nation Women supports for women's property rights as part of its foundation policy to improve women's financial safety and rights and decrease feminized poverty. There is a strong center of attention on guaranteeing that women profit from equal rights to land under the law, as well as in real practice at the basic level.

Right to nationality- Many countries of the world refuse women equal rights with men regarding the capacity to obtain, alter and preserve their nationality, and to give nationality to non-national partners.

This bigotry results in important human rights abuse and misery for individuals and families, contributing to innumerable troubles, including: statelessness; lack of admission to community education, health care, child marriage; amplified threat of gender-based hostility; unemployment and poverty; social estrangement and mental damage.

Reproductive rights- Even today women around the globe in maximum number are unaware about their reproductive health and rights, especially those who are

uneducated, poor and those who have no access to information and technology. Improvement seems sluggish even though the proof that these human rights can have a transformative result, not only on women, but on families, national economies and communities. Reproductive rights include abortion rights, use of contraception, infant health, medical aid etc.

In spite of all the rights which women are given there is a lot to be done to improve the condition of women. Gender inequality and capability deprivation are two problems and injustices that lead to poverty and violates human rights of women, and exists due to various reasons. Nussbaum discusses them in detail. Lets us study the concept of feminization of poverty in next section of the chapter.

PART-II

POVERTY AND GENDER INEQUALITY

Amartya Sen said gender inequality is not a natural human condition. But the idea that women have to be quite inferior position or dominant position is really a wholly artificial thought which could be vanished though not easy to vanish. There are two issues to the problem of gender inequality according to Sen, first: an issue of enlightenment and second, an issue of agency. The agency is an easier issue to deal with namely that whenever you are in a position where people lives are affected, consider young women, plays greater role as agents in family decisions. Sen argues that once oppressed people are given greater role, agency, in running their lives, for example through education or employment, you start to see that their lives change. Women literacy and education, and gain full employment each of which increases the voice of women and agency in family affair. He writes:

Different aspects (women's earning power, economic role outside the family , literacy and education, property rights and so on) may at first sight appear to be rather diverse and disparate. But what they all have in common is their positive contribution in adding force to women's voice and agency- through independence and empowerment. For example, working outside the home

and earning an independent income tend to have a clear impact on enhancing the social standing of a woman in the household and the society. Her contribution to the prosperity of the family is then visible... women's education strengthens women's agency and also tends to make it more informed and skilled. The ownership of property can also make women more powerful in family decisions.²¹⁵

And, no one lives as much affected as of young women from frequent rearing and bearing of children. If women have more voice fertility rate dramatically comes down. So, it is that agency issue and where that is also evident that women education reduces child mortality, gender discrimination between boys and girls so on. There have to be a better understanding of the importance of treating human beings as equal not as boys and girls, men and women. That a big challenge says Sen, if we have a society where girls are systematically discriminated whether after birth or even before birth, the attitude of mind which prefer boys over girls that itself is devaluated for society. That attitude is an issue, giving human being the respect they deserve. Idea of human right depends upon it, idea of social equity depends upon it, and there can't be two different standards on it.

In last few decades there has been much discussion on feminization of poverty. The concept of the 'feminization of poverty'; goes back to 1970's and become fashionable in 1990s through the fourth world conference on women which was held in Beijing. This conference brings into notice that poverty has gender dimension too. Also, "its 40th session a year later, the united nations commission on the status of women discussed the issue of women and poverty and proposed further action to be taken by UN member states and the international community."²¹⁶ It became a prominent terminology after Diane Pearce's study focusing on gender patterns in the evolution of poverty rates in the United States.²¹⁷ What is feminization of poverty? As we know, poverty is a lack of resources, capabilities or freedom which Sen call spaces or dimensions of poverty. The term feminization refers to gender biased change in any of

²¹⁵ Sen, 1999:192-193.

²¹⁶ <https://www.mtholyoke.edu/~abbat221/classweb/feminizationofpoverty/changingtheface.html>

²¹⁷ https://en.wikipedia.org/wiki/Feminization_of_poverty

these dimensions. Thus feminization of poverty is a change in the spaces of poverty biased against women. It is the gap in poverty level among men and women. It results from gender inequalities and deprivation of capabilities prevalent in the society.

Nussbaum explains:

Gender inequality is strongly correlated with poverty. When poverty combines with gender inequality, the result is acute failure of central human capabilities. In the developing countries as a whole, there are 60% more women than men among illiterate adults; the female school enrollment rate even at the primary level is 13% lower than that of males; and female wages are only three-fourths of male wages. We do not yet have reliable statistics for rape, domestic violence, and sexual harassment, because in many countries little attention is paid to domestic violence and sexual harassment, rape within marriage is not counted as a crime, and even stranger-rape is so rarely punished that many women are deterred from reporting the crime.²¹⁸

Amartya Sen has defines poverty as capability deprivation. For Sen, in analysis of Social justice, individual advantage plays a very important role in terms of capabilities a person has. The proper “space” for examining poverty is what people can do and be rather than what they have or how do they feel, according to capability approach.

