DISABILITY AND SOCIAL JUSTICE:

PROSPECTS OF THE CAPABILITY APPROACH

*Dissertation Submitted to Jawaharlal Nehru University
in partial fulfillment of requirements for
the award of the Degree of*

MASTER OF PHILOSOPHY

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July 2008

July 25, 2008

CERTIFICATE

I hereby, declare that the Dissertation entitled, **Disability and Social Justice: Prospects of the Capability Approach,** submitted by **Mahesh S. Panicker, Centre for Political Studies, School of Social Sciences, Jawaharlal Nehru University, New Delhi,** for the award of the degree of **Master of Philosophy** is my original work and has not been submitted in part or full for any other degree or diploma in any other University.

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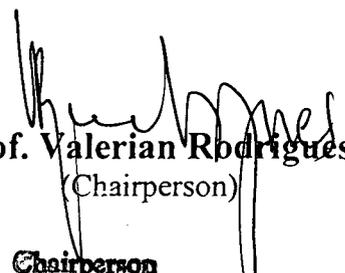
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List of Abbreviations

ICF—International Classification of Functionings

ICIDH—International Classification of Impairment, Disability, and Handicap

UNDP—United Nations Development Program

UN—United Nations

UPIAS—Union of Physically Impaired Against Segregation

USA—United States of America

WHO—World Health Organization

Introduction

The recent developments in social sciences show an unprecedented degree of normative orientation than its conventional fervor for explicating social reality. The question of a social response to disability has emerged as a matter of serious concern and a theoretical puzzle for the disciplines (see Nussbaum 2006b, Demuijnck and Le Clainche 2006). It is important to note that, for a long period in history, the issue of disability remained marginal in the major social science discourses (see Gleeson 1999). The traditional understanding of disability was based on a medicalized view in which disability was understood as functional limitation of the body or the mind that prevents the individual from performing species typical functions (see Altman 2000). The disability rights movement emerged as part of the effort to provide a theoretical alternative to the medicalized approaches towards the understanding of the nature of disability and the mode of social policy responses harped on the idea and the ideology of normality as the ability of an individual to perform species typical functions (see Oliver 1996).

After the emergence of the social model of disability in the 1970s, the issue of disability began to be understood in terms of justice and equality, rather than on the basis of the ability to perform species typical functions. In addition to that, the emergence of the social model also marked the development of disability studies as a new academic discipline (see Oliver 1990). At the same time, John Rawls published 'A Theory of Justice' in 1971 which marked a new beginning within normative political philosophy. As a result, justice and equality once again became the central concerns of political theory (see Kymlicka 2002).

The engagement between disability studies and normative philosophy could be beneficial for both the disciplines. The question of disability is of great importance to normative philosophy, "because it raises fundamental issues about the significance of variations in physical and mental functioning for human performances and well-being, for personal and social identity, and for justice in the allocation of resources and the design of the physical and social environment" (Wasserman 2000, 219). Normative philosophy, particularly the recent Anglo-American theories of justice, "in turn, should be of interest to disability scholars because of its close analysis of concepts critical to the conceptualization and social response to disability, such as health, normality, and disease; human action and well-being; and discrimination, justice, and equality" (Wasserman 2000, 219). Normative philosophy can bring in the much needed clarification to issues of classifying impairment and disability. A proactive engagement between the disciplines of disability studies and normative political philosophy can facilitate the elimination of stereotype myths and misrepresentations playing a significant role in the creation of discrimination that the disabled individuals face in the social domain (see Wasserman 2000).

Another possible ground for the convergence for the disability rights movement and normative philosophy has been the centrality that both disciplines accord to the idea of social justice. Normative philosophy conceptualizes social justice in terms of the moral equality of human beings and argues that social institutions should accord equal moral worth to all citizens (see Pogge 2002). The Rawlsian theory, which is a procedural in nature, argues that the objective of social institutions is to guarantee social justice to all citizens. The two principles of justice that Rawls

proposed argue in favor of guaranteeing basic liberty and reasonable equity to all citizens in terms of resource allocation (see Rawls 2000). The formulation of the principles regulating social institutions should be on the basis of the moral equality of all the citizens; and he asserts that "no one should be advantaged or disadvantaged by natural fortune or social circumstances in the choice of principles" (Rawls 2000, 19). This conception of social justice thus rejects discriminating social hierarchies. Within the structure of social institutions that are the result of the collective will of the human beings to live together, Rawls goes on to affirm that no individuals should be treated as inferior, as all human beings have equal moral worth (see Rawls 2000).

While the mainstream liberal egalitarian theories mainly conceptualize social justice in terms of equitable resource allocation, some other theories of justice like that of Iris Marion Young understands disability in terms of recognition of difference (see Young 1990).[1] Young argues that society consists of heterogeneous elements and the majority should not be able to dominate the minority and looking forward to that direction, she maintains that different groups should be given constitutionally guaranteed group rights so that they can protect and maintain their identity (see Young 1990).

The disability rights movement understands disability in terms of equal citizenship. The movement argues for the restructuring the social and physical environment so that the disabled can act as equal citizens (see Oliver 1990, 1996). Social justice

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[1] The liberal egalitarian project was pioneered by John Rawls. He presented his theory as an alternative to the utilitarian as well as intuitionist theories. The Rawlsian theory tries to balance concerns of liberty and equality within the framework of the traditional social contract paradigm. Other liberal egalitarians base their theories on the Rawlsian foundation, even while modifying some of the Rawlsian assumptions. For more, see Kymlicka 2002.

can only be achieved even when the disabled can substantially access their rightful claims as equal citizens. The social model contends that since disability is the result of discriminating social structures, justice and equality can be guaranteed to the disabled only through inclusive restructuring of the public domain; and therefore, the issue of disability is one of social justice rather than that of a medical condition that is individualized (see Oliver 1990).

Many sections within the disability rights movement, particularly the supporters of the minority group model in the United States, understand disability in terms of social recognition, as they attribute disability to oppressing social conditions alone (see Wasserman 2000, Terzi 2004). However, theorists like Jenny Morris argues that even though disability should be considered as difference, it is unique in the sense that in order to accommodate this difference largely, expensive environmental restructuring is required; and therefore redistribution of resources is essential (see Morris 2001).

A deeper engagement between disability studies and normative philosophy can provide greater clarification in these issues. However, regardless of these possible lines of convergence, the actual relationship between disability studies and normative philosophy has been one of tension and suspicion. The early engagement of normative philosophy with the issue of disability was characterized by an overwhelming influence of eugenics and bioethics (see Asch 2000, Malhotra 2008).[2] Susan Wendell notes that majority of the philosophical writings engaging

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[2] The term eugenics was coined by Sir Francis Galton in 1883. Although it mend different thing to different people, the general inference is that the human gene pool can be improved through medical intervention. In the early 20th century, eugenics was used to support theories of scientific racism, and later on, eugenic theories were advanced to suggest that the disabled represent genetic malfunctioning, and therefore the birth of a disabled child should be avoided at all cost, so as to

with the issue of disability were basically concerned about two questions: "under what conditions is it morally permissible/right to kill/let die a disabled person and how potentially disabled does a fetus have to be before is it permissible/right to prevent it's being born?" Even after moral philosophy gained ascendancy in political theory, philosophers often refer to disability to address the broad general principles regarding well-being or justice, and in this attempt to generalize the experience of disability the issue gets misrepresented or oversimplified (see Wasserman 2000). Ronald Dworkin has treated disability as a medical condition where the individual lacks certain internal resources that would make him/her economically productive (see Dworkin 1981b). Both Amartya Sen and G. A. Cohen have invoked the euphoria of the fictional character, the happy cripple tiny Tim in their arguments about subjective welfare (see Sen 1980, Cohen 1989). Philosophical writings that treat disability as an individual condition alone end up neglecting the disabling role of social circumstances (see Wasserman 2000).

Disability studies on the other hand treat normative philosophy with suspicion. Philosophy is often considered as the handmaiden of policies that are not related to the kind of reform agenda that the disability rights movement envisages (see Wasserman 2000). Most important of all, public policy too often works with the idea of normality as an underlying assumption; and thus the disability rights movement attributes this to the philosophical foundations of public policy.

However, it is imperative for normative philosophy to include disability within the theoretical fold of social justice. Although impairment is a medical condition of the

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create a genetically improved human race. For more on the relationship between disability, eugenics and bioethics, see Asch 2000.

individual, the issue of disability is a larger question that has an important social dimension. The creation of disability has as much, if not more to do with the social and physical environment, as it has got to do with the particular impairment of a person. The physical environment is generally designed for the so called normal people. An impaired person, in the present circumstances, cannot easily access public transport, or public educational facilities like a person without such impairments (see Oliver 1996). Another reason for the disadvantage that the person with impairment faces is the kind of social stigma associated with disability. Disability has been stigmatized throughout history, and the disabled has been by and large secluded from equal participation within the social domain (see Oliver 1990, Foucault 2001). Therefore, it is apparent that disability is an issue of social justice, and it requires social response more than medical attention.

The United Nations Organization has declared that the disabled are entitled to equal citizenship rights. Following the UN many countries have adopted legislations to protect and promote the rights of the disabled (see Karna 2001).[3] As the principal guide to public policy, normative political philosophy has to envisage a society that is inclusive of its disabled citizens as well. The engagement between normative philosophy and the public policy on disability is particularly significant in the context of the countries of the developing world like India. Majority of the disabled population is living in the developing world, and the degree of social, economic and political marginalization of the disabled is higher in these countries

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[3] The United Nations Organization declared the year 1981 as world disability year, and the UN convention on the rights of the disabled in 1992 called upon member states to adopt legislations ensuring and protecting equal human rights of the disabled people. Many countries have adopted such legislations as the result of the UN initiative. The Americans with Disability Act 1990 in the USA, and the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 in India are examples in this regard.

(see Barnes, Mercer, and Shakespeare 1999). In general, employment and educational opportunities for the disabled are extremely limited (see Karna 2001).

These facts suggest that public policy and normative philosophy is closely related. However, this study is limited to the theoretical dimensions of the issue of disability. An inclusive theory of disability should be able to define disability in a broad sense taking into account different dimensions of the issue, to account for the kind of environmental restructuring required for inclusion and integration of the disabled as well as addressing the question of care and dependency. The contemporary moral contractarian theories of justice, particularly that of John Rawls, offers a strong foundation to address the question of disability and social justice. Unlike other theories of distributive justice, it seems that, Rawlsian theory could better accommodate the concerns of self-respect within its theoretical fold (see Nussbaum 2006b). The foundation of the Rawlsian theory is a strong sense of morality which is based on the equal moral worth of all human beings. As has been already mentioned, Rawls believes that social institutions should be regulated by principles of fairness, formed by citizens who are morally equal (see Rawls 1993, 2000).

Although the centrality of moral and political equality that Rawls accords to his citizens can be the foundation for building up an inclusive theory of social justice, the issue of disability remains a challenge to his theory; or for that matter, the entire mainstream liberal contractarian theories of justice and equality (see Nussbaum 2006b). Even though he recognizes disability as an issue of social justice, Rawls postponed it to be addressed later; arguing that disability constitutes a hard case for any theory of justice, and a theory of justice should first address the

fundamental cases of social justice (see Rawls 1993). The luck egalitarian theories contend that disability is a medical condition, in which the individual is lacking some internal resources that would enable him/her to acquire the external resources needed to lead a life of one's own choice (see Dworkin 1981b). The measurement of disadvantage on the basis of income and wealth alone and the particular contractarian structure of Dworkin's theory based on reciprocity, the conception of citizen as free, equal, independent and rational pose serious challenge to the Rawlsian theory, when it comes to address the issue of disability (see Nussbaum 2006b; Sen 2004; Cohen 1995; Kittay 2001). Other mainstream liberal egalitarian theorists like Ronald Dworkin also faces similar challenges because of the structural constrains of his theory (see Anderson 1999).

This study identifies that the capability approach propounded by the economist and political philosopher Amartya Sen and Martha Nussbaum's attempt to develop and extend it offer an alternative theory of social justice that could address the issue of disability adequately. As Ingrid Robeyns observes, "the capability approach is a broad normative framework to assess individual well-being and social arrangements" (Robeyns 2005, 94).

Unlike income, utility or primary goods based approach, the capability approach uses a broad informational basis to assess claims of justice and equality (see Sen 1992). The approach contends that human beings are diverse in different ways, and a theory of justice should be able to take into account these diversities within the theoretical fold for it to become adequately representative (see Sen 1992). For, the diversity in the social and economic life of human beings is the result of different factors, the nature of the society, the general economic conditions, personal factors

or conditions like health and impairment, the structure of the physical and social environment and so on (see Sen 1999, Nussbaum 2006b).

For the effective inclusion of these diversities, the capability approach stipulates the use of a broader metric to understand questions of social justice and equality. Hence, the approach proposes that justice and equality should be understood in terms of valuable beings and doings or functioning; and, the substantive freedoms or choices available to people to access these functionings. This positive freedom is referred to as capability (see Sen 1980). Functioning is a constitutive element of life, and thus represents an achievement (see Sen 1992). Capabilities on the other hand refer to the actual freedom of the individual to select from the available vector of functioning (see Sen 1992). Although there are a number of functionings, the capability approach argues that some of the functionings are essential to the existence of a human life, and therefore the society has the responsibility to guarantee to its citizens the capability to access these basic functionings at least at a democratically fixed threshold level (see Nussbaum 1992, 1993, 2006b).

The capability approach thus seems to be successful in offering a framework to define disability in a balanced way, and provide an inclusive theory of social justice too. The first major insight that the capability approach puts forward for the understanding of disability is the broad conception of human diversity (see Terzi 2005a). In a capability framework, disability can be understood as functional and capability deprivation that is the result of various environmental and personal factors (see Terzi 2005a, Mitra 2006).

Martha Nussbaum and Elizabeth Anderson extend the capability approach to deal with the question of disability and social justice (see Nussbaum 2006b, Anderson 1999). The most important aspect of their approach as far as the issue of disability is concerned is the fact that the basic capabilities are projected in a general sense; rather than absolute equality, the stipulation for the society is to guarantee a threshold level of capabilities for all citizens (see Wasserman 2006). The use of the broader metric of capabilities that are environmentally contingent to assess advantage/disadvantage instead of single metrics like utility, income or primary goods, the rejection of the contractarian conception of the social basis of cooperation based on mutual advantage, and the conception of the person that takes into account human dependencies and the need for care are the strongpoints of the capability approach when it comes to addressing the question of disability (see Nussbaum 2006b).

The study thus focuses on the capability approach and its take on the issue of disability. The structural limitations of the mainstream liberal egalitarian theories in particular and the Rawlsian maxim of justice as fairness that prevents adequate treatment of the question of disability are also addressed here.

The study is organized into three chapters. The focus of the first chapter is on the contractarian theories of justice with particular focus on Rawls. The Rawlsian perspective on disability and the structural limitations of his theory that forces Rawls to postpone the issue will be critically examined. Other mainstream egalitarian theories like that of Ronald Dworkin will be discussed briefly.

The second chapter is a theoretical exposition of the capability approach. In this chapter, an examination of capability approach's critique of the mainstream theories of utilitarianism and justice as fairness are offered. Then the chapter goes on to a discussion on the conceptual foundations of the capability approach. Although the capability approach has been extensively used by different scholars in different academic fields the chapter will only focus on the two pioneers of the approach; Amartya Sen and Martha Nussbaum.