In this sense, for Sen, poverty must be seen as capability deprivation. Poverty is based on deprivation of fundamental capability and that will show the standard of recognition of poverty rather than lowness of income. Lack of income is main reason for a person’s capability deprivation, along with other cause such as low income. The inadequate earning is a strong prompting cause for poor and deprived life. The capability approach to poverty is not concerned with scarcity of income as income is not the only device in creating capabilities and the influence of capabilities and income shows discrepancies between families, communities and even individuals. The strong influences of capability and income are gender, age, location, social role, and others of an individual. People will illness, old age, disability and physical

²¹⁸ Nussbaum, 2000: 3.

challenges are not capable to earn income as well as not convert income into capability. So this brings about the “real poverty” in expression of capability deprivation.

The capability approach put forward a social advancement structure that can incorporate realities like: women vulnerability to violence, inequalities that intensify their vulnerabilities and the fact that women represent the largest number of population living in poverty. Nussbaum work on capabilities is extension to Sen’s original idea and represents a significant voice for promoting the capabilities for women. These ideas are backed and came out from factual proof that exists globally, especially in developing countries. How violence appears to be direct contributing factor to the poverty levels of women is a additional concept in understanding the capability approach.

Coming out of a violent relationship has additional problems like: women find themselves with many difficulties to employ themselves in official regions, such as child care, transportation, and other ongoing safety issue. Women who have left violent relationships may find themselves with numerous difficulties to employment in the official region, such as transportation, child care, and other continuing security issues. As a consequence, women continue to stay in violent relationships for reasons like safety and finances.

So, we can say that gender inequality and capability deprivation are two factors of poverty among women. Let us first discuss what causes these factors. .

- a) Inequality in wages,
- b) Female headed households,
- c) Unemployment for women, ,
- d) Lack of education,
- e) Lack of health care concerns, and
- f) Sexual violence against women

Inequality in wages- Women often find themselves as being paid less in comparison to men for the same type of work done in many part of world entertainment industry is one example here pay scale is very different for men and women. . Women are even unpaid for the domestic work done by them. These include various reason for example society view their work as undignified and considers them as servants instead of workers. Also, the notion of occupational segregation results in wage gap. Women from the early age is prepared to take up household work or soft work like teaching which does not result in high income or results is no income at all thus leads to poverty. Another reason is that women is thought as less capable then men and especially after motherhood women is believed to be less committed to their jobs, hence paid less. This has been called as motherhood penalty.

Female headed households- female headed household has come up as an indicator of the gender extent of poverty. Female headed household are those which are headed by single mothers, or divorced women, widows or where there is no male earning member. Female headed households are at high risk of poverty because of lack of income and resources. Single mother with no source of income or low income is poorest in the society.

Lack of employment for women- employment is need for survival and woman often finds herself as unemployed because of wage gap which leads to discouragement. Marriage and bearing a child is another reason for lack of opportunities of employment for women. Although women get maternity leaves but they are often fired from their job once they become pregnant. Also there are many jobs in which women are not seen even today for example driving a public vehicle, street vendors these type of works are seen as men oriented.

Lack of education- Higher education is the only key to reduce poverty that a woman faces. Education not only increases the opportunities of employment but also increases the income. Education also enables women to educate her children and support household poverty. Lack of education results in poverty because education

not only gives financial assistance, but also gives wisdom to know good and bad which helps further to make better choices in life.

Lack of health care-women with poor health is unable to find a suitable work of herself and thus often finds herself in shekels of poverty. Nussbaum says,

If we turn to the very basic area of health and nutrition, there is pervasive evidence of discrimination against females in many nations of the developing world. Researchers standardly claim that where equal nutrition and health care are present, women live, on average, slightly longer than men: thus, we would expect a sex ratio of something like 102.2 women to 100 men...²¹⁹

Sexual violence against women- Women experiences violence not only at workplace but also at homes by their relatives. Sexual harassment leads to physical and psychological damage to a woman and as a result women either leave jobs or miss days to work. Poor women are more prone to sexual violence. Violence affects various aspects of women's life like: physical and mental health, ability to generate income, loss of confidence etc.

Martha Nussbaum wants us to come across further than the concepts of philosophers and economist to implant reflection about social justice in the factual authenticity of the fight of poor women. Nussbaum points to aggrieved reality of women where she is not as much of well nourished as men, not as much of healthy, and further exposed to bodily brutality and sexual exploitation. Nussbaum argues that global economic and political interest must be perceptive to gender distinction as a setback of justice, and that feminist contemplation must start to center on the troubles of women. Nussbaum prove hoe philosophy should under-fix fundamental constitutional doctrines that should be respected and put into practice by all government. Nussbaum acknowledges:

They are much less likely than men to be literate, and still less likely to have pre-professional or technical education. Should they attempt to enter the workplace, they face greater obstacles, including intimidation from family or

²¹⁹ Nussbaum, 2010:.3.

spouse, sex discrimination in hiring, and sexual harassment in the workplace — all, frequently, without effective legal recourse. Similar obstacles often impede their effective participation in political life. In many nations, women are not full equals under the law: they do not have the same property rights as men, the same rights to make a contract, the same rights of association, mobility, and religious liberty. Burdened, often, with the ‘double day’ of taxing employment and full responsibility for housework and child care, they lack opportunities for play and the cultivation of their imaginative and cognitive faculties. All these factors take their toll on emotional well-being: women have fewer opportunities than men to live free from fear and to enjoy rewarding types of love.²²⁰

This brings us to the question of gender justice and how capability approach can bring about gender justice, which I will discuss in next part of the chapter.

PART-III

CAPABILITY AND GENDER JUSTICE

Those living in poverty are majorly women and girls. A key means of addressing poverty is achieving gender justice and it is also a matter of basic rights. Gender and sexual-based brutality has a distressing, lasting out come on the lives of sufferers, their families and societies, and obstructs growth movement. Women and girls are excessively affected where gender and sexual-based brutality persist. Societies must be free from cultural and interpersonal structure of benefit and domination, and from brutality and subjugation based on gender.

Unequal authority relation between men and women is chiefly a concern of gender equality. It breaks human rights, restrains preference and agency, and has harmful influence upon people’s capacity to partake in, give to and advantage from economic, political and social progress. It is important that we put effort together and use our authority to build just and equal relationships between man and women to facilitate just, and It is essential that we work together and use our authority to create just and

²²⁰ Nussbaum, 2010: 235.

equitable relationships between women and men in order to achieve fair, flexible and flourishing societies.

Mostly women and girls sternly experience the impact of gender injustice. Discrimination is faced at homes and in the work place. They make up the great part of the world's poor. Women are under- represented at peace tables, world conferences and in governance formations even though they suffer majorly during war and conflicts. Cultural limitation might delay women's actions and their right to use health care. The preference of boys over girls results in female infanticide and feticide. Violence based on gender, female genital mutilation, and forced marriage has affected the lives of millions of girls around the world.

Unnecessary demands are placed upon men and boys by gender inequality. It is very difficult for men to live up to conventional gendered hopes that most societies place on them due to various reasons like: diminution of natural resources, climate change, political power concentrated among few privileged people, clash and dislocation of whole communities. Increased well-being and greater freedom comes from gender justice and, on the other hand, gender inequality fails both men and boys, and girls and women. Hitherto, we suppose that change is achievable.

Ending the inequalities between men and women that are created and re-created in the society, the family, the marketplace and the community come into preview of gender justice. It also needs those conventional organizations, from justice to financial policymaking, are responsible for dealing with the bias and unfairness that keep a lot of women deprived and debarred. Bias attitude is a quandary that stops development towards social justice in emerged and emergent countries in a similar way. The Millennium Development Goals are mutually dependent and each person depends on building development on gender equality. Ranging up actions and investments on the gender equality magnitudes of all the aims has the double benefit of tackling extensive discrimination and speeding up development on the whole.

Nussbaum discusses two positions which describe how division of labor is arranged along gender line. In first position, which she calls position A, males and females are given same normative list of functions but that should be exercised in different spheres of life i.e. public and domestic respectively. This position is attuned with gender justice as it maintains that “male and females have the same basic needs for capability development and should get what they need. It is determined to ensure that both get to the higher (developed) level of capability with respect to all the central functions”²²¹ But Nussbaum points to the problem with this position i.e. it supports commonly division of duties that is linked with conventional forms of hierarchy. Nussbaum express her concern by pointing to the fact that:

...women’s subordination will not be adequately addresses as long as women are confined to a sphere traditionally devalued, linked with a low “perceived well-being contribution”, *The Human Development Report’s Gender Empowerment Measure* rightly focuses, therefore, on the ability of women to win entry into the traditional male spheres of politics and administration.²²²

Nussbaum next moves to position which she calls as position B, maintain that the list of functions should be different even at a high level of generality. Women must be confined to sphere of love and care and men to the sphere of rational autonomy and citizenship. This position is defended by many philosophers on the ground of physical differences between male and female. But Nussbaum argues that there is no responsible scientific evidence to support such claim. She further explains that “experiments that cross-label babies as to sex have established that children are differently handled, played with, and talked to straight from the birth, in accordance with the handler’s beliefs about the child’s biological sex. It is therefore impossible at present to separate ‘nature’ from ‘culture’”.²²³ Thus for Nussbaum “unequal failure in capability is a problem of justice. it is up to all human beings to solve this

²²¹ Nussbaum, 1999: 51.

²²² Ibid., 52.