The third chapter deals with the issue of disability within the framework of the capability approach. The chapter examines major potential grounds for convergence between different approaches within disability studies and the capability approach. In addition to that, this chapter analysis a framework of social justice that includes disability, which the capability approach provides. This analysis is primarily done through the study of the versions of the capability approach presented by Martha Nussbaum and Elizabeth Anderson.

Chapter I

Disability, Social Justice and Contractarianism

Introduction

The philosophical tenability of liberalism has been significantly reiterated over the past three decades. In the context, John Rawls' intervention in the field is the most influential impetus not only in generating a renewed interest in liberalism, but also in shaping the entire Anglo-American normative political theory. In his most celebrated work 'A Theory of Justice', Rawls puts forth an alternative conception of justice against the dominant utilitarian ideas. Framed in the classical social contract mold, the Rawlsian theory is strongly rooted in a sense of morality, which is Kantian in nature. The most significant aspect of the Rawlsian theory has been the transformation that it brought about within the normative political philosophy by bringing the concept of justice back to the center of political theory. Rawls begins his most fundamental treatise on political philosophy *A Theory of Justice* by proclaiming that "justice is the first virtue of social institutions, as truth is of systems of thought" (Rawls 2000, 3).

Emphasizing the importance of justice at the level of social institutions, Rawls reopened the debate on social justice. The fundamental basis of the idea of social justice is that individuals, regardless of their diversities share many things in common within the social and economic order as members of humanity, and therefore nobody should be discriminated at the level of social institutions that are the result of the collective will of human beings to live together. The significance of the Rawlsian theory is in the fact that it has been able to provide a moralized

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view of social justice on the basis of human dignity. The Rawlsian theory affirms that all individuals should have a fair position in the creation of the principles of justice. Thus the moral foundation of the Rawlsian theory rejects social marginalization of any section of the society.

The renewed vigor that the Rawlsian theory provided to the discourse on social justice brought forward questions of many marginalized identities to the fore. In course of time, issues pertaining to gender, race, religious and cultural minorities, hitherto marginalized, have attracted significant interest among social scientists. However, disability as a matter pertaining to justice and equality has hardly figured in the dominant social sciences discourses. None of the major social sciences paid much attention to the subject. Although the disciplines of biomedicine and medical sociology have addressed disabilities in a limited manner, the social dimension of the issue was conspicuously absent (see Gleeson 1999).

When Rawls's theory brought back the issue of social justice to the center of the debate within political theory, a new set of questions were posed with regard to the inclusion and equal treatment of the disabled within the realm of social institutions. Concomitantly, new approaches developed in the field of disability studies as well, and the traditional medical model understanding of disability, which treated disability as lack of some internal resources was challenged.[1] The social model of

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[1] The medical model was the predominant approach for understanding disability for a long time. The central concern of this approach is the detection, avoidance, elimination, treatment, and classification of impairment. The medical model is an individualized approach in the sense that it considers impairment or disability as results of failure of part of the mind or body to act according to the social norms or species specific functions. For more detailed discussions on the medical model, see Thomas 2002; Altman 2000; Wasserman 2000; Karna 2001.

disability thus began to take the center stage in the disability discourse by challenging the traditional notion that disability is just a medical condition. It brought about a distinction between impairment and disability. Although the former is a medical condition, the latter is a social creation, and it is the social circumstances that create conditions that prevent a person with impairment from leading a normal life (see Oliver 1990, 1996, Gleeson 1999).[2]

This chapter therefore examines disabilities in the light of the social contract theories of justice. The classical contract theories had not taken up the issue at all. By blending human freedom, dignity and concerns of equality within a liberal, democratic and moral framework, Rawls's theory can claim a sense of greater comprehensiveness among the contemporary contractarian theories of justice (see Nussbaum 2006b).[3] Therefore the focus of the chapter is on Rawls.[4] Another reason for focusing on Rawls is that, all contemporary theories of justice and

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[2] The roots of the social model of disability can be traced back to the 1970s. It emerged as a counter to the Medical Model, and argued that Disability is a social construction. Rather than the particular impairment it is the social conditions that are designed for the so called normal people that result in the exclusion of the disabled. Powerfully articulated by the Union of the Physically Impaired Against Segregation UPIAS in Britain, the model got academic credentials through the writings of scholars like Vic Finkelstein, Paul Abberley, Colin Barnes, and above all, Mike Oliver. For more, see Oliver 1990, 1996, Altman 2000.

[3] The term Contractualist is a contribution of T. M. Scanlon. In his view it is a kind of moral theory based upon reasonable agreement. Rawls' theory is a theory of justice to regulate social and political institution, and can be considered as contractarian, as the theory is framed within the structure of a social contract. But unlike contractualist theories, it is not designed to determine the right action. For more, see Stark 2007.

[4] The two main works of Rawls that are used in this study are 'A Theory of Justice' which was first published in 1971, and 'Political Liberalism published in 1993. 'A Theory of Justice that has been used in this study is the first Indian reprint published by Universal Law Publishing Company in 2000. Hereafter, 'A Theory of Justice will be referred to as (Rawls 2000).

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equality have been influenced by the Rawlsian theory; they have either supported and modified some of the Rawlsian assumptions, (see Dworkin 1981b; Sen 1992; 1999; Nussbaum 2006b; Cohen 1989; Arneson 1990) or they have pitted against his position (see Nozick 1974). The aim of the chapter is not to go into a detailed analysis of the Rawlsian theory of justice; rather the attempt here is to critically understand the Rawlsian perspective on disability. What is the Rawlsian perspective on disability? Why is it that the issue of disability being postponed, even though it is obvious that the issue poses an important question to the social justice discourse? Some other egalitarian theories that are influenced by the Rawlsian theory, like that of Ronald Dworkin are also considered, since these theories also have some insights on disability.

Basic Principles of the Rawlsian Theory

Before the question on the Rawlsian view of disability is to be addressed, it is pertinent to dwell up on the foundations of justice as fairness. As has been already mentioned, the Rawlsian theory projects itself as an alternative to the dominant utilitarian theory. Although Rawls pits his theory against the classical version of utilitarianism, he suggests that the basic idea of the framework remains the same throughout different versions of the theory, and that the basic contrast between contractarian and utilitarian theories remains the same (see Rawls 2000). Rawls argues that utilitarianism as a theory of justice stands for the net balancing of the overall sum of utility or want satisfaction in a society. Rawls notes," "the main idea is that society is rightly ordered, and therefore just, when its major institutions are arranged so as to achieve the greatest net balance of satisfaction summed over all the individuals belonging to it" (Rawls 2000, 22).

According to Rawls, utilitarianism as a theory of justice is highly problematic. He argues that utilitarianism does not distinguish between persons and their different conceptions of the good. The idea of the impartial spectator suggests that it is up to that particular person to sum up the different priorities of the individuals, and weigh them against one another and arrive at a net balance: "endowed with ideal powers of sympathy and imagination, the impartial spectator is the perfectly rational individual who identifies with and experiences the desires of others as if these desires were his own. In this way he ascertains the intensity of these desires and assigns them their appropriate weight in the one system of desires the satisfaction of which the ideal legislator then tries to maximize by adjusting the rules of the social system" (Rawls 2000, 27).[5]

In Rawls view, basic human liberties should have a priority in any society. He notes, "it has seemed to many philosophers, and it appears to be supported by the convictions of common sense, that we distinguish as a matter of principle between the claims of liberty and right on the one hand and the desirability of increasing aggregate social welfare on the other; and that we give a certain priority, if not absolute weight, to the former. Each member of society is thought to have an inviolability founded on justice or, as some say, on natural right, which even the welfare of every one else cannot override. Justice denies that the loss of freedom for some is made right by a greater good shared by others. The reasoning which balances the gains and losses of different persons as if they were one person is excluded" (Rawls 2000, 27-28). In Rawls's view, utilitarianism fails to guarantee

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[5] The idea of the impartial spectator was advanced by Adam Smith in his 1759 work 'Theory of Moral Sentiments'. The impartial spectator is an informed and sympathetic third party, who weighs the different claims of individuals.

these basic freedoms to all individuals. Although the utilitarian values freedom, it has a secondary status within the utilitarian framework as the instrument that can promote utility (see Rawls 2000). There is also a possibility of trade offs of freedom for aggregate social welfare (see Rawls 2000). If curbing one man's freedom would promote aggregate utility, the utilitarian framework would support such an action.

Rawls is critical of the intuitionist theories as well, for him these theories represent the other extreme of utilitarianism (see Kymlicka 2002). Rawls regards intuitionism "as the doctrine that there is an irreducible family of first principles which have to be weighed against one another by asking ourselves which balance, in our considered judgment, is the most just" (Rawls 2000, 34). Intuitionism includes a plurality of principles, that might be contradictory, and weighing them against one another depends on the particular circumstances. The lack of a procedure to determine priority, and the often contradictory nature of intuitionist doctrines leave the theory weak and incoherent as an alternative to utilitarian conception of justice (see Rawls 2000).

Founded on a Kantian frame of morality, the Rawlsian theory is an attempt to arrive at an alternative conception of justice within the framework of the traditional Social contract theory. He writes, "my aim is to present a conception of justice which generalizes and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant" (Rawls 2000, 11). In essence the central theme in the Rawlsian theory is that in a well-ordered society, basic human liberties should be safeguarded, and inequalities should be

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regulated in such a way that the least advantaged are also benefited.[6] The two principles of justice that Rawls propounded are as follows: "first: each person is to have an equal right to the most extensive basic liberty compatible with a 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" (Rawls 2000, 60).

Rawls has tried to balance concerns of liberty with that of equality. Unlike utilitarian theory, basic liberties of all the citizens are given priority in the Rawlsian formulation. For Rawls, justice as fairness is a political, and not a metaphysical conception. Here Rawls means that the principles of justice enable citizens to live and cooperate with one another within an institutional structure without compromising their comprehensive conception of the good (see Rawls 1993).[7] Thus Rawls is able to accommodate different conceptions of the good within his theoretical fold. Unlike the intuitionist theories, Rawls is able to accommodate concerns of equality and fairness in a coherent theoretical structure.

In *A Theory of Justice*, Rawls argues that the basis of justice is equality between human beings. For him, principles of justice are applicable in regulating human relations. Our conduct towards other living things is not to be regulated by these

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[6] For Rawls, the well ordered society is the sphere which is regulated by a public conception of justice. All The members of the society abide by the accepted public conception of justice. See Rawls 2000, section 69.

[7] A person's conception of right and wrong might be influenced by many factors like religion. There can be different such conceptions, and Rawls lets any such reasonable conception of the good to exist in the Well Ordered Society. While such comprehensive conception of the good remains private there is a public conception of the good, which ultimately leads to a public conception of justice. See Rawls 1993.

principles (see Rawls 2000). The fundamental point of equality of human beings is the conception of humans as moral persons. According to Rawls the conception of moral person has two features: "first they are capable of having (and are assumed to have) a conception of their good (as expressed by a rational plan of life); and second they are capable of having (and are assumed to acquire) a sense of justice, a normally effective desire to apply and to act upon the principles of justice, at least to a certain minimum degree" (Rawls 2000, 505).

Individual's ability to have a conception of justice and a conception of the good entitles one to claims of justice. Rawls clarifies that only an essential minimum ability is required, and every normal human being possesses basic rational faculties that would enable him/her to have the two moral powers. However, he understands the fact that there are pressing problems with such an approach. There are children, in whom such abilities would not be fully developed. However at times Rawls suggests that children have the necessary rational faculties, and it would develop in course of time. Justice across national boundaries and justice for the disabled are other pressing concerns that the Rawlsian theory has failed to adequately address (see Rawls 1993, Nussbaum 2006b).

Rawls on Disability

Rawls argues that the case of temporary disabilities can be considered similar to that of children, as a restoration to a stage of normalcy is possible over course of time. However the question of permanent disability is a greater challenge to Rawls. He notes in 'A Theory of Justice', "...those more or less permanently deprived of moral personality may present a difficulty. I cannot examine this problem here, but I assume that the account of equality would not be materially affected" (Rawls

2000, 510). Thus Rawls is aware of the challenge the issue of disability present to his conception, but he suggests that the issue should be postponed to a later stage.

However, when it comes to the days of 'Political Liberalism', Rawls acknowledges that the idea of justice as fairness might not be able to give satisfactory answers as far as the question of disability is concerned. Since the priority is to be given to what he calls the fundamental cases, Rawls believes that the issue of disability needs to be postponed for the time being. He writes in 'Political Liberalism', "since we begin from the idea of society as a fair system of cooperation, we assume that persons as citizens have all the capacities that enable them to be cooperating members of society. This is done to achieve a clear and uncluttered view of what, for us, is the fundamental question of political justice: namely, what is the most appropriate conception of justice for specifying the terms of social cooperation between citizens regarded as free and equal, and as normal and fully cooperating members of society over a complete life? By taking this as the fundamental question we do not mean to say, of course, that no one ever suffers from illness and accident; such misfortunes are to be expected in the ordinary course of life, and provision for these contingencies must be made. But given our aim, I put aside for the time being these temporary disabilities and also permanent disabilities or mental disorders so severe as to prevent people from being cooperating members of society in the usual sense. Thus, while we begin with an idea of the person implicit in the public political culture, we idealize and simplify this idea in various ways in order to focus first on the main question" (Rawls 1993, 20).

Rawls believes that disability is an issue that has implications for any theory of

justice, and it should be considered at some stage. However, since he regards it as an extension, Rawls argues that the issue should be taken up after the principles for the fundamental cases are derived. Also he suggests that justice as fairness or for that matter any theory of justice can not be expected to provide answers to all plausible questions regarding justice. He notes, "with regard to the problems on which justice as fairness may fail, there are several possibilities. One is that the idea of political justice does not cover everything, nor should we expect it to. Or the problem may indeed be one of political justice but justice as fairness is not correct in this case, however well it may do for other cases. How deep a fault this is must wait until the case itself can be examined" (Rawls 1993, 21). So in a way, Rawls acknowledges that justice as fairness is not able to provide answers as far as the issue of disability and social justice are concerned.

The Alternative suggestion that Rawls puts forward is to postpone the issue to the legislative stage. By that stage, the veil of ignorance would be removed, and the particulars of different individuals, like physical or mental disability would be known (see Rawls 2000).

Disability and the Structural Limitations of Rawlsian Theory of Justice

Postponing an issue like disability that has important connotations within the discourse of social justice is a serious conundrum as far as the Rawlsian theory is concerned. According to Rawls, the first subject of justice is the design of the basic structure of society. The parties to the social contract come together with a view to deliberate and decide upon fair principles that would determine the basic structure of the society. However, the disabled are kept away from the process of framing principles of justice. So in the well ordered society, which is governed by the

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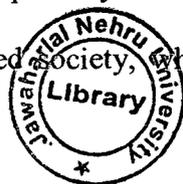
principles of justice, the Rawlsian citizen is under no obligation towards the disabled, as they are not parties to the original agreement that has been the basis of the basic structure of the society. The disabled has no say in the choice of principles that determine the basis of the society, nor are the principles formed for them. David Wasserman refers to this as the outlier problem (see Wasserman 2006).

The postponement of the issue of disability to the legislative stage means, by that stage, the principles of justice that would shape the well ordered society would have been framed, and to deal with the issue of disability, new principles like charity or pity would be required (see Nussbaum 2006b). If the disabled are considered as part of humanity, this is a grossly unfair situation. The disabled who are capable of entering into meaningful human relationships also constitute the body of citizens, and therefore cannot be placed outside the framework of justice (see Kittay 2001). Of the total world population, even conservative estimates place the number of people who suffers from either permanent or temporary disability at over five percent (see Oliver and Barton 2002). Many of them can become part of the productive force in the liberal sense itself, if the right social and physical conditions are provided. Even those who might not belong to this category, the people with severe mental disabilities constitute part of the human community, and form part of a broader conception of the person.

There are many other general reasons against postponement of the issue. The appalling, discriminatory treatment the disabled has to face over the course of history itself place the issue at the center of any debate on social justice along with

race, gender, class, and other excluded categories (see Richardson 2006).[8] Human beings at one or the other stage in life are dependent on others. Human life passes through different stages, in the course of which there are points of dependence on others. Childhood and old age are examples. So the issue of dependence is not something limited to the disabled. However, an idealized fiction of fully cooperating individuals over a life time, which is at the core of the Rawlsian formulation can not include these dependencies (see Richardson 2006).

Although he is a severe critique of utilitarianism, the idea of postponement of the issue of disability to the legislative stage that Rawls advances has some utilitarian implications as well (see Stein 2002). In his reply to Amartya Sen's critique regarding the limited nature of primary goods, Rawls concedes that in case of issues like severe disabilities, primary goods may not be flexible enough. But he regards such situations as conditions of medical laxity, and suggests, "the variations that put some citizens below the line as a result of illness and accident (once we allow for these) can be dealt with, I believe, at the legislative stage when the prevalence and kinds of these misfortunes are known and the costs of treating them can be ascertained and balanced along with total government expenditure. The aim is to restore people by health care so that once again they are fully cooperating members of society" (Rawls 1993, 183).

Mark S. Stein argues that by postponing the case to the legislative stage, and emphasizing restoration of people into fully cooperating status, Rawls is

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[8] Disability has been stereotyped in different ways over the course of history. With the emergence of modernity and modern capitalism, exclusion of disability became the norm of the day, and mental disability got institutionalized and completely excluded from the mainstream of society. See Foucault 2001.

suggesting that "the society is to balance the benefits the disabled would receive from treatment against the costs such treatment would impose on society" (Stein 2002, 17). This essentially utilitarian implication in the Rawlsian theory is self-defeating, when we consider the strong critique that Rawls provides against the dominant utilitarian model.

The Rawlsian exclusion of the disabled has been a point of contention from the very days of 'A Theory of Justice'. In fact nearly four decades after 'A Theory of Justice' got published, the debates on justice and equality have seen a decisive shift towards the need for greater inclusiveness of the disabled. Ronald Dworkin, G. A. Cohen, Amartya Sen, Martha Nussbaum, Eva Kittay, and many others have criticized different dimensions of the Rawlsian theory because of the failure to adequately deal with the issue of disability.

Ronald Dworkin argued that by just focusing on social primary goods, Rawls ignore factors like health, and a good theory of equality should take into consideration these natural resources, so that the theory might be able to accommodate issues like justice for the disabled within its fold (see Dworkin 1981b).[9]

In Dworkin's view, an individual's physical and mental abilities should be considered as part of his or her natural resources. However he argues that these resources are different from independent material resources, and they can only help the individual to acquire these independent external resources (see Dworkin

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[9] For Rawls, liberty and opportunity, income and wealth, and the basis of self-respect constitute social primary goods (Kymlicka 2002). Social primary goods are those that any rational individual prefers more, rather than less off, whatsoever is their final conception of the good (Arneson 1990).

1981b). It has to be said that the issue is not just about the inclusive or exclusive nature of primary goods. There are certain fundamental problems within the Rawlsian framework that prevent him from including disability within the framework of justice as fairness.

There are some basic assumptions of the Rawlsian theory that would not let Rawls to include disability within the framework of justice as fairness. In 'Frontiers of Justice: Disability, Nationality, and Species Membership', Martha Nussbaum identifies four grounds on which Rawls has not been able to include disability within the structure of justice as fairness. according to her, "the four problematic areas that we must probe are the theory's use of income and wealth to index relative social positions, its use of a Kantian conception of the person and of reciprocity, and its commitments to the circumstances of justice and to the idea of mutual advantage as what makes cooperation superior to noncooperation" (Nussbaum 2006b, 107). She also suggests that Rawls' attempts at methodological simplicity also contribute to the issue of disability being postponed to a later stage.[10]

The Rawlsian Difference Principle argues that the social and economic inequalities should be regulated in such a way so that the least advantaged in the society are also benefited. But the relative social positions are indexed on the basis of a persons economic position. Since the first criterion of indexing is equal citizenship, equal liberty and rights are available to all the citizens. Rawls assumes that for

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[10] Rawls believes that the informational basis of justice should be simple enough, and should be comprehensible to any rational person, who is a party to the contract. In 'Political Liberalism', Rawls touches upon this point in his reply to Sen's critique.

purposes of redistribution, indexing can be done on the basis of income and wealth. He assumes that a person's social status corresponds to his or her economic position. He writes that "the definition of representative men for judging social and economic inequalities is less satisfactory. For one thing, taking these individuals as specified by the levels of income and wealth, I assume that these primary social goods are sufficiently correlated with those of power and authority to avoid an index problem. That is, I suppose that those with greater political authority, say, or those higher in institutional forms, are in general better off in other respects. On the whole, this assumption seems safe enough for our purposes" (Rawls 2000, 97). Although Rawls is aware of the plausible questions that can challenge this assumption, he retains it because of a primary concern for methodological simplicity.

The question of indexing difference in terms of income and wealth has been a major point of critique of the Rawlsian framework. Amartya Sen, Martha Nussbaum, Will Kymlicka and many others have pointed out that by limiting indexing of relative social positions in terms of income and wealth, Rawls is shutting out the possibility of making the theory more inclusive (see Sen 1980, 1992, 1999, Nussbaum 2006b, Kymlicka 2002). It has been argued that by setting such a limit, Rawls effectively rules out the possibility of including different kinds of human diversity within his framework.

From the days of 'Equality of What', Amartya Sen has consistently argued that the social primary goods that are at the core of the Rawlsian framework is not a sufficient tool to understand the various diversities in society. Social primary goods are only means to attain certain ultimate ends. Sen has been highly critical of

Rawls' insistence regarding measuring relative social positions in terms of income and wealth. He argues that "the interpersonal comparisons that must form a crucial part of the informational basis of justice cannot be provided by comparisons of holdings of means to freedom (such as primary goods, resources, or incomes). In particular, interpersonal variability in the conversion of primary goods into freedom to achieve introduces elements of arbitrariness into the Rawlsian accounting of the respective advantages enjoyed by different persons; this can be a source of unjustified inequality and unfairness" (Sen 1990, 114). Sen has maintained that by adopting income and wealth as the unit of measuring disadvantage, Rawls refuse to include human diversities that are important. People's ability to convert income and wealth is dependent upon various factors that might not be within the control of the individual. "since the conversion of these primary goods and resources into freedom to select a particular life and to achieve may vary from person to person, equality in holdings of primary goods or resources can go hand in hand with serious inequalities in actual freedoms enjoyed by different persons" (Sen 1990, 114).

The implication of indexing disadvantage in terms of the holding of primary goods is detrimental to the interests of the disabled. As Sen argues, the disabled suffers from both earning handicap as well as conversion handicap (see Sen 2004).[11] Although a person with disability and a so called normal person have the same level of income, their ability to convert the income into other goods certainly

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[11] By the term Earning Handicap, Sen means that the disabled might find it hard to get and a job, and even when it is found the general experience has been one of discrimination in terms of payment. Conversion Handicap according to Sen refers to the disadvantage that the disabled might face in converting money or other resources into good living. For more, see (Sen 2004).

varies. The person with disability needs extra resources to attain basic life facilities. His or her ability to convert primary goods depends on the nature and extend of the particular impairment, the level of technological development available, the extent of social acceptance and so on. Therefore any calculation of disadvantage based on relative income position alone would end up denying the legitimate special claims to which the disabled are entitled.

Sen suggests that indexing be done on the basis of basic human capabilities, and not social primary goods a suggestion Rawls considers as meritorious, although he rejects it in the end (see Nussbaum 2006b). Rawls holds on to these restrictive assumptions with a view to maintain methodological simplicity. He gives the following guidelines in 'Political Liberalism': "first, we must stay within the limits of justice as fairness as a political conception of justice that can serve as the focus of an overlapping consensus; and second, we must respect the constraints of simplicity and availability of information to which any practicable political conception (as opposed to a comprehensive moral doctrine) is subject" (Rawls 1993, 182).

In fact, Rawls accepts there are various diversities in the society, and these diversities can have an impact on the effectiveness of any theory of justice. He identifies four main kinds of such variations or diversities: (a)variations in moral and intellectual capacities and skills; (b) variations in physical capacities and skills, including the effects of illness and accident on natural abilities; (c) variations in citizens' conceptions of the good (the fact of reasonable pluralism); and (d) variations in tastes and preferences (see Rawls 1993, 184). In case of mental and physical diversities, Rawls assumes that the parties in the original position have

basic threshold level of such abilities. Rawls argues that the question of those who fall below this threshold level constitute hard cases, and since the major concern of justice as fairness is to conceive principles for the fundamental cases, the issue has to be postponed to a later stage. Rawls argues that to deal with the problem of people who might fall below the threshold level in terms of physical abilities, adequate principles can be derived, ones the veil of ignorance lifts and more information becomes available. However, Rawls does not pursue the question any further. He notes that he "cannot pursue the matter here and simply state the conjecture that by taking advantage of the information that becomes available at the legislative stage, a sufficiently flexible index can be devised in that it gives judgments as just or fair as those of any political conception we can work out" (Rawls 1993, 184).

Even if the disabled are compensated in terms of income for the deprivations they face, it cannot be an adequate response. Many of the restrictions that the disabled face are to be addressed at the level of the public domain. For example, if there is no public transport system accessible to the disabled, there is no use for the additional income he or she might receive from the society. Disabilities are to be addressed often through redesigning the public domain, and a theory of justice that does not take into account this factor and measure inequality in terms of income alone is bound to miss out on many important facets of justice (see Nussbaum 2006b).

Had Rawls taken up Sen's suggestion of indexing difference in terms of the actual choices available to an individual, then there would have been a chance of his theory being able to accommodate issues like disability within its fold (see

Nussbaum 2006b). However it is not without reasons that Rawls is forced to reject this proposal.

The particular nature of the contractarian structure of the Rawlsian theory, and his conception of the contracti as "someone who can be a citizen, that is, a normal and fully cooperating member of society over a complete life", in turn eliminate any chance of including various kinds of diversities like disability within the whole framework (Rawls 1993, 19).

The Rawlsian commitment to the circumstances of justice as has been proposed by David Hume and the particular contractarian framework of justice as fairness act as theoretical constrains that prevent the inclusion of the disabled within the framework of justice as fairness.[12] Like Hume, Rawls also subscribes to the idea that moderate scarcity of resources, mutual disinterest, and rough equality between the parties constitute the basic conditions in which mutual cooperation becomes possible and necessary (see Rawls 2000).[13]

The parties in the original position needs to come together because the available

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[12] The *circumstances of justice* are the set of conditions that give rise to the problems that are simultaneously problems of coordination and of conflict. In the view of Rawls, they are the background conditions in which mutual cooperation become possible and necessary. For more, see Rawls 2000, Vanderschraaf 2006.

[13] The circumstances of justice as has been elaborated in much of the contemporary contractarian literature are based on the ideas of David Hume. Although Hume was not a contractarian, his idea of the circumstance of justice has greatly influenced later contractarians like Rawls. As Rawls himself acknowledges, the objective circumstances of justice that he stipulates, are a basic restatement of Hume. The interesting aspect here is the fact that Hume had traced the roots of his ideas back to Thomas Hobbes, a contractarian himself, but in the contemporary analysis including that of Rawls, the roots of the idea of the circumstances of justice has been traced back to only Hume and not Hobbes. For more on this point, see Vanderschraaf 2006.

resources are not unlimited, and only through mutual cooperation can the best use of these available resources be made possible. Although the parties are not self-seeking maximizers, the veil of ignorance makes sure that they are not aware of one another's particulars, and therefore they are interested in getting a fair deal only for themselves (see Rawls 2000). According to Rawls, the framers of the social contract are roughly equal as far as their physical and mental capacities are concerned. He is not in favor of absolute equality, but he assumes that they all possess minimum level of rationality, and although the veil of ignorance prevent them from having any idea about their relative social positions, they are aware of their physical and mental conditions, and in that regard they are roughly equal (see Rawls 2000). All these assumptions of Rawls are particularly problematic when it comes to the question of justice for the disabled.

The disability rights movement argues that disabilities are a social construction. It is the social barriers and prejudices which prevent the disabled from becoming active participants in the different social and economic activities. The social and economic structures are constructed according to the demands of the so called normal and it is this construction of the social and economic sphere that acts as stumbling blocks (see Oliver 1990, 1996). If these barriers are removed the disabled also can become active citizens, and there is no justification of excluding the disabled from the framing of principles that would regulate functioning of the basic structure of the future society.

When one approaches the question from the perspective of the physically disabled, this argument seems quite strong. Although physically impaired, the physically disabled possess moral and rational faculties which are essentials for a Rawlsian

citizen.[14] So it is unfair that they are kept out of the process of formulating principles for a well ordered society. The present-day technological development has enhanced the economic productivity of the majority of the physically disabled people to a great extend.

However, Rawls is in no position to include this claim within his framework because of two basic reasons. Firstly, if the physically disabled are included within the framework, Rawls end up losing the primary indexing mechanism the income and wealth criterion. This result in the methodological simplicity of the principles being compromised, and accommodating intuitionist understandings to which he is resolutely opposed to (see Nussbaum 2006b).

More importantly, his commitment to the Humean Circumstances of justice creates further anomalies for Rawls. G. A. Cohen argues that the social contract structure of the Rawlsian theory prevents a fair treatment of the issue of disability. The basic idea of the contractarian theory is that individuals comes together and enter into a social contract to ensure mutual advantage (see Cohen 1995, Quong 2007). In the hybrid contractarian conception of Rawls, The basis of social cooperation is mutual advantage: "social cooperation is always for mutual benefit and this implies that it involves two elements: the first is a shared notion of fair terms of cooperation, which each participant may reasonably be expected to accept, provided that everyone else likewise accepts them. Fair terms of cooperation

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[14] The Social Model of disability argues for a sharp distinction between disability and impairment. For the advocates of the approach, impairment represents a physical or mental condition, where the individual faces some medical laxity. For them, Disability means the socialization of a person's impairment so as she or he is prevented from becoming active citizens because of some impairments. For an elaborate discussion, see Oliver 1996.

articulate an idea of reciprocity and mutuality: all who cooperate must benefit, or share in common burdens, in some appropriate fashion judged by a suitable benchmark of comparison" (Rawls 1993, 300).[15] Since the resources are scarce, individuals need to come together and cooperate with one another to make the best use of available resources. As far as Rawls is concerned, the citizens are fully cooperating members of the society over a life time. The basis of this cooperation is mutual advantage, and Rawls refuses to assign any strong assumptions like benevolence in his theoretical structure (see Rawls 1993, 2000, Nussbaum 2006b). The basic rule that governs this cooperation is founded on the principle of cost effect analysis (see Nussbaum 2006b).