²²³ Ibid., 52.

problem...the conception of human functioning gives us valuable assistance as we undertake this task”²²⁴

There is requirement to reinforce the capabilities of women to attain gender equality and justice. "The problems of women in developing countries call urgently for new forms of analysis and for an approach that moves beyond utilitarian economics to identify a number of distinct components of human being's quantity of life, including life-expectancy, maternal mortality, access to education, access to employment, and the meaningful exercise of political rights. Even when a nation seems to be doing well in terms of GNP per capita, its people may be doing poorly in one or more of these areas. This is especially likely to be the case for women, who have been treated unequally in many traditional societies, and who nowhere enjoy, on average, or 'quality of life' equal to that of men, then this is measured by the complex standard recommended by the '*capabilities*' approach. The influence and value of this approach to development in general and to sex inequality in particular can be already seen in 1993 and 1994 volumes of the *UNDP Human Development Report*."

Feminists in large number have argued the subject of law and its influence on women's quality of life, questioning how law has endured and supported prejudice in opposition to women and how, in contrast, it may represent a assurance to sex quality. "American law in the area of sex discrimination makes proposals for national and international legal change, and comments on the limitations of market mechanisms in ending discrimination." Nussbaum quotes from 'The Hindu Magazine Report' (24 April 1994):

"The importance of many laws meant to secure gender justice is, once again, established by the study. For example, although widows in virtually all communities are legally entitled to inherit at least part of their deceased husband's property (if any), Chen found that less than half exercise even use rights over what ought to be their land. Disputes over property often lead to violence against widows - sometimes in the form of fatal witch-hunts, which

²²⁴ Ibid., 54.

provide a convenient cover for physical elimination of women who attempted to claim their rights. ...As women who have experienced the worst that the patriarchal order has to offer their gender, widows could well become the vanguard of the women's movement once they are enabled to break out of their isolation and fragmentation, scattered as they are in separate households across the country. Once they are empowered to become an organized political force, they will surely be potent agents of change who simply cannot be ignored by society or the state."Meanwhile, public awareness of the condition of widows and public action both to prod the state into positive action and to encourage the full participation of widows in public life can pave the way towards gender justice for women with and without men. "The struggle for human capabilities is not just a theoretical construct. For women all over the world, and for everyone who cares about women's well-being, it is a way of life."²²⁵

Jean-Jacques Rousseau wrote in *Emile*, Book IV, "Human beings are not by nature kings or nobles, or courtiers, or rich. All are born naked and poor. All are subject to the miseries of life, to frustrations, to ills, to needs, to pains of every kind. Finally, all are condemned to death. That is, what is really the human being; that is what no mortal can avoid. 'Begin, then, by studying what is the most inseparable human nature, that which most constitutes."

Nussbaum outlines fundamental values in terms of ten capabilities, i.e. genuine prospects based on social and personal situations. She claims that a "political order can only be considered as being decent if this order secures at least a threshold level of these 10 capabilities to all inhabitant."²²⁶ "Nussbaum's capabilities approach is centered on the notion of individual human dignity."²²⁷ Given Nussbaum's contention that "the goal of the capabilities approach is to produce capabilities for each and every person, the capabilities below belongs to individual persons, rather than to groups."²²⁸ The capabilities approach has been very significant in expansion strategy

²²⁵ http://shodhganga.inflibnet.ac.in/bitstream/10603/111052/11/11_chapter%204.pdf

²²⁶ Nussbaum, 2011:30-31.

²²⁷ Ibid., 19.

²²⁸ Ibid., 19-29.

where it has shaped the advancement of the human development index which has been greatly talked about in philosophy, and is ever more significant in vary of social sciences. Nussbaum argues that core capabilities which should be carried by all democracies are:²²⁹

1. *Life*. Being able to live to the end of a human life of normal length; not dying prematurely, or before one's life is so reduced as to be not worth living.
2. *Bodily Health*. Being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter.
3. *Bodily Integrity*. Being able to move freely from place to place; to be secure against violent assault, including sexual assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction.
4. *Senses, Imagination, and Thought*. Being able to use the senses, to imagine, think, and reason—and to do these things in a "truly human" way, a way informed and cultivated by an adequate education, including, but by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing works and events of one's own choice, religious, literary, musical, and so forth. Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to have pleasurable experiences and to avoid non-beneficial pain.
5. *Emotions*. Being able to have attachments to things and people outside ourselves; to love those who love and care for us, to grieve at their absence; in general, to love, to grieve, to experience longing, gratitude, and justified anger. Not having one's emotional development blighted by fear and anxiety. (Supporting this capability means supporting forms of human association that can be shown to be crucial in their development.)
6. *Practical Reason*. Being able to form a conception of the good and to engage in critical reflection about the planning of one's life. (This entails protection for the liberty of conscience and religious observance.)
7. *Affiliation*.

²²⁹ Ibid., pp. 33-34.

-
- a) Being able to live with and toward others, to recognize and show concern for other humans, to engage in various forms of social interaction; to be able to imagine the situation of another. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech.)
 - b) 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. This entails provisions of non-discrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin and species.
8. *Other Species*. Being able to live with concern for and in relation to animals, plants, and the world of nature.
 9. *Play*. Being able to laugh, to play, to enjoy recreational activities.
 10. *Control over one's Environment*.
 11. *Political*. Being able to participate effectively in political choices that govern one's life; having the right of political participation, protections of free speech and association.
 12. *Material*. Being able to hold property (both land and movable goods), and having property rights on an equal basis with others; having the right to seek employment on an equal basis with others; having the freedom from unwarranted search and seizure. In work, being able to work as a human, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers.