It is true that the physically disabled and mildly retarded persons would be able to become productive in the economic sense if the existing social and economic structures are rearranged in such a way that they become more inclusive. However, the cost of such restructuring might outweigh the extra economic productivity the disabled might bring in. this means there is no economic advantage as a result of the cooperation, and so there is no benefit in cooperating with such a group. Therefore, there is no incentive for the Rawlsian citizen to cooperate with the disabled (see Nussbaum 2006b).

The Kantian conception of the person as free, equal, independent and rational being happens to be another serious theoretical anomaly at the core of the Rawlsian paradigm that prevents the attempts at including the issue of disability within the

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[15] Although the Rawlsian theory has a strong moral foundation based on the Kantian ideas, his theory is also influenced by others particularly David Hume, whose ideas about the relationship between justice and cooperation has greatly influenced Rawls.

framework of justice as fairness (see Kittay 2001, Nussbaum 2006b). Rawls believes that rationality is the distinctive character of human beings. The two moral powers that entitles one as the designer of principles that regulate organized human institutions, the ability to have a conception of one's own good, and the ability to have a sense of fair principles of justice that would enable others to pursue their own conception of the good, emanates from a rational basis. The extraordinary importance that the power of intellect has is a central feature of liberalism in general, and the Rawlsian theory in particular. Persons, with this capacity "in turn, become the bearers of rights, the only signers of the social contract, the only actors in our morality plays, the only players to whom the rules of justice pertain, and so, the only ones for whom citizenship and justice are defined" (Kittay 2001, 563).

The physically and mentally disabled do not come under the narrow conception of the person that Rawls or for that matter Kant offers. When it comes to the question of mental disability, the Rawlsian theory bungles up completely. According to Rawls, the framers of the contract are rational, free, and independent. In a liberal sense, none of these values can be attributed to the mentally disabled.

The powers of public articulation, the ability to have a conception of the good of their own, powers that are at the center of the idealized fiction of rationality that form the core of the Rawlsian paradigm do not correspond to the every day reality regarding the mentally retarded individuals. It is because of these pressing difficulties that traditional contractarian theories put aside the question of justice for the disabled. But can this exclusion be justified? As Eva Kittay notes, "if traditional theories in the Western moral and political tradition are correct in their exclusion, then we have to wonder: When the heart cries "Injustice" upon

encountering pictures of the mentally retarded tied to their beds, where one attendant cares for over one hundred entirely dependent residents (as in the "asylum" in Guadalajara), is this merely a misunderstanding of the term justice?" (Kittay 2001, 564).

The contractarian conception of citizenship is far too limited to include people with severe mental disability (see Kittay 2001). The core of the liberal conception of citizenship, the idealized fiction of people being roughly equal, free and independent, and the emphasis on intellect and deliberative rationality as distinctive human qualities that would enable one to become citizens of the well ordered society keep the mentally disabled out of the framework of citizenship itself.

However, as Eva Feder Kittay argues, the question of the severely retarded persons cannot be placed outside the framework of justice and citizenship. Although they are not productive in the economic sense of the term, the mentally disabled are capable of entering into meaningful relationships with other fellow human beings, and therefore should come under the framework of citizenship (see Kittay 2001).

The Rawlsian conception of the person as roughly equal and independent has another grave consequence in the context of severe mental disability. The severely disabled are prone to extreme dependents on others even to the extent of performing their daily life activities. However, the Rawlsian theory completely ignores the question of dependency. The conception of the person as rational, free, independent, and fully cooperating over a complete life makes it impossible for Rawls to conceive any kind of dependency within his theoretical formulation. Rawls treat the case of the disabled as exception, but interestingly, as we have

already seen, postpone the question to a later date, to be addressed later on.

However, as Eva Kittay argues, dependency is not the exception, but it is the rule in the sense that people cannot remain as the fully cooperating individuals throughout a life time, as factors like old age and ill health makes one dependent on others (see Kittay 2002). Traditionally, the liberal contractarian theories have placed the question of care giving within the domain of the family. Rawls' theory is also not an exception to this. Pushing back such care giving activities to the realm of the family is highly problematic. As Kittay argues the persons with severe mental retardation are to be cared for either by their own family members or professional care takers. Most often the care-giving activity becomes the domain of the women. Just like those who receive care, the care-givers are also subjected to denial of social justice. When members of the family performed care-giving duties which require investment of lot of time and energy, it ultimately results in their economic productivity being restricted. When women of the family performed care giving duties, it becomes unpaid labor and even when professional care givers performed the task it is often under paid (see Kittay 2001).

In assigning the care giving activities to the domain of the family, the Rawlsian theory becomes arbitrary in another important sense. In the public domain, the disabled often faces serious discrimination and stereotyping of their impairment and disability (Oliver 1990, 1996). The liberal theory including that of Rawls views the family as the sphere of love, compassion, and understanding. However, as feminist theories have long contended, such an understanding of the family is often flawed as the prevailing social norms have an important role in shaping

family values (see Nussbaum 2006b).[16] In fact, Mike Oliver has pointed out that the disabled faces serious discrimination within the family as well (see Oliver 1990).

So as to address the complex situation, Kittay proposes that care be included in the list of Rawlsian primary goods (see Kittay 2001). But Rawls has serious difficulty in accepting this seemingly reasonable proposal. As Martha Nussbaum points out, if care is included within the list of Rawlsian primary goods, it might upset the simpler method of indexing relative social position on the basis of income and wealth (see Nussbaum 2006b). More than this methodological problem, Rawls has greater theoretical difficulty in accepting Kittay's proposal. In the Rawlsian original position there is no place for the value of benevolence (see Nussbaum 2006b).[17] Since the framers of the principles of justice are not aware of one another's relative social positions Rawls also refuses to entertain strong assumptions like benevolence within the fair procedure (see Nussbaum 2006b). So there is no way to see how they would react to a deprived person. Moreover, since Rawls regards citizens of well ordered society as free, equal and independent it is virtually impossible to bring in the element of care into his framework as it represents extreme dependence of people over others.

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[16] The public private divide has been a central theme of liberalism. Many schools of thought have challenged this basic assumption of liberalism. The feminist theories present a strong challenge to the liberal idea of division between the public and the private spheres. These theories contend that the divide is arbitrary. For more on this, see Gavison 1992.

[17] For Rawls, the idea of the original position represents the initial situation in which the principles of justice are selected. In the original position, the parties to the social contract have no idea about their particulars like their respective social and economic position etc. this is done to ensure

Disability and the Later Modifications of the Rawlsian formulation

Although Rawls never took up the challenge of disability seriously, many other theorists have taken up the question. Rawlsians like Norman Daniels, Thomas Pogge, Harry Brighouse, and Henry Richardson have attempted to include disability within the framework of justice as fairness. While Daniels and Pogge favor a scheme that has its thrust on restoration of the disabled to species typical functional level, Brighouse favors a two stage original position where special principles can be derived to deal with the question of disability (see Daniels 1990; Pogge 2002; Brighouse 2005; Demuijnck and Le Clainche 2004). A detailed exposition of these approaches is not possible here. However it has to be mentioned that these approaches have inherited much of the problems of the Rawlsian framework. When these theories attempted serious modifications, they have to either enter into drastic shifts from the basic Rawlsian framework or had to be dependent upon principles other than justice (see Brighouse 2005, Richardson 2006, Quong 2007).

At this juncture, it is interesting to look at some of the other liberal egalitarian theories that share many basic intuitions of the Rawlsian framework. Thomas Scanlon suggests that at the point of framing principles of justice the issue of disability can be included if the framers act as trustees (see Nussbaum 2006). Anita Silvers and Lesley Francis argue that contractarian theories are unable to accommodate disability within the fold because of the concept of the persons as mutual bargainers who cooperates with one another due to their ability to

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fairness, which is the foundation of the whole theory. In this hypothetical condition, the parties are supposed to be covered by a Wale of Ignorance.

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participate in the productive process. Instead if the contractarian theories base themselves on the platform of mutual trust, the issue of disability can be accommodated (see Silvers and Francis 2005). However, Rawls has obvious problems with this approach because of his insistence upon keeping benevolence out of the process of forming principles of justice.

The luck egalitarian project has its roots in the basic Rawlsian intuitions.[18] Besides bringing in the element of choice and responsibility to the egalitarian theoretical framework, there are important suggestions regarding inclusion of the issue of disability within the egalitarian formulation. Although the luck egalitarian school represents various theoretical formulations, the theory of Ronald Dworkin, who criticized Rawls for failing to include natural resources like health within the framework of justice, is discussed briefly. The enquiry has been limited to Dworkin alone not only because of space concerns, but also due to the fact that some of Dworkin's proposals like social insurance has been considered favorably by Rawls as possible methods to account for the issue of disability within justice as fairness (see Nussbaum 2006b).

Dworkin's theory of equality of resources is based on the idea of being ambition-sensitive and endowment-insensitive (see Kymlicka 2002). Dworkin argues that people should be held accountable for their expensive choices, and unlike welfare

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[18] The phrase luck egalitarianism was coined by Elizabeth Anderson. According to her, "luck egalitarianism relies on two moral premises: that people should be compensated for undeserved misfortunes and the compensation should come only from that part of others' good fortune that is undeserved." (Anderson 1999, 290). Ronald Dworkin, Gerald Cohen, Richard Arneson, John Roemer, Thomas Nagel, Eric Rakowski, and Philippe Van Parijs are classified within the broad group of theorists who belong to the luck egalitarian School. For more details, see Anderson 1999, Sheffler 2003.

egalitarians, he argues that they should not be compensated for these expensive choices (see Dworkin 1981a). He proposes a theory of equality of resources. All individuals should start from a point of equal resources. Using the analogy of victims of a ship-wreck who land up in an isolated island, Dworkin argues for the equal sharing of the resources of the island among the new inhabitants. He suggests that when no individual envies another one's bundle of resources, that distribution can be considered as equal: "no division of resources is an equal division if, once the division is complete, any immigrant would prefer someone else's bundle of resources to his own bundle" (Dworkin 1981b, 285). Dworkin argues that luck plays an important role in the distribution and use of resources. He identifies two kinds of luck that are important in the scheme of equality: "option luck is a matter of how deliberate and calculated gambles turn out-whether someone gains or loses through accepting an isolated risk he or she should have anticipated and might have declined" (Dworkin 1981b, 293). In his view, "brute luck is a matter of how risks fall out that are not in that sense deliberate gambles" (Dworkin 1981b, 293).

Dworkin argues that bad brute luck is not the result of any deliberate choice on the part of the individual and therefore it should be compensated. He proposes a complex system of an insurance market, and suggests that the compensation should be based on the average amount of insurance that the people are willing to take for an anticipated disability in the future (see Dworkin 1981b).

In Dworkin's view, disability is a result of bad brute luck in the sense that it is not the result of a conscious choice on the part of the individual (see Dworkin 1981b). Unlike Rawls, Dworkin include physical and mental abilities within the framework

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of resources. He considers the disabled as people who lacks these internal resources and therefore should be compensated: "any person's physical and mental powers must count as part of his resources, so that someone who is born handicapped starts with less by way of resources than others have, and should be allowed to catch up, by way of transfer payments, before what remains is auctioned off in any equal market" (Dworkin 1981b, 300). However, Dworkin does not view these internal resources at par with the independent material resources. In fact the importance of the internal resources is the fact that they help an individual to acquire material resources (see Dworkin 1981b).

Dworkin understands disability as the lack of some internal resources. His proposed solution is to adequately compensate this 'bad brute luck' through social insurance. In his later writings, Rawls also seems to react favorably to the idea of social insurance (see Nussbaum 2006b).

However, a further enquiry down this line shows that an understanding of disability through such an approach is highly problematic. Elizabeth Anderson powerfully argues that the luck egalitarian project is a self-defeating one. She argues that even when the luck egalitarian theories compensate people for their disabilities, there is implicit disrespect involved (see Anderson 1999). The Disabled are compensated for their lack of internal resources which in turn renter them incapable of engaging in productive activities that would enable them to earn what Dworkin called the independent material resources. So rather than promoting moral equality, luck egalitarianism promotes social hierarchy and division between the so called normal who are capable of engaging in productive activities and the disabled who are lacking in such abilities (see Anderson 1999).

Dworkin's idea of disability is closer to the medical approach on disability. Interestingly, he uses the term handicapped rather than the term disabled throughout his writings on the issue (see Dworkin 1981b).[19] As David Wasserman argues, in treating disability in this narrow sense, Dworkin ignores the entire spectrum of the social dimensions of the problem of disability. He notes, "admittedly, accounts like Dworkin's (1981) that require equality of resources tend to take the social environment for granted when they propose a hypothetical division of resources into individual bundles, either within the present scheme of social and economic cooperation or in a state of nature assumed to evolve into a scheme like the present one through transactions among equally endowed participants" (Wasserman 2006, 219). As has been already pointed out, the inability of the disabled to contribute to the process of production is also dependent upon the particular social conditions.

Like the Rawlsian theory, the luck egalitarian project also fails to accommodate the element of care within its theoretical fold. As has been mentioned, the performance of the duties of care giving is often confined to the domain of the family, and is generally underpaid. However under the luck egalitarian formulation, the individuals who engagement in care giving activities have the better option of choosing another more rewarding career available to them. So their choice of doing

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[19] The issue of the right terminology has been a hot topic of dispute between the various models of disability. The traditional medical model often uses the term handicapped in the sense that the concerned individual suffers from some acute medical condition. The social model has strongly contested this term and argued that it is a demeaning and disrespectful usage which implies that the disabled require charity from others due to their impairment. Instead of the term handicapped the social model proposed the usage of disabled people or people with disability. For more details, see Barnes, Mercer, and Shakespeare 1999.

care giving activities happens to be part of their option luck, and the society is under no obligation to compensate them. As Elizabeth Anderson notes, this means "people who want to avoid the vulnerabilities that attend dependent caretaking must therefore decide to care only for themselves. This is egalitarianism for egoists alone" (Anderson 1999, 300). Thus, like the Rawlsian project the luck egalitarian project also fails to adequately accommodate the issue of disability within its framework.