Liberal have charged an objection against this list, they argue that this list of capabilities neglect autonomy, any view like this which gives determinate view takes away from the people the possibility to make their own selection about good life. Nussbaum gives reply to this objection by stating that:

First, the list is a list of capabilities, not a list of actual functions, precisely because the conception is designed to leave room for choice. Government is not directed to push citizens into acting in certain valued ways; instead, it is directed to make sure that all human beings have the necessary resources and condition for acting in those ways.

Second: this respect for choice is built deeply into the list itself, in the role it gives to practical reasoning, to the political liberties, and also to employment, seen as a source of opportunity and empowerment. One of the most central capabilities promoted by the conception will be the capability of choosing itself.

Finally the capability view insists that choice is not pure spontaneity, flourishing independently of material and social conditions. If one cares about autonomy, then one must care about the rest of the form of life that supports it and the material conditions that enable one to live that form of life.²³⁰

We saw Martha Nussbaum developed the capability approach, not as a procedural justice but as an outcome-oriented approach that gives impartial account of justice as welfare. I attempted to bring out the close relationship between the institutional and constitutional design in Martha Nussbaum with the quest for justice and equality of opportunities between genders. I addressed the questions concerning minimizing injustice in terms of discrimination, particularly gender discrimination in the cultural practices of different peoples on the one hand and legal, political, social and economic status of women on the other. The discrimination and the deprived situation of women are due to the cultural traditions and practices that mould their lives. I tried to interrogate the conflict between cultural practices and women's rights. The issue addressed was that of women's injustice and brought gender equality under the purview of human rights. With feminist perspective, Martha Nussbaum attempted to establish an inclusive society which not only incorporates the basic philosophic visions of Kant, Rawls and Sen but also transcends it.

²³⁰ Nussbaum, 1999: 49-50.

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CONCLUSION

This thesis is an attempt to conclude the concept of justice on the basis of four problematic, firstly, contending claims on social contract theory and emergence of perfect justice. Secondly, an attempt to analyse Kant's contention that moral laws are vindicated how an action ought to be and what an action ought not to be. The same applied to the concept of justice how justice is to be delivered, not what kind of justice is to be delivered. Thirdly, there was an attempt to vindicate Rawls' position on justice and bring out its shortcomings in two fold manner. First the way Rawls has criticized his own earlier position in his later work and secondly the way his successors like Sen, Martha Nussbaum and others have criticized both the positions of Rawls. Fourthly, an attempt to address the issues concerning human dignity, wellbeing, development and freedom by discussing justice as welfare through Sen's capability approach. lastly, an attempt to develop the capability approach, not as a procedural justice but as an outcome-oriented approach that gives impartial account of justice as welfare. Also, the discussion brought the close relationship between the institutional and constitutional design in Martha Nussbaum with the quest for justice and equality of opportunities between genders. The questions concerning minimizing injustice in terms of discrimination, particularly gender discrimination in the cultural practices of different peoples on the one hand and legal, political, social and economic status of women on the other were addressed.

The discussion began by Plato's definition of justice as minding one's own work and obedience of duty towards state and its laws. Leading us to discussion of how justice takes place within society by discussing Aristotle distributive theory. Justice in Aristotle came under activity of state and not as individual ethics. Justice was reached by two processes called distribution and corrective. Aristotle considered justice to be a virtue and believed that justice consists in giving people what they deserve, and that a just society is one that enables human beings to realize their highest nature and to

live the good life. Political activity is not merely a way to pursue our interests, but an essential part of the good life. Social Contractarian including many rights-oriented philosophers believe that distributive justice is not a matter of rewarding virtue or moral desert, and that the measure of a just society is not whether it produces virtuous citizens, but whether it provides a fair framework of rights within which individuals can pursue their own values. With this view, they reject Aristotle's position.

Hobbes, Locke, and Rousseau introduced justice by the way of social contract theory which has an insight into the perfect, ideal or absolute justice. Here we discussed that for Hobbes justice lies in hands of monarch, in Locke justice is in the form of individual rights related to life, freedom and property. For Rousseau, it is the general will or moral collective will of the individuals in the society who will shape the laws of institutions which will deliver justice.

Then we saw in our discussion that social contract theory was repudiated by Hume on the ground that there is no historical evidence to any contract, original or otherwise. His account of justice is based on convention and customs. Hume asserted that forcing people to be citizens rather than people, forcing them to set aside their private desire that precedes happiness for general good, is really a perversion of human nature. That cannot be done for very long, and if one tries to do that too hard then their might actually be bad consequences. For Hume, social contract is not helpful way of thinking about society. Precisely the notion of individual rights and that individualized consent having to be the most important. We need to think in terms of general amount of utility and, as the basis of social contract. For Hume, convention is deeper than contract.

In the realm of absolute, ideal or perfect justice enlightenment rationality gave rise to another thinker into same stream i.e. Kant. The notion of perfect justice in Kant was elaborated with the help of his brief but seminal article in December 1783 issue, entitled "Answer to the Question: What is the Enlightenment?" His answer was: "Enlightenment is the coming out of man from his self-imposed immaturity.

Immaturity is the incapacity to serve one's own understanding without direction from another. This immaturity is self-imposed; Reason itself languishes, not because it lacks understanding; what it lacks is resolution and courage; it is unwilling to serve itself. Take courage to serve your own understanding! This is therefore the Motto of the Enlightenment."²³¹

Kant asserted that once humanity reaches at the stage of enlightenment and develops reason to the extent that it becomes autonomous and dignified, it can perform juridical and ethical duties. Enlightened being acts in the conformity of categorical imperative, realizes an ideal such as universality, end-in-itself and kingdom of ends. This ideal reaches at the notion of perfect just society wherein every enlightened being makes a general consent in formulating the principles of justice. At this stage human being can realize his own betterment and for the sake of entire society. Thus, the principle of absolute justice transforms an individual behaviors and institutions in such a way that everyone can act rationality to transform oneself and society as well.

It is Kant's philosophical insight into perfect justice that has been carried forward by John Rawls. We saw that, for Rawls, as a member of contract we can best understand the notion of justice by thinking of it as a 'set of principles' that would be agreed upon by everyone if they had to decide in a hypothetical or original position. This position was one in which the participants were all faced with 'veil of ignorance' about particular facts. The original position enabled the parties in contract to choose principles of justice without prejudice. This was achieved through the device called the 'veil of ignorance'.

I have then discussed two principles stated by Rawls, "the principles for determining the basic institutions of a society as to what is just are: First: each person is to have an equal right to the most extensive basic liberty compatible with similar liberty for others. Second: Social and economic inequalities are to be arranged so that they are

²³¹ Kant, 1996: 55.

both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all"²³².

The first principle embodied the notion of *liberty*. The first part of the second principles embodied the idea of *fraternity*. The second part of the second principle along with the first principle guaranteed *equality*. We called principle 1 the principle of equal liberty, principle 2(a) the difference principle, and principle 2(b) the principle of fair equality of opportunity.

In Rawls' justice as fairness, the direct attention was on 'just institutions' rather than focusing on 'just individuals and societies' which helped to create effective intuitions and reduce injustices and inequality as well. Thus, realization of the sense of justice is not a matter of judging institutions and rules or principles but judging societies itself also. Samuel freeman summarized Rawls strategy in justice as fairness in the following way: "Rawls applies the idea of a hypothetical social agreement to argue for principles of justice. These principles applied in the first instance to decide the justice of the institutions that constitute the basic structure of the society. Individuals and their actions are just insofar as they confirm to the demands of just institutions. I then discussed how these institutions are specified and integrated into a social system deeply affects people's characters, desires, and plans and their future prospects as well as the kind of persons they aspires to be"²³³ and how "A theory of justice" brings out moral philosophical side of justice and as a result every citizen who is equal and free shared a particular view of justice. And this led to ignorance of reasonable pluralism. Pluralism seemed to have less scope in Rawls theory of justice. Keeping in mind such shortcomings Rawls latter revised and wrote political liberalism which acknowledges pluralism. And explain justice as fairness through political conception rather than moral conception. Again Rawls got occupied in setting up legitimate and stable institution by looking into stances where public consensus could be formed to deliver social justice. Though he recognized pluralism within society but he never

²³² Rawls, 1999: 60.

²³³ Freeman, 2003: 3-4.

dealt with problem of cultural, gender, historical circumstances of people. This brought us into the discussion of notion of minimizing injustice as necessary in age of enlightenment wherein less people are capable to use their freedom, rights and toleration.

It was discussed that institutional choice and arrangement focused approaches to justice is not sufficient because societies full of actual human beings will never agree on a final, perfect set of institutions and rules. More importantly, the search for absolute justice could distract us from tackling real-life, immediate injustices such as access to enlightenment opportunities like education, skill, etc. for women, tribal and marginalized community who are deprived. Absolute justice could be possible when each and every individual becomes enlightened and are equally capable to use social opportunities.

Amartya Sen attempted to tackle the issues of minimizing injustices by highlighting that human being has a dignity with their ability to pursue their own ends. Sen's notion of minimizing injustice was a dynamic departure in the debate of justice which concentrated on the well being of each and every individual. It did not concentrate on the means of primary goods and just institutions but minimizing injustices by removing obstacles in actual opportunities of individual which has been facing in day to day life. He distinguished between *niti* and *nyaya* in *Idea of Justice*, "One important distinction between two different concepts of justice in early Indian jurisprudence between *niti* and *nyaya*. The former idea, that of *niti*, related to organizational propriety as well as behavioral correctness, whereas the latter, *nyaya*, was concerned with what emerges and how, and in particular the lives that people are actually able to lead, both stands for justice but *niti* is an arrangement focused and *nyaya* is concept of realized notion of justice"²³⁴. Though both concepts were related to the notion of justice but the notion of *nyaya* gave the vision of relative justice that we have to understand justice in broader sense for entire humanity.