Conclusion

There is a perceptible tension between the strong sense of morality at the core of the Rawlsian theory and his treatment of the issue of disability. Rawls believes that people should not be advantaged or disadvantaged due to their natural or social disadvantages in the framing of principles of justice. In his discussion of the idea of original position, Rawls writes, "it seems reasonable and generally acceptable that no one should be advantaged or disadvantaged by natural fortune or social circumstances in the choice of principles" (Rawls 2000, 19). However, The Rawlsian formulation in its present form is not flexible enough to include the issue of disability within its fold. What Samuel Freeman calls 'the Realistic Utopia' of Rawls do not work as far as including the issue of disability is concerned. His list of primary goods are too limited and rigid, and his insistence on indexing relative social advantage in terms of income and wealth ends up denying the rightful claims of the disabled. The Rawlsian conception of citizenship arbitrarily keeps the disabled outside the very framework itself, and the conception of the person he advances keeps the disabled in the margins of moral personhood. His alternative proposal of postponing the issue of disability is against the very moral claims that

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have been the hallmark of his own theory. The various attempts at including the issue of disability within the vantage point of the Rawlsian framework like that of Daniels, Brighouse, Richardson or Stark have to do away with many basic assumptions of Rawlsian theory, and even then, they have inherited much of the problems that the Rawlsian theory has in its theoretical structure. The luck egalitarian project has misrepresented the issue of disability, and the underlying contractarian structure makes the theory incapable of addressing the issue of disability fairly.

For an adequate understanding of disability, one needs to go beyond the rather limited conception of personhood and citizenship that Rawls offers. One has to also come out of the constraining framework of the social contract structure with its commitment to the Humean circumstances of justice.

No theory of justice can be complete without specifying the society's obligation to the disabled. No such theory can idealize the social circumstance and get away from the real issues at hand. To adequately include the issue of disability within the framework of a theory of justice one needs a broader conception of the person, and a more positive account of the circumstances of social cooperation based on the intrinsic dignity of human being. The following chapters in this study attempts to derive such a model within the framework of the capability approach pioneered by Amartya Sen and Martha Nussbaum.

Chapter II

The Capability Approach: A Theoretical Exposition

Introduction

Although John Rawls has brought normative political philosophy back on to the mainstream discourse through his 'A Theory of Justice', many issues like gender and disability fails to get an adequate treatment within the Rawlsian framework, or for that matter, broadly within the social contract paradigm. As has been discussed in the first chapter, the capability approach of Amartya Sen and Martha Nussbaum entails a critique of mainstream contractarian theories, and an attempt to provide an alternative based on the substantive ability of the people to access valuable doings and beings. The basic objective of this study is to understand the capability approach and its take on the issue of disability.

This chapter is a theoretical exposition of the capability approach. Here an attempt is been made to broadly understand the basic ideas of the capability approach. Many scholars maintain that the capability approach "is a broad normative framework for the evaluation and assessment of individual well-being and social arrangements, the design of policies, and proposals about social change in society" (Robeyns 2005, 94).

Amartya Sen pioneered the capability approach in the 1980s. Ever since the days of Sen's Tanner Lecture on 'Equality of What', the approach has grown a lot, and has become very much interdisciplinary. From theories of social choice to measurement of poverty, from questions regarding the metric of equality to

questions about the nature of freedom, one can see a large but scattered, and widespread literature based on the capability approach. The discourse on human rights, human development, studies on poverty and famine, the fields in which the capability approach is been used is quite diverse (see Robeyns 2005). The approach has been extensively used within development economics in empirical studies regarding the nature and origin of poverty, malnutrition, resource distribution and so on. Within political theory, feminists and egalitarians of different kind have extensively engaged with the capability approach. Martha Nussbaum has extended the approach in the domain of philosophy, and has used the approach in an Aristotelian essentialist framework to challenge relativist doctrines (see Nussbaum 1992, 1993). Organizations like the United Nations Development Program have put the approach into practical usage through different Human Development Reports.[1] However, the focus of this chapter is on the theoretical foundations, and therefore the enquiry is limited to the major theoretical works of Amartya Sen, who pioneered the approach, and Martha Nussbaum who has expanded its reach to normative political philosophy and questions of justice.

The exposition of the approach is undertaken through two basic streams. When the

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[1] The UNDP website describes the human development report initiative as "a reliable source and alternative perspective on critical issues for Human Development Worldwide Featuring the Human Development Index - every report presents agenda-setting data and analysis and calls international attentions to issues and policy options that put people at the center of strategies to meet the challenges of development today - economic, social, political, and cultural". The effort was pioneered in 1990 under the leadership of Mahboob Ul Huk. Amartya Sen has also contributed to the process of formulating the human development index that has been the basis on which the reports have been prepared over the years. For more details, http://hdr.undp.org.

capability approach took shape, it started out with a strong and profound critique of means based and subjective preference based theories of assessing well-being. On a more positive note, the capability approach then proposed an alternative conception of understanding well-being on the basis of the substantive freedoms or ability of the individual to achieve certain doings and beings that are worthy of a flourishing human life. So an understanding of the capability approach should be undertaken from these two angles. First we start with the critique of the mainstream theories, in particular that of utilitarianism, which has been the dominant paradigm in public policy formulation for more than two centuries, and the moral contractarian Rawlsian theory of justice as fairness, that has been the strongest alternative proposed to the utilitarian model. Thereafter we go on to the proposed alternative of Sen and Nussbaum. Although many other scholars have made much substantial contribution to the capability approach, here the basic focus will be on the two pioneers of the model, Sen and Nussbaum.

Although Amartya Sen had launched his academic career in the 1970s through his influential studies on the social choice theory, he started developing the capability approach extensively after 1980.[2] In his Tanner Lecture titled 'Equality of What?' Sen challenges many assumptions of mainstream theories of equality. The ideas

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[2] The Social Choice Theory was pioneered by French mathematicians like Board and Condorcet during the late 18th century. The theory tries to look at the processes of arriving at a legitimate and rational choice for society. In its modern form the theory was brought back in the discourse of welfare economics by Kenneth Arrow in the 1950s, but his 'Impossibility Theorem' suggested that consistency of choices becomes possible only in dictatorships, and there are serious problems within the democratic framework. Taking forward Arrow's argument for an individual based assessment of welfare, Sen arrived at the idea of understanding welfare through assessment of 'Functioning and Capability'. For a summery of Sen's views on Social Choice Theory, see Sen 2006c.

introduced in that lecture has been developed and considerably modified by Sen in subsequent writings, but the basic framework of the capability approach can be found in that writing. His later encounters with theorists like Rawls and Dworkin was basically on the question of 'Equality of What?'

In Sen's view, the informational basis of a theory of justice would determine its reach and effectiveness (see Sen 1999).[3] If the informational basis is limited, the diversity within different human beings may not be accounted for. Utilitarian and resource based theories have this problem. Sen argues that means based categories like income, primary goods, or resources can not be an adequate basis for understanding development, justice, and equality (see Sen 1980). He also rejects the utilitarian logic as well. In his view capabilities or substantive freedom should constitute the basis of development and equality (see Sen 1980).

The capability approach rejects aggregate income calculations that have been the norm in welfare and development economics as an inadequate basis for public policy formulation. In Sen's view, they obscure the underlying real issues of the various factors that influence a person's substantive ability to achieve valuable doings and beings. Although an increase in real income might enhance other

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[3] According to Sen, "any evaluative judgment depends on the truth of some information and is independent of the truth or falsity of others. The 'informational basis of a judgment' identifies the information on which the judgment is directly dependent and—no less importantly—asserts that the truth and falsehood of any other type of information cannot *directly* influence the correctness of the judgment. The informational basis of judgments of *justice,* thus, specifies the variables that are directly involved in assessing the justice of alternative systems or arrangements (the role, if any, of the other variables being only derivative)" (Sen 1992, 73). In case of utilitarianism, the informational basis is the amount of utility, while in case of the Rawlsian theory, the holding of social primary goods acts as the informational basis.

welfare, equality and development are beyond the limits of real income calculations (see Sen 1999). Income and wealth are means to an end. But individual's ability to convert income into ends is dependent on very many factors, and a same level of income may not enable individuals to convert it equally (see Sen 1992). As Martha Nussbaum observes, aggregate income based calculations and ranking of countries obscure many things. Sighting the case of the erstwhile discriminatory regime in South Africa, she argues that a country with gross inequality in the distribution of resources can get a good ranking in an aggregate income based calculation (see Nussbaum 1992). She further notes, "such an approach, furthermore, does not look at all at other human goods that are not reliably correlated with the presence of resources: infant mortality, for example, or access to education, or the quality of racial and gender relations, or the presence or absence of political freedoms" (Nussbaum 1992, 229).

Capability Approach and Utilitarianism

Like the Rawlsian theory of justice as fairness, the capability approach also has its vantage point in the critique of the dominant utilitarian paradigm, which has been of considerable importance as far as policy formulation is concerned.[4] Rawls was mainly concerned about the lack of space for individual conceptions of the good, and the possibility of trade off of inviolable natural rights and basic liberty of the individual in the name of aggregate utility calculation (see Rawls 2000). Martha Nussbaum, supporting the Rawlsian case against such possible trade offs argues that if utility is considered as one single metric, trade offs of different human

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[4] The Rawlsian critique of the utilitarian model has been mentioned in the first chapter. For more details, see Rawls 2000.

functionings becomes possible within a utilitarian framework. Human life is composed of a plurality of activities, and many of these doings and beings have intrinsic value. However, utilitarianism only assigns these functionings an instrumental value in terms of their ability to influence utility. To promote aggregate utility, there can be trade off of the rights and freedoms of the individual. However Nussbaum argues that such trade offs are against the very egalitarian conception of human dignity and self-respect as every individual is entitled to have at least the basic threshold level of all doings and beings that are considered central to a flourishing human life (see Nussbaum 1993). The emphasis on the single metric of aggregate utility means that the utilitarian framework might lead to the justification of the notion of one mans misery being balanced with another's satisfaction (see Nussbaum 1992).

Amartya Sen have extended the criticism into newer territories. He deals with the classical Benthamite form of utilitarianism, where utility is considered as a mental metric, as some kind of pleasure. He also finds problems with the later modifications of the approach as well (see Sen 1979, 1980, 1992, 1999).

Sen identifies three distinct components within the utilitarian framework of evaluation. They are 'consequentialism', 'welfarism', and 'sum-ranking' (see Sen 1999). According to Sen, 'consequentialism' "stands for the claim that all choices (of actions, rules, institutions, and so on) must be judged by their consequences, that is, by the results they generate" (Sen 1999, 58). As the focus of utilitarianism

is on consequents, it is a teleological theory, and it entails a rejection of procedural theories like that of Rawls which are deontological.[5]

Welfarism, in Sen's view, "restricts the judgments of state of affairs to the utilities in the respective states (paying no direct attention to such things as the fulfillment or violation of rights, duties, and so on)" (Sen 1999, 59). When the two requirements, 'Consequentialism' and 'Welfarism' are combined, it means that different choices are to be evaluated on the basis of their utility (see Sen 1999).

The third component of the utilitarian evaluation is "sum-ranking, which requires that the utilities of different people be simply summed together to get their aggregate merit, without paying attention to the distribution of that total over the individuals (that is, the utility sum is to be maximized irrespective of the extent of inequality in the distribution of utilities)" (Sen 1999, 59).

These three components together form the classical idea of utilitarianism. In this formulation, where choices are guided on the basis of the amount of utility they can generate, "injustice consists in aggregate loss of utility compared with what could have been achieved. An unjust society, in this view, is one in which people is significantly less happy, taken together, than they need be" (Sen 1999, 59).

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[5] A teleological theory is one that is based on the end result. For instance the aim of utilitarianism is the promotion of utility. In deontological theories, rather than end results, what matters more is the right procedure. Deontological theories believe that the right procedure guarantee the right result. In another sense, teleological theory prioritizes good over right, and deontological theories prioritize right over good. This has been the line adopted by Rawls in his theory. For a critical evaluation of this claim of Rawls, see Kymlicka 1988.

The utilitarian theory has made its presence felt for more than two centuries, and influenced public policy formulation. However, the capability approach problematizes this dominant paradigm. Both Sen and Nussbaum concede that utilitarianism has merits. Nussbaum suggests that the most significant aspect of the utilitarian approach is its focus on the people, rather than on categories like Gross National Product. In Sen's view, the judgment of social arrangements, their consequences are also important. No social arrangement can be fully understood or justified without analyzing its end result. Evaluation on the basis of mere constitutive principles cannot be considered adequate. Although utilitarianism takes 'Consequential Evaluation' to an extreme level, where consequences are evaluated on the basis of the utility criteria, Sen argues that consequential evaluation when not taken to extreme levels can throw considerable light on the working of a social arrangement (see Sen 1999).

Like Rawls, Sen is also concerned about the inability of the utilitarian framework to respect individual conceptions of the good. Utilitarianism is concerned about maximization of aggregate utility, and the individual's conception of the good has no priority whatsoever. Another general critique that Sen points out is the failure of utilitarianism to evolve accurate criteria to measure the mental metric of utility (see Sen 1992).

Sen's critique of the utilitarian paradigm goes beyond this general dimension. In his view, "utilitarianism is ultimately an efficiency-oriented approach, concentrating on promoting the maximum sum total of utilities, no matter how unequally that sum total may be distributed" (Sen 2006b, 423). His critique of utilitarianism has three distinct components. 'distributional indifference', 'neglect

of rights, freedoms and other non-utility concerns', and 'adaptation and mental conditioning' (Sen 1999, 61). Martha Nussbaum and other scholars have done much work to enhance Sen's critique of the utilitarian model.

By 'Distributional Indifference', Sen suggests that utilitarianism only cares for sum total of aggregate happiness, and is not concerned about inequalities within the distribution of happiness as such. Even when one is concerned about general happiness, the extent of inequalities in the distribution of this happiness among individuals is equally important, and the utilitarian calculus fails to see this point (Sen 1999, 61).

The neglect of freedoms, rights and other non-utility concerns has been pointed out as an important problem within the utilitarian framework. Utilitarianism is basically concerned with aggregate utility considerations. Rights, freedoms and other similar values have no direct importance within a utilitarian framework. If at all these values have any considerations, it is in the context of them promoting happiness. Rights and freedoms have an intrinsic value, and have a wider reach than as promoters of overall utility. As Sen says, "it is sensible enough to take note of happiness, but we do not necessarily want to be happy slaves or delirious vassals" (Sen 1999, 61).

The cornerstone of the capability approach's critique of the utilitarian framework has been the 'Adaptive Preferences' argument.[6] Sen, Nussbaum and other scholars

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[6] The usage 'Adaptive Preferences' was coined by John Elster. In his view, 'Adaptive Preferences refer to an adjustment of people's aspirations to feasible possibilities. For more details, see Elster 1982, Teschli and Comim 2005.

of the capability school has done considerable work in this field. In Sen's view, "even the view the utilitarian approach takes of individual well-being is not very robust, since it can be easily swayed by mental conditioning and adaptive attitudes" (Sen 1999, 62).

The basic idea is that the utilitarian metric based on the subjective preferences might not represent a real state of individual wel-being, as human beings have a tendency to adapt to the circumstances and adjust their preferences accordingly. This is particularly important in the case of marginalized identities, women, disabled and so on. As Sen suggests, "the deprived people tend to come to terms with their deprivation because of the sheer necessity of survival, and they may, as a result, lack the courage to demand any radical change, and may even adjust their desires and expectations to what they unambitiously see as feasible" (Sen 1999, 63).

People living under oppressed and deprived conditions often end up adapting themselves to the circumstances, and try to find happiness within such circumstances. Nussbaum's illustration of the point through case studies in India is a telling contribution in this context. The cases of Basanti and Jayama, one living with an oppressing husband and another working for a lower wage for decades in comparison to fellow mail workers respectively, do not find themselves particularly unhappy due to their particular circumstances (see Nussbaum 2000). However, this does not mean that they are in an actual condition of well-being. As Sen says, "usual underdogs in stratified societies, perennially oppressed minorities in intolerant communities, traditionally precarious sharecroppers living in a world of uncertainty, routinely overworked sweatshop employees in exploitative

economic arrangements, hopelessly subdued housewives in severely sexist cultures", may have distorted preferences, and the mental metric of utility cannot be the correct basis to understand their real well-being (Sen 1999, 63).

The capability approach's critique of utilitarianism is profound and deep. It shares the Rawlsian concerns regarding the inability of the utilitarian paradigm to account for individual conceptions of right and good. But it goes beyond the Rawlsian critique of utilitarianism when it comes to the 'Adaptive Preference' argument against the utilitarian model. However it should be mentioned that the focus on what the people are actually able to do, the core concern within the capability approach has been influenced by the utilitarian model (see Nussbaum 1993).[7]

Justice as Fairness and the Capability Approach: A Contrast

The mutual engagement between the capability approach and the Rawlsian theory of justice as fairness has been profound and long.[8] Even while sharing many insights with the Rawlsian approach, the capability approach projects itself as an

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[7] For a discussion on the potential meeting points between the capability approach and utilitarianism, see Comim 2005.

[8] Other than the prolonged arguments between Rawls and Sen, the interventions of Rawlsians like Norman Daniels, Harry Brikhouse, Thomas Poggey on the one hand, and scholars from the capability school, like Ingrid Robeyns, Elizabeth Anderson, and Sandrine Berges on the other, have enriched the literature greatly. See Daniels 1990, Pogge 2002, Brighouse 2005, Robeyns 2004, Anderson 1999, Berges 2007.

alternative to the theory of Justice as Fairness, at least on a partial basis.[9] Since the capability approach has not been developed as a complete theory of justice, a comprehensive comparison of the Rawlsian theory and the capability approach may be premature. Therefore the attempt here is to identify certain common grounds, and on a more detailed scale, an engagement with the critique of the Rawlsian theory offered by the capability approach.

As has been already pointed out, the capability approach and the Rawlsian justice as fairness are antagonistic to the dominant utilitarian paradigm (see Rawls 2000, Sen 1992, 1999). Another feature of the Rawlsian formulation that has been greatly appreciated by the capability approach has been its equity centered nature. Sen suggests that one of the principle merits of the Rawlsian approach has been the fact that it has brought equity to the center of justice debates unlike the utilitarian model, which had equity at the peripheries. As Sen brings to our notice certain aspects regarding Rawls' principles of justice. According to him they put "equity at the centre of disputes about justice in a way that utilitarianism (peripherally concerned, as it is, with equity) fails to do" (Sen 2006b, 428).

Even while accepting many broad insights of the Rawlsian paradigm, the capability approach has a deep and profound critique of justice as fairness. There are four broad lines on the basis of which one can understand the capability approach's critique of the Rawlsian theory. The limited nature of primary goods as

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[9] Martha Nussbaum suggests that the version of the capability approach that she advances should be considered as complimentary to the Rawlsian theory, rather than as an alternative. She says that her version of the capability approach tries to be more inclusive, especially when it comes to people and social sections that have not got a fair deal within the Rawlsian theory.

the basis of interpersonal comparisons, the restricted application of the Rawlsian political conception of justice, the exclusionary nature of the Rawlsian contract structure, and the idealized theoretical conception of justice as fairness (see Robeyns 2004).[10]

The Rawlsian difference principle suggests that social and economic inequalities are to be arranged in such a manor that the least advantaged are benefited (see Rawls 2000, Kymlicka 2002). The holding of primary goods determines one's social and economic status. The idea of priority of liberty and the lexical ordering of the two principles of justice means that disadvantage is measured on the basis of income and wealth within the Rawlsian framework.

In his Tanner Lecture, 'Equality of What?', Amartya Sen argued that the Rawlsian primary goods are not an adequate basis for interpersonal comparison in the realm of justice (see Sen 1980). In subsequent writings, he has expanded the claim, and this argument has become the focal point of the critique of justice as fairness that the capability approach offers. Sen's argument is that social primary goods are means to an end, and not an end in itself. The conversion of these goods into meaningful ends is influenced by external factors that are not necessarily within the control of the individual (see Sen 1992). In 'Inequality Reexamined', Sen argues that equality of holding of primary goods do not ensure substantive equality: "since the conversion of these primary goods and resources into freedom of choice over alternative combinations of functionings and other achievements may vary from person to person, equality of holdings of primary goods or of

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[10] For more on the Rawlsian understanding of primary goods, see Arneson 1990, Kymlicka 2002.

resources can go hand in hand with serious inequalities in actual freedoms enjoyed by different persons" (Sen 1992, 78).

Even if two individuals have the same level of primary goods, their level of actual equality may not be the same, as the process of conversion of primary goods into freedoms or other ends depends on external factors as well. Sen notes, "the extent of real inequality of opportunities that people face cannot be readily deduced from the magnitude of inequality of *incomes*, since what we can or cannot do, can or cannot achieve, do not depend just on our incomes but also on the variety of physical and social characteristics that affect our lives and make us what we are" (Sen 1992, 28).

A disabled man, a pregnant woman, a lactating mother, all might need extra resources or primary goods to satisfy their ends in comparison with someone who is not in any such situation. However, the Rawlsian system fails to differentiate between people with such diverse characteristics (see Sen 1990, 1992). Nature and structure of the family and society might play an important role in determining an individual's ability to convert primary goods into meaningful ends. Interpersonal difference in terms of mental and physical ability is another factor. So when it comes to interpersonal comparisons in the realm of justice, the limited informational basis of the Rawlsian primary goods that fail to account for the various diversities within human beings cannot be sufficient (see Sen 1992).

Sen identifies five factors that influence the process of conversion of means into ends. 1: "*personal heterogeneities:* People have disparate physical characteristics connected with disability, illness, age or gender, and these make their needs

diverse". The needs of a pregnant woman, a disabled man and a young child would be very different (Sen 1999, 70).

2: "*environmental diversities:* Variations 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" (Sen 1999, 70).

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" (Sen 1999, 70).

4: "*differences in relational perspectives:* The commodity requirements of established patterns of behavior may vary between communities, depending on conventions and customs" (Sen 1999, 71).

5: "*distribution within the family:* Incomes earned by one or more members of a family are shared by all--nonearners as well as earners" (Sen 1999, 71).

Sen suggests that rather than means to freedoms like primary goods and resources, substantive freedom itself should form the basis of interpersonal comparison in the realm of justice. For him what matters are the real freedoms that people are able to enjoy. The substantive ability of people to do things in Sen's vocabulary is known as capability. According to Sen, "capability represents *freedom,* whereas primary goods tell us only about the *means* to freedom, with an interpersonally variable relation between the means and the actual freedom to achieve" (Sen 1992, 84). So He argues that capabilities, rather than Primary Goods or resources, should form

the basis of interpersonal comparison in terms of justice and equality (see Sen 1980, 1985, 1990, 1992, 1999). Sen's conception of functionings and capabilities will be discussed in detail in the next section.

In response to Sen's criticism, Rawls maintains that since justice as fairness is a political and not a metaphysical conception, it is not concerned with ultimate ends (see Rawls 1993).[11] In his theory, Rawls advocates a respect for individual's comprehensive conception of the good, and distinguish it from the realm of the public conception of justice which stands outside the purview of any comprehensive conception of the good (see Rawls 1993). The implication here is that the capability approach represents a comprehensive conception of the good (see Rawls 1988, 1993). This claim has been strongly refuted by Sen in subsequent writings. Sen clarifies that capabilities represent sets of freedoms or functionings from which people can make the relevant choices according to their own conceptions of the good (see Sen 1992).

Sen accepts the Rawlsian argument in favor of fairness and respect for individual conceptions of the good. However, he argues that the devise of primary goods

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[11] Rawls responds to Sen through two lines of criticism. One by charging that the Capability Approach represents a comprehensive conception of the good, and therefore does not confine to the limits of a political conception of justice, which is based on a public, political conception of the good. Secondly, the methodological difficulties associated with the public verifiability of the informational basis of the Capability Approach: "first, we must stay within the limits of justice as fairness as a political conception of justice that can serve as the focus of an overlapping consensus; and second, we must respect the constraints of simplicity and availability of information to which any practicable political conception (as opposed to a comprehensive moral doctrine) is subject" (Rawls 1993, 182). Although Sen tries to counter both the claims, this has been the main line of argument between the two approaches of late. See Pogge 2002, Robeyns 2004.

cannot adequately meet these basic requirements of the Rawlsian framework. Since the convertibility of primary goods is different with different individuals, the ability of these goods to help the individual to use them in the satisfaction of their own conceptions of the good might get compromised. Sen argues, "for the sake of fairness it must not be the case that some people's ends are so *imperfectly* served by the primary goods (compared with the ends of others) that the first group may have a legitimate complaint about judging individual deals in terms of primary goods" (Sen 1992, 85).

Sen is also critical of the restrictive domain of applicability that Rawls gives to his theory by imposing conditions of principles of tolerance and plurality. Although Sen is not against these values as such, he believes that by imposing such restrictions, many countries, which do not follow these values in the public domain get left out of the purview of the theory of justice, and he believes that a theory that fails to address serious discrepancies like gender inequality and famine in many of the third world countries that do not have a political culture that respect the values of tolerance and plurality leaves a lot to be desired (see Sen 1992). Even while regarding tolerance and respect for plurality as very important, Sen argues that a theory of justice should not be strictly bound to these conditions: "there can be important issues of justice and injustice in, the choice of 'political, social, and economic institutions' even when pluralist tolerance of the kind outlined by Rawls simply does not obtain. While 'toleration', in the sense discussed by Rawls, of different comprehensive views of the good is undoubtedly one of the most important political aspects of living together in a society, it is nevertheless not the only thing that is 'political' in social living" (Sen 1992, 76-77).

The undue emphasis that Rawls place on tolerance and plurality results in justice as fairness excluding many categories from the framework of justice itself. The kind of value structure that Rawls demands might not be found in most of the third world countries. But in these countries, blatant cases of unfairness and injustice do take place. A good theory of justice cannot exclude these categories from the purview of justice. But the restrictions that Rawls imposed on justice as fairness results in such definitional exclusions. According to Sen, "the definitional exclusion contained in Rawls's 'political conception' limits the scope of the concept of justice drastically and abruptly, and it would often make it hard to identify political rights and wrongs that a theory of justice should address" (Sen 1992, 77).[12]

Another aspect of the Rawlsian theory that has come in for serious criticism on the part of the capability approach has been the exclusion of certain marginalized sections within the framework of the contractarian structure. Martha Nussbaum argues that the Rawlsian characterization of the institution of the family as outside the public domain has left the issues of gender off the framework of justice as fairness (see Nussbaum 2003).[13] She argues that the family structure is influenced

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[12] Sen believes that Rawls need not place such restrictions on his theory,. He suggests that without these restrictions, the broad moral insights that Rawlsian theory provides can be quite important for policy considerations even in countries where one cannot find the Rawlsian kind of respect for plurality and tolerance. See Sen 1992. Thomas Pogge has tried to argue that the Rawlsian theory indeed can address the cases of inequalities in third world countries as well. See Pogge 2002..

[13] Although Rawls does not strictly adhere to the traditional liberal distinction between the public and private domains, he nevertheless does not recommend the adoption of the two principles of justice within the family. The Rawlsian position on the position of the family within the framework of 'Justice as Fairness is ambiguous at best, as he keeps altering between conceptualizing family as

by prevailing social values, and there is a possibility for the family to become a domain of serious injustice, especially with regard to the issue of gender equality (see Nussbaum 2000).[14]

In 'Frontiers of Justice', Nussbaum goes on to identify three issues that the Rawlsian theory has failed to address. The question of physical and mental disabilities, the issue of justice across nations, and the just terms of regulating our relations with other species (see Nussbaum 2006b). Other than the strive for methodological simplicity there are fundamental problems within the Rawlsian contractarian structure which forces him to exclude these categories from the domain of justice as fairness. According to Nussbaum, "the four problematic areas that we must probe are the theory's use of income and wealth to index relative social positions, its use of a Kantian conception of the person and of reciprocity, and its commitments to the circumstances of justice and to the idea of mutual advantage as what makes cooperation superior to noncooperation" (Nussbaum 2006b, 107).

The problems with using the holding of primary goods as tools to measure inequality at the interpersonal level has been already discussed. The first chapter has dealt with the Rawlsian treatment of the issue of disability. Some of the points have to be recapped here.

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the institution of love and care, and at the same time expressing concerns regarding the inequalities within the family. For a critical evaluation of Rawls's views on the institution, see Nussbaum 2003.

[14] Susan Mendus argues that the Rawlsian theory can address most of the concerns expressed by his feminist critiques. See Mendus 1999.

The structure of the Rawlsian contractarian theory is such that some issues that have serious implications in the realm of justice cannot be accommodated within the framework. The Rawlsian commitment to a Kantian conception of the person is an important hindrance in the way of the theory becoming more inclusive. Rawls conceives the parties to the social contract as rational, free, equal and independent: "since we begin from the idea of society as a fair system of cooperation, we assume that persons as citizens have all the capacities that enable them to be cooperating members of society. This is done to achieve a clear and uncluttered view of what, for us, is the fundamental question of political justice: namely, what is the most appropriate conception of justice for specifying the terms of social cooperation between citizens regarded as free and equal, and as normal and fully cooperating members of society over a complete life" (Rawls 1993, 20).[15]

The assumption of rough equality and independence result in the Rawlsian theory excluding the disabled, both temporary as well as permenant, from the purview of the public conception of justice. The insistence on rationality is another problem, as many of the mentally disabled might fall below the threshold limit that Rawls demands (see Nussbaum 2006b). The idea of rough equality might end up in covering up the various kinds of real world situations, where there exists a system of a group or an individual dominating another group or individual. Although the veil of ignorance leaves the contracties with no idea about their respective social positions, the Rawlsian division between the domain of the family and the public

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[15] Rawls is aware of the possible cases of exclusions that his conception of the person might result in. but he argues that a theory of justice should first address the normal cases, a theory that cannot propose a just and fair framework to address the normal cases cannot address the harder ones. See Rawls 1993.

results in issues of gender, that have their basic origin within the family getting

neglected within the framework of justice as fairness (see Nussbaum 2000).[16]

The Rawlsian assumption of the parties to the contract being fully cooperating over

a life time implies they are independent of one another throughout their life time.

This assumption is particularly problematic on two counts. Human life passes

through different stages and during one or the other stage there would be

dependence of one or the other kind on others. For example during childhood and

more importantly during old age (see Nussbaum 2006b, Kittay 2001). The

Rawlsian conception of the person as free equal and independent completely

neglects this dimension of human life. The disabled are another group that is

dependent on care. The Rawlsian paradigm has nothing whatsoever to say about

this aspect (see Kittay 2001).