²³⁴ Sen, 2009: 15- 20.

Sen brought new conception of justice as welfare through freedom, capability and public enlightenment. The notion of justice in Kant and Rawls was helpful to construct a just society to eradicate inequality but it was failure to recognize human agency and their freedom. But for Sen's notion of justice surrounded with human agency to choose that thing that is valuable for them and this is one of the important of well being and their enlightenment. Sen's notion of justice tried to minimize injustice in terms of welfare mechanism through enhancement of individual and collective quality of life in the form of freedom, capability and public enlightenment. Freedom as wellbeing is the alternative approach to justice which emphasized that people instead of resources are the real wealth of a nation. So the purpose of just society is to create an enabling society for well being of the poorest of the poor. Freedom is one of the important keystones in minimizing injustice.

Just as justice as fairness tried to evolve just society through the principle of distributive justice that each individual should get equal liberty and equality, capability as one of the principle of minimizing injustice in Sen's view. "In contrast with the resource-based lines of thinking, individual advantage was judged in the capability approach by a person's capability to do things he or she has reason to value. A person's advantage in terms of opportunities was judged to be lower than that of another if she had less capability – less real opportunity – to achieve those things that she had reason to value. The focus here was on the freedom that a person actually has to do this or be that – things that he or she may value doing or being"²³⁵. This approach moved away from the income-led evaluation to people's ability to achieve the things that they value. So that wellbeing can be measured by assessing people's freedom and choices rather than resources. For him, focus on utility or resources had been misleading us because justice is not sum total of commodities but what and how people use these resources. "The concept of capability was thus linked closely with the opportunity aspect of freedom, seen in terms of comprehensive opportunity. It pointed to an informational focus in judging and comparing over all individual

²³⁵ Sen, 2009: 232-33.

advantages and did not propose any formula about how that information may be used”²³⁶. Freedom and well being focused that the capability approach recognizes that people differ in their capacity to convert goods into valuable achievements due to personal and social etc factors. Its main concern was to eradicate inequality of capability means those who were less capable to lead their life in dignified manner so that justice in terms welfare can achieve. This approach was a paradigm shift in the notion of justice which constitutes a significant contribution to brought public enlightenment. Public enlightenment was one of the important ingredients of justice as welfare through freedom based capability approach. Instead of institutional mechanism which governed collective choices. Sen’s minimizing injustice made each and every individual to act on their own preferences. Paul Anand, Graham Hunter, Ron Smith writes in “Capabilities and Well-Being: Evidence Based on the Sen-Nussbaum Approach to Welfare”, “We should start from a conception of what makes a good life for a human being, and build up from this to a theory of the social good. That it is the opportunity to live a good life rather than the accumulation of resources that matters most for well-being, and that opportunities result from the capabilities that people have. This so-called 'capability' approach thus focuses more on people and less on goods. In it resources do not have an intrinsic value; instead their value derives from the opportunity that they give to people”²³⁷. Through freedom based capability approach makes each and every individual capable and decides what makes their life in well being and that enabling environment brings public enlightenment. As Jonathan Makuwira writes in, *Whose Development and Freedom?*”, four fundamental elements that foster an enabling environment: Awareness of the problems poor people face and ways of mitigating them; access to all the resources required to enhance the quality of their lives; affordability of the resources required for people to improve their welfare; and, accountability of those in positions of power, and who claim to represent the interests and welfare of ordinary people”²³⁸. The enabling society promotes an attitude that facilitates enlightenment in local people endeavors. Public enlightenment brought

²³⁶ Ibid., 232.

²³⁷ Paul Anand, Graham Hunter and Ron Smith, 2005: pp. 9-55

²³⁸ Makuwira, 2006: 193-200.

out an enabling attitude in the form of capability to make decision about issues that affect their lives and minimize injustice to that that extent.

Amartya Sen, criticizes the original position, i.e. ‘veil of ignorance’ of Rawls’ theory of justice. Sen has also criticized the utilitarianism of Bentham and Mill on the ground that act utilitarianism and rule utilitarianism along with hedonistic calculus cannot help us much either in minimizing injustices or enhancing happiness. Instead of transcendental institutionalism, Sen proposes *realization – focused comparison* which is primarily interested in removing the manifest injustice from the world and hence he goes to ‘retreat of justice.’ Sen, proposes that the place of impartiality in the evaluation of social justice and social arrangements is central to the understanding of justice. Unequal and impartial social structure opens the avenues of nepotism. Sen argues that Kant and Rawls have developed perfect justice to concentrate primarily on getting the institutions right with transcendental institutionalism, and it is not directly focused on the actual societies that would ultimately emerge.