The second dimension of the assumption is the problem of the society being just

and fair to the care givers. Often the function of care giving falls in the domain of

the women, and by and large, this function gets socially neglected (see Kittay

2001). The care givers might have to compromise on a lot of their activities, and

the duties of care giving might prevent them from taking up other economically

productive tasks. But since the Rawlsian system does not even conceive of the

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[16] In the hypothetical original position in which the principles of justice are decided, Rawls
supposes that the parties to the contract are under the cover of a veil of ignorance, which prevents
them from having any idea about their respective social positions. In this situation, the contracties
are not aware of their particulars like race, gender, economic status, different conceptions of the
good, the generational particularities, the nature of their own society and so on. Rawls argues that
this is done to ensure fairness. For more, see Rawls 2000, section 24.

possibility of dependence, the idea of care giving does not at all figure within justice as fairness (see Nussbaum 2006b, Kittay 2001).

The Rawlsian commitment to the Humean circumstances of justice, the contractarian idea of mutual advantage being the basis of cooperation has been another point of difference between the capability approach and justice as fairness. Nussbaum strongly argues that this aspect of the Rawlsian theory is a disabling one in the sense that Rawls' failure to include questions of disability within his framework because of his strict commitment to these ideas. As has been discussed in the first chapter, many of the disabled can be productive in the economic sense of the term, if the right circumstances are provided (see Oliver 1990, 1996). But Rawls is not able to take in this seemingly logical suggestion, because of his idea that the basic purpose of social cooperation is mutual advantage (see Nussbaum 2006b). The cost of providing the productive circumstances might outweigh the expected returns out of them joining the productive forces, there is every possibility for the so called normal not to cooperate with the deprived group (see Nussbaum 2006b).

The critique of the Rawlsian theory as idealistic can be read as an extension of the above mentioned claims of Nussbaum and Kittay. The basic argument is that because of its idealized nature, the Rawlsian theory might falter when it comes to real world situation. Andrew Williams, Roland Pierik, Ingrid Robeyns and Sandrine Berges have distinguished the capability approach as 'non-idealistic, from the Rawlsian and Dworkinian approaches that are 'idealistic' (see Williams 2002, Pierik and Robeyns 2007, Berges 2007).

The dialogue between the capability approach and the Rawlsian theory has been an ongoing one. Both Sen and Nussbaum share the moral basis of the Rawlsian theory in a broad sense. However, it becomes very clear that the capability approach has been able to bring out some serious problems of the Rawlsian theory to the fore. The claims of Sen and Nussbaum regarding the inadequate nature of primary goods in the realm of interpersonal comparisons, and exclusionary nature of the Rawlsian conception of the person and his contract structure are particularly important in this context. The capability approach, unlike the means based Rawlsian theory of justice or the Dworkinian theory of equality of resources, proposes an alternative approach based on substantial freedoms, rather than means to freedoms.[17]

Unlike the means based and subjective preference based theories, the capability approach conceptualizes normative evaluation of equality or justice on the basis of a broader informational basis. Rather than means to live according to one's own conception of the good, or individual subjective evaluation, the capability approach focuses on the substantial ability or freedom that is available to the individual to achieve well-being, that is, to have certain doings and beings that are worthy of a human life.

Functionings and Capabilities

As David A. Crocker argues, the foundational ethic of the capability approach is

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[17] Although the criticism here has focused on Rawls, many of the arguments hold true in the case of Dworkin's theory as well (Sen 1992). Dworkin however has argued that the capability approach represents a generalization of his theory of equality of resources (Dworkin 2000). For a refutation of this claim, see Williams 2002, Pierik and Robeyns 2007.

the twin ideas of functioning and capability (see Crocker 1992). The capability approach argues that individual well-being should be assessed on the basis of the state of affairs that he or she is in, and the kind of thing he or she is able to do. The basic claim of the capability approach "is that functionings are constitutive of a person's being, and an evaluation of well-being has to take the form of an assessment of these constituent elements" (Sen 1992, 39). He further notes, "the well-being of a person can be seen in terms of the quality (the 'well-ness', as it were) of the person's being. Living may be seen as consisting of a set of interrelated 'functionings', consisting of beings and doings" (Sen 1992, 39). Functioning can be seen as the constitutive elements of living: "a functioning is an achievement of a person: what he or she manages to do or to be, and any such functioning reflects, as it were, a part of the state of that person" (Sen 2006b, 440). The relevant functionings can vary from elementary ones like being well nourished, being free from ailments, avoiding premature mortality and so on, to rather complex ones like being able to participate in community life, having self-respect etc (see Sen 1992).

The allied notion of capability reflects substantive freedom to achieve these functions. In other words, capabilities can be understood as the freedom to achieve well-being.[18] It represents different combinations of functionings that a person can

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[18] The idea of freedom has been a theme intrinsically built into the foundations of the capability approach. The idea of freedom used in the capability approach is different from the sense in which it is used in contemporary libertarian literature. Unlike the libertarians like Nozick, Berlin etc, who are closer to the classical liberal notion of negative liberty, the capability approach understands freedom in a more positive sense, and the perspective is closer to the Marxian idea of freedom. See Sen 1992, 1999.

choose from. Thus according to Sen, capability is a "set of vectors of functionings, reflecting the person's freedom to lead one type of life or another" (Sen 1992, 40). In Sen's view, capabilities have both instrumental as well as intrinsic values. They are instrumental in the sense that capabilities represent the amount of choice available to an individual as far as his achieved functionings is concerned (see Sen 1992). More importantly, capabilities have an intrinsic value, as freedom of choice itself can be considered as an important component of well-being.

The idea of capability is presented as a broader analytical instrument in comparison with the conventional liberal idea of rights. To start with, both rights and capabilities are quite close and complimentary. In fact, the capability approach has a close affinity with the human rights paradigm (see Nussbaum 2006a). Both rights and capabilities can be used as tools of reference in cross-cultural comparisons, and can be the basis for organizing constitutional structures. However, the concept of capability gives the idea of rights more precision. Rights are presented as a rather abstract conception. There is difference of opinion about the basis of rights. The contractarian tradition argues that rights are based on natural laws, and precedes any form of state or government. On the other hand, the utilitarian tradition has a different take on the issue, and attributes rights to their legality. In the contemporary debates the neoliberal school characterizes rights as a negative idea in the sense that it prohibits individuals or institutions from doing something so as to violate the rights of an individual (see Nussbaum 2006a).

The capability approach believes that the space of right can become meaningful only when the assessment is based on capability. A disabled person might have the right to vote in the abstract sense, but so long as there is no accessible facility that

enables him or her to exercise this right, the space of rights becomes redundant (see Nussbaum 2006a). The capability approach argues that right should be assessed in terms of the substantive freedoms available to individuals, and capabilities therefore compliment and goes beyond the rights framework (see Nussbaum 2006a).

Functioning represents the actual doings and beings of the individual, and capability, which in turn is a derivative idea, represents the freedom to have these functionings. Otherwise, capabilities refer to the substantive freedom of the individual to select the combination of functioning that he or she wants (see Sen 1992). As Ingrid Robeyns notes, "the distinction between achieved functionings and capabilities is between the realized and the effectively possible; in other words, achievement on the one hand, and freedoms or valuable options from which one can choose on the other" (Robeyns 2005, 95).

It is obvious that not all functionings are equally important. As Sen says, playing basketball is not as important as the capability to move around (see Sen 1992). At this point the capability approach needs to address the problem of evaluating and prioritizing the different functionings. Sen argues that this is not an embarrassing situation, and is the case with any normative theory. He notes, "the primary claim is that in evaluating well-being, the value- objects are the functionings and capabilities. That claim neither entails that all types of capabilities are equally valuable, nor indicates that any capability whatsoever—even if totally remote from the person's life—must have some value in assessing that person's well-being" (Sen 1992, 46). The issue is one of methodology. But as Sen argues the basic claim of the capability approach is the demand for a broader informational basis to assess

equality and justice, and methodological questions can not invalidate the importance of the claim (see Sen 1992).

The roots of Martha Nussbaum's disagreements with Sen regarding the need for a specific list of capabilities can be traced back to these methodological concerns. Nussbaum argues that with a list of capabilities not being specified, the capability approach might loiter into vagueness (see Nussbaum 2006a). She argues that the capability approach is superior to the contractarian theories of justice, aggregate income based, and utility based approaches in understanding issues of inequality like gender. But the approach can only become clear and truly substantive only when it specifies a list of fundamental entitlements that a society should ensure to all its citizens at least at the minimum threshold level. While substantiating her claim of the capability approach being a superior tool to address concerns of gender inequality, Nussbaum observes, "the capabilities approach will supply definite and useful guidance, and prove an ally in the pursuit of sex equality, only if we formulate a definite list of the most central capabilities, even one that is tentative and revisable, using capabilities so defined to elaborate a partial account of social justice, a set of basic entitlements without which no society can lay claim to justice" (Nussbaum 2006a, 47).

Nussbaum presents her list as part of a political conception like the Rawlsian justice as fairness. The list of capabilities does not specify any ultimate conception of the good. It is neither final nor closed. The list is kept open ended because of concerns regarding pluralities. It is up to different societies to specify the contents of the general list (see Nussbaum 2006b). The list of capabilities is based on a conception of the person based on dignity, which is more Aristotelian than Kantian

in nature (see Nussbaum 1992, 2000, 2006b). At the centre of the conception is the idea of a flourishing human life. To have a flourishing human life, each individual should be able to attain at least a threshold level of all the capabilities in the list. Nussbaum argues that the list is universal to the extent that each society should guarantee the threshold level of all the capabilities to all its citizens, and a failure in this means that the society becomes an unjust one (see Nussbaum 2006b).

The present version of Nussbaum's list of central human capabilities is as follows.

"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 nonbeneficial 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.*

A. Being able to live with and toward others, to recognize and show concern for other human beings, 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 nonhumiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of nondiscrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.

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.*

A.   *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.

B.   *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 being, exercising practical reason and entering into meaningful relationships of mutual recognition with other workers" (Nussbaum 2006b, 76-79).

Nussbaum develops three levels of capabilities. Basic capabilities are innate abilities of a person. Internal capabilities refers to "states of a person that enable him/her to exercise a specific capability, if the circumstances and constrains allow this exercise" (Robeyns 2005, 104). Combined capabilities are the internal capabilities together with the external provisions that effectively enable the person to exercise the capabilities (see Robeyns 2005).[19]

Although Nussbaum has proposed and tried to defend her list of capabilities, there

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[19] Nussbaum's list of capabilities is long, and includes many things to ponder. A detailed analysis of each of the components in the list is not undertaken here, but some of these would come in for a detailed discussion in the next chapter.

is no consensus within the capability school regarding the propriety of a list of specific capabilities. As has been already pointed out, Amartya Sen has always resisted the urge to specify a list of capabilities. His argument is not altogether against a list of capabilities as such, but against a specific list of capabilities. Sen writes, "the problem is not with listing important capabilities, but with insisting on one predetermined canonical list of capabilities, chosen by theorists without any general social discussion or public reasoning. To have such a fixed list, emanating entirely from pure theory, is to deny the possibility of fruitful public participation on what should be included and why" (Sen 2006a, 362).

Sen argues that the specific list of capabilities for a particular society should be fixed by the concerned society itself through a process of public deliberation. In his view, the function of pure theory is to give directions, and not to make judgments ones and for all. According to him, "pure theory cannot 'freeze' a list of capabilities for all societies for all time to come, irrespective of what the citizens come to understand and value. That would be not only a denial of the reach of democracy, but also a misunderstanding of what pure theory can do, completely divorced from the particular social reality that any particular society face" (Sen 2006a, 363). Sen suggests that although capabilities are inherently valuable, the specific prioritization of different capabilities is context dependent, and factors like the economic strength, technological development, particular social circumstances etc play a major role in the process (see Sen 2006a).[20]

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[20] The difference between Sen and Nussbaum on the need for a specific list of basic capability has reflected in the works of other scholars within the capability school. Des Gasper and Irene Van Staveren argue that Nussbaum's approach gives the whole framework more solidity (see Gasper

Conclusion

The capability approach has emerged as a strong presence within normative philosophy. Starting out with the critique of the dominant utilitarian as well as aggregate income paradigms, it has extended its reach in the domain of normative political philosophy through a strong engagement with the Rawlsian paradigm. Unlike the utilitarian, Rawlsian, or the aggregate income based macro-economic approaches, the capability approach argues for a broader space of informational basis to assess claims of justice and equality. The core characteristic of the capability approach is its focus on what people are actually able to do. It has argued for understanding equality and justice through a plurality of principles by focusing on the different variables that influence substantive freedoms available to people.

More importantly, the approach has tried to provide an inclusive framework to understand claims of justice and equality. Sen's and Nussbaum's critique of the contractarian tradition is particularly important in this context. The capability approach tries to be more inclusive by reaching out to the marginalized sections like the disabled and women, without compromising the moral claims of individual dignity of the contractarian theory, and at the same time expands this whole concept of dignity in such a way that the pits and shortfalls of the contractarian theory is avoided.

Sen has always been concerned about gender issues in his writings (see Sen 1999,

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and Van Staveren 2006). Ingrid Robeyns feels the need for a list of capabilities along with Nussbaum, but does not support the idea of a canonical list as such, and supports Sen's claim that the lists should be context based as well. See Robeyns 2006.

2006b), and Nussbaum is tagged as a feminist philosopher. Other issues of social marginalization like disability have started to get greater attention from the capability school recently (see Anderson 1999, Nussbaum 2006b). The inclusion of human diversity as fundamental to any theory of justice, the different conception of the person, and a more Aristotelian rather than Kantian conception of dignity at the core, the capability approach can address the questions of social marginalization in a better way than the contractarian theories have been able to do. The next chapter attempts to further this claim by focusing on the capability approach's perspective on disability.

Although the capability approach has been a significant development within normative political philosophy in recent years, one can not forget the fact that the approach has not been completely developed as a full theory of justice like the Rawlsian theory. Therefore this sense of incompleteness would be there in any attempt at comparisons with other theories of justice. In this context Nussbaum writes, "the capabilities approach is not intended to provide a complete account of social justice. It says nothing, for example, about how justice would treat inequalities above the threshold (In that sense it does not answer all the questions answered by Rawls's theory" (Nussbaum 2006b, 75). On another note, the capability approach has developed as a highly interdisciplinary one, and the amount of literature has grown immensely over the last few years. Likewise many scholars have critically engaged with the approach as well. But since the basic objective of the chapter is a theoretical introduction, the engagement with the vast literature critical and otherwise has been limited.

Chapter III

Understanding Disability in a Capability Framework

Introduction

The failure of the mainstream liberal egalitarian contractarian theories to adequately address the question of disability has been registered over the last two decades (see Anderson 1999; Wasserman 2000; 2006, Kittay 1999; 2001, Nussbaum 2006b). Disability, however, has moved from the margins to the center of the justice debates by invoking challenge to many assumptions of mainstream theories. Although criticisms of these dominant theoretical paradigms have been amply leveled against, the productive part of the exercise is to propose a more inclusive alternative.

In this chapter, an attempt is made to analyze the potentials of the capability approach to develop a comprehensive understanding of the disability question. A serious dialogue between the mainstream normative political philosophy and the dominant approaches within disability studies has been conspicuously absent. In this context, this chapter argues that the capability approach has the potential to bridge the gap between the two areas so much so that we can effectively devise a much more comprehensive approach to the understanding of disability within the social justice discourse. The study proceeds through an analysis of different concepts and variables within disability discourse through a threefold approach. The possibilities of the capability approach in turn are understood in relation to the social model of disability as well as the mainstream liberal egalitarian theories; especially that of John Rawls.