Carrying further the notion of minimizing injustice, Martha Nussbaum, considered the quest for justice and equality of opportunities between genders. She tried to establish an inclusive society and the possibility of feminist perspective on justice. Her main concern was to pay attention to the actual experiences and circumstances of individual women. She wrote, “the need to recognize that the lives of women are highly varied, that women live within a variety of traditions, and that the best account of human justice is not one that merely projects Western values onto groups with different concerns”²³⁹.

Nussbaum pointed out that women’s rights in the form of human rights are often spoken of as entitlements that belong to all human beings simply because they are human and deserve equality and protection regardless of their gender. Nussbaum wrote,

²³⁹ Nussbaum, 1999: 6-8.

Women in much of the world lack support for fundamental functions of human life. They are less well nourished than men, less wealthy, more vulnerable to physical violence and sexual abuse. They are much less likely than men to be literate and still likely to have professional or technical education. Should they attempt to enter to the work place to face greater obstacles including intimidation from family or spouse, sex determination in hiring and sexual harassment in the workplace- all frequently without effective legal resources²⁴⁰.

Martha Nussbaum developed a theory of human capabilities to understand rights and social justice. Its concern was to realize human potentialities rather than emphasizing on distribution social and public goods to all people. I then discussed ten capabilities, she mentioned, namely, “Life, Bodily health, Bodily integrity, Senses, imagination and thought, Emotions, Practical reason, Affiliation: friendship, respect, other species, Play, Control over one’s environment includes political and material”²⁴¹. Nussbaum used capability approach to minimize inequality and gender discrimination from feminist perspective because women have been facing discrimination at every stage. She tried to bring equal opportunities of all human being through human capability irrespective of their gender and brought feminist notion of justice. As Hillary Charlesworth writes in *Feminist Internationalism*, “From evidence of the second-class status of women across the developing and developed country divide and their consistently lower quality of life when measured by access to health, education, political liberty and participation, employment, self respect, and life itself”²⁴². Women’s rights are depriving day by day and it is due to utilitarian and liberal conception of justice which overlooks individual potentialities and their problems.

Nussbaum’s response to the injustice of women’s position was a version of the “capabilities” approach to the measurement of the quality of women’s life. It emphasized on how women becomes capable to lead their lives in dignified manner. Nussbaum writes in *Sex and Social Justice*, “Women’s capabilities approach focuses on women’s abilities to do and be certain things deemed valuable. The approach was concerned with capability to function, rather than functioning itself, because it

²⁴⁰ Nussbaum, 2000: 1.

²⁴¹ Ibid., 168.

²⁴² Charlesworth, 2000: 64-78.

emphasized the role of practical reason and choice in exploiting the capability²⁴³. It is a paradigm shift in the notion of justice that focuses on human needs rather than resources. It helped to evolve an equitable just society to evaluate gender disparity and the curtailment of women's capability imposed by family, culture and tradition and nation. Thus, the capability approach was not as procedural but as an outcome-oriented approach that provided us a vision of women welfare in terms of their capability to do certain things which secure justice up to a suitable threshold.

As we saw that Sen criticizes Rawls theory of justice for seeking 'perfect justice'. For Sen, there is nothing like perfect justice rather we should strive to remove injustices. And this is very idea of criticizing the notion of perfect justice to minimizing injustices can be debated. The search for perfect justice can be a difficult task but atleast this exercise brings us in approximation to the notion of perfect justice. Secondly, there is large complication involved in many credible cases of injustices, for example, if we look into complex religious, cultural practices, we will get conflicting views on what actually is unjust because our conception may differ regarding what should be considered as injustice pertaining to different cultural and religious practices. These days question regarding homosexual marriage is coming before society, whether same sex should be legally allowed to stay together and marry or not as biologically it is natural to feel like that. So should LGBT marriage be legal? This type of situation raises much religious, regional, cultural issue which further raises the question of justice and injustice. They can only be resolved by resorting to law. Though it becomes a problem, in such cases, to figure out what constitutes, a move to superior, more just position, a person can only by his own idea of what perfect justice is can work out in such situation. So there are times when we need a Mona Lisa to anchor out judgments' about Picasso and Dali.

An Ideal of perfect justice aspires, and gives us a vision to turn an idea into reality if not exactly than atleast into close approximation. Mary Wollstonecraft work was also about perfect society for women and at the same time about minimizing injustices for

²⁴³ Nussbaum, 1999: 39-44.

women, her novel “Maria or the wrongs of Women”, earned her considerable criticism in beginning. As she discussed women’s sexual desire, but later she was recognized as the grandmother of British Feminism and her ideas shaped the thinking of the suffragettes, who campaigned for the women’s votes. So, we can say that a vision of perfect society leads to minimizing of injustice. Or the other way, her works on women rights which aimed in minimizing injustices helped to create a perfect society for women. Similarly Karl Marx vision of perfect society helped in minimizing injustices towards subjugated labor class.

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