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Among the major thinkers belonging to the capability school, Martha Nussbaum has fervently raised the question of disability (see Nussbaum 2006b). Elizabeth Anderson's critique of resource egalitarianism and her idea of democratic equality is another important contribution in this context (see Anderson 1999). Although Amartya Sen has not done many extended works specifically focusing on the issue of disability, the issue has been a recurring theme throughout his writings. Moreover, his works on gender equality, and the conceptual tools he developed over the years prove to be resourceful in the development of a more inclusive framework (see Sen 1980, 1992, 1999, 2004, 2006b). Tania Burchardt, Carolyn Baylies, David Wasserman and Lorela Terzi have also invoked the capability approach in their attempt to develop a more inclusive and comprehensive approach to understanding the question of disability and social justice (see Burchardt 2004; Baylies 2002; Wasserman 2000, 2006; Terzi 2005a, 2005b).

The issue of defining and conceptualizing disability, the need for a broader conception of the basis of social cooperation, an alternative conception of the person, the question of integrating care to the fold of disability theory, and the implications for public policy are the major themes explored in the chapter. These different themes are discussed within the framework of the capability approach. The possibility of a deeper engagement between the mainstream theories of justice and the dominant models within disability studies through the capability approach is a major theme of the enquiry.

Disability Models and Definitional Issues

Although disability has now become a prominent issue in academic debates, it is difficult to find a neutral language to speak of the issue (see Altman 2000). Different models advance different conceptions of disability. While the traditional medical model views disability in terms of certain physical or mental conditions that are to be treated medically, the social model of disability considers disability as a relational concept in the sense that a person's impairment becomes disability due to socially constructed barriers (see Altman 2000). Other approaches like the Nagi model, and the model advanced by the World Health Organization attempt to synthesis both the individual as well as the social dimensions of disability (see Altman 2000, Mitra 2006).

Defining disability is not a simple task. As Barbara M. Altman observes, "part of the difficulty of defining disability has to do with the fact that disability is a complicated, multidimensional concept" (Altman 2000, 97). Concepts ranging from impairment and disability to functional limitation and social participation have been used in different models of disability. Any attempt to derive an understanding of disability within the framework of the capability approach requires an engagement with at least some of the prominent models of disability. In this study, apart from the mainstream social model and the traditional medical model, the Nagi model as well as the model developed by the World Health Organization is also discussed.

The Medical Model

The medical model has been the traditional approach to the understanding of

disability. In the conventional sense, disability has been viewed as some medical condition in which the individual is lacking in terms of physical or mental abilities. The central concern of the medical model has been the detection, avoidance, elimination, treatment and the classification of impairment (see Thomas 2002). An overwhelming commitment to the possibilities of a fast developing genetic science is another important feature of the medical model. The medical model of disability has throughout viewed impairment and disability as one and the same. Disability has been attributed to the inability of parts of body or mind to act according to recognized social norms or species typical functions (see Wasserman 2000, Thomas 2002).

Although subsequent models have challenged the medical model, it still has a profound influence on policy formulation, rehabilitation process, and schemes of classification of impairment and disability (see Thomas 2002). Administrative programs of rehabilitation are often dependent on the word of the physician to legitimize impairment through medical corroboration. As Altman says: "for programmatic administrative purposes, disability is usually defined as situations associated with injury, health, or physical conditions that create specific limitations that have lasted (or are expected to last) for a named period of time" (Altman 2000, 98).[1]

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[1] Although legislations like the Americans with Disability Act, which is considered is one of the landmark legislations by the disability movements, defines disability at a broader level taking into consideration the various social determinants of disability, when it comes to practical applications disability tends to be defined in terms of medical conditions. This has been particularly noticeable in the case of judicial decisions. For more, see Altman 2000, Malhotra 2008.

The Social Model of Disability

The most serious challenge to the medical approach came from the social model of disability. This model was advanced in the 1970s by the British disability movement. The Union of the Physically Impaired Against Segregation has been at the forefront of the British disability movement, and the social model of disability has been powerfully articulated by its founding leaders like Vic Finkelstein and Mike Oliver (see Finkelstein 1975, Oliver 1990, 1996). There are various versions of the social model.[2] On the one hand, the British social theorists like Oliver and Finkelstein take a Marxist materialistic view of disability; American disability activists favor a minority group approach or the social constructionist version of disability (see Mitra 2006).

The social model challenges the basic premises of a medical understanding of disability. Mike Oliver argues that the basis of a medicalized approach towards disability is the theory of personal tragedy (see Oliver 1996).[3] Whatever disadvantage the disabled might face is all attributed to their physical or mental abnormality. The social factors are completely ignored (see Oliver 1996). In the medical approach, there is a direct causal link between a person's impairment and

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[2] At least nine versions of the social model can be identified (1) the social model of the United Kingdom, (2) the oppressed minority model, (3) the social constructionist version of the United States, (4) the impairment version, (5) the independent living version, (6) the post-modern version, (7) the continuum version, (8) the human variation version and (9) the discrimination version. See Mitra 2006.

[3] Unlike the general differentiation between the medical and social approaches towards disability, Oliver prefers the categories of the individual model and the social model of disability. According to him, the medicalization of disability is just one dimension of the individual model of disability. For more on this point, see Oliver 1996.

disability. In fact, the medical model fails to distinguish between impairment and disability. Oliver Observes: "for medical sociologists, what they call chronic illness is causally related to the disadvantages disabled people experience" (Oliver 1996, 34).

Unlike the medical model, the social model attributes disability to social barriers that are oppressing and secluding. According to the social model theorists, "the whole medical and rehabilitation enterprise is founded upon an ideology of normality, and this has far reaching implications for rehabilitation and treatment" (Oliver 1996, 36). This idea of the normal which is at the core of the medical approach is both unjust and arbitrary. Oliver argues that a perfect state of normality does not exist at all; according to him, "normality is a construct imposed on a reality where there is only difference" (Oliver 1996, 88).

A biological view of normality is unjust in the sense that those who do not come under the category of the normal are often excluded from social institutions and their claims and rights are not recognized due to their perceived inability to participate in the productive enterprise and thereby cooperate with, and reciprocate the efforts of other individuals. Theories of justice and equality like that of John Rawls even deny citizenship rights to the disabled on this ground (see Rawls 1993, 2000).

The arbitrariness of a medicalized view of normality neglects the fact that a person's ability to perform socially defined roles is very much dependent on the prevailing social conditions as well. Social attitudes, economic development, nature of the society and accessibility to advanced technology are important

determinants as far as an impaired person's ability to engage in the productive process is concerned. For example, the demands of an agricultural society have been much more accommodative than that of the modern capitalist society as far as the disabled are concerned (see Oliver 1996). Like that, many visually challenged were thrown out of their jobs due to unavailability of compatible screen reading softwares when Microsoft introduced the icon based windows operating system in 1995 in place of the 'Dos' system (see Wasserman 2000).[4] An exclusively biological view of normality thus ends up ignoring these factors.

In the social model framework, it is the societal oppression that constitutes the core of the understanding of disability (see Abberley 1987, Oliver 1990, 1996, Mitra 2006). Oliver writes that in his view "it is society which disables physically impaired people. Disability is something imposed on top of our impairments by the way we are unnecessarily isolated and excluded from full participation in society" (Oliver 1996, 22).

The advocates of the social model therefore argue for societal change rather than biological normalization suggested by the medical model. The social approach argues for the social recognition of the disabled individual. Rejecting the claims of the medical model as well as charity groups, Oliver writes: "instead, we are increasingly demanding acceptance from society as we are, not as society thinks we should be. It is society that has to change not individuals and this change will come about as part of a process of political empowerment of disabled people as a

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[4] A screen reader is a piece of software that allows the user to hear via a speech synthesizer or touch via a Braille display of the information on the screen. The technology enables the visually challenge to access the computer using voice. For more, http://www.doit.wisc.edu

group and not through social policies and programs delivered by establishment politicians and policy makers nor through individualized treatments and interventions provided by the medical and para-medical professions" (Oliver 1996, 37). Through such a radical stand the social model attempts to shift the thrust of the understanding of disability from the individualized pattern of the medical model to the social realm.

The two basic components of the social model of disability are impairment and disability (see Altman 2000, Thomas 2002). Within the social model paradigm, impairment is defined as "lacking part of or all of a limb, or having a defective limb, organ or mechanism of the body" (Oliver 1996, 22). The Disabled People's International defines impairment as "functional limitation within the individual caused by physical, mental or sensory impairment" (Altman 2000, 104). The social model argues that impairment should be treated as a value free concept and ideas of normal/abnormal should not cloud our understanding of the concept. Impairment means functional limitations of the body or mind, but it does not connote any standard sense of normality or superiority or inferiority (see Morris 2001).

The second and more important component of the social model is disability. As has been already pointed out, the social model attributes disability to societal oppression of impaired people. Mike Oliver defines disability "as the disadvantage or restriction of activity caused by a contemporary social organization which takes no or little account of people who have physical impairments and thus excludes them from participation in the mainstream of social activities" (Oliver 1996, 22).

The social model contends that there is no causal link whatsoever between impairment and disability. Impairment is a state of the human body, while disability is socially caused. Disability results when a society refuses to include people who have some sort of impairment from social participation on the basis of a rather arbitrary idea of normality. The impaired people are different from others, but the impairment transforms into a disability when societal exclusion based on artificial social barriers prevents their meaningful social participation (see Abberley 1987; Finkelstein 1975; Oliver 1990, 1996).

Although the social model has changed the way disability was perceived in the realm of public policy and academic studies, it has increasingly come under the scanner of critiques, both internal as well as external (see Thomas 2002; Corker 2001; Shakespeare and Watson 2002; Terzi 2004). Within the social model paradigm itself, many scholars have come to challenge what they call 'Social Model Orthodoxy' (see Shakespeare and Watson 2002). The social model as has been enunciated by the British scholars like Mike Oliver in particular has tried to understand disability on Marxist lines by placing the issue within an economic framework. However later developments within the movement has challenged this position, and argued that disability should be understood in the particular cultural dimensions of any society, as cultural factors play an important role in disabling people with impairment (see Corker 2001, Shakespeare and Watson 2002). As Lorella Terzi writes: "according to this view, no social phenomena including impairment and disability exists independently from the discoursive practice that has created it. Therefore, rather than focusing on material relations of power, the social model of disability should draw attention to the cultural processes that shape

impairment and disability and build a model to counter the disability-engendering role played by cultural ideas, always negative about people with impairment" (Terzi 2004, 146-147).

Critiques also draw attention to the fact that the contemporary capitalist system has been fast changing, and the social model needs to evaluate these changes and accommodate them. Scholars like Carol Thomas argue that the social model in its present materialist form has failed to evaluate technological changes that are taking place in the contemporary capitalist system. While some of these changes have been advantageous to the disabled people, some of them have caused serious challenges that have an adverse impact on the ability of the disabled people to participate in the productive process (see Thomas 2002).

Scholars like Lorela Terzi argue that although the materialist framework based on mode of production can show the kind of discrimination that the disabled people face in a capitalist system, it might not represent the disabled people's position in the society adequately. She argues that the model "is indeed based on modes of production and on concepts of productivity, it seems to rest on a scheme of redistribution of resources based on what has been termed as justice as reciprocity" (Terzi 2004, 147). In such a framework the ones who have the ability to participate in the process of social cooperation are considered as proper subjects of justice. But impairment might restrict a person's participation in the process of production and thereby deny them justice. Therefore there arises a fundamental contradiction between the inclusive society that the social model argues, and the materialist framework that it puts forward (see Terzi 2004).

The issue of care has been one of great importance as far as any theory of disability is concerned. However, many feminist theorists have pointed out that the social model does not have a fair and adequate model of care (see Morris 2001). The social model's emphasis on the idea of independent life for the disabled, in effect, seems to follow an orientation of the mainstream liberal theorists like Rawls; because, such an emphasis is tantamount to idealizing the disabled individual as being completely free and independent. The feminist theories on the other hand argue that dependency is a constant feature of human life, and every individual is dependent on others at one or the other stage in their life (Kittay 1999, 2001). As Jenny Morris argues, the majority of the disabled population comprises of people who are cognitively disabled and in that case it is fictitious to argue for a completely independent life (see Morris 2001). A comprehensive theory of disability therefore should include the aspects of dependency and care. It should entail not only the disabled person who is the receiver of care but also the ones who are entrusted with the task of care giving. So the account of care should be based on human dignity rather than inability (see Morris 2001; Kittay 2001; Nussbaum 2006b).

Another issue that has caused serious dissent within the social model has been the failure of the approach to evolve an adequate theory of impairment. The social model theorists like Mike Oliver and Vic Finkelstein have insisted that impairment and disability are independent of one another as the latter is exclusively caused by a recalcitrant society which refuses to accept the difference of the people who have impairment and enforce the arbitrary ideology of normality on them (see Oliver 1996).

However, later disability theorists like Jenny Morris, Carol Thomas and Sally French have challenged this position and argued that a comprehensive theory of disability needs to take into account impairments. Contrary to the claims of the social model, they hold that impairments do have a role in creating the kind of disadvantages a person might face (see Morris 2001, Thomas 2002, French 1993). Morris argues that separating impairment from disability does not mean that the former should be neglected. The social model unavoidably requires an account of impairment in order to sustain its foundation which in fact is based on the separation between impairment and disability (see Morris 2001). Impairment should be considered as difference, but the kind of difference it represents is unique which warrants greater resource allocation to accommodate this difference; therefore, a comprehensive theory of disability should have an adequate account of impairment (see Morris 2001).

Another reason for the need for an adequate treatment of the subject of impairment within the fold of the social model is the fact that accounts of impairments hitherto has been molded within the framework of the medical model that often involve misrepresentation of the realities of a disabled body. If the social model continues to ignore the component of impairment in the name of the experience being personal and subjective and therefore lacking any general political implications for the struggles of the disabled, the medicalized understanding of impairment will continue to hold sway. The problem with such a situation is, as Morris observes: "if we don't express the experience of our bodies, others will do it for us. If we don't confront what we need as a result of illness, pain, chronic conditions which inhibit our lives, then health services and support services will continue to be run

in ways which disempower us. If we don't engage in the debates about old age, then as we age we will find that the battles we fought we had won as younger disabled people are of no use to us whatsoever. Most importantly, if we don't take over the representation of the negative aspects of impairment then its meaning to others will continue to undermine us" (Morris 2001, 10-11).[5] While Morris continues to hold on to the assumption of social causation of disability to a great extend, Sally French argues that impairments do have activity restricting implications, and therefore, they are disabling. She therefore argues that the theory of exclusive social causation of disability as has been proposed by the social model is untenable (see French 1993).[6]

Philosophers like David Wasserman and Lorela Terzi have questioned the theory of exclusive social causation of disability advocated by the social model (see Terzi 2004, Wasserman 2000, 2006). Social model theorists like Oliver puts forward many of their claims on the basis of the development of accessibility technology. Oliver writes: "today, when technological and social changes have radically altered the possibilities for us to take independent control over own lives; to continue to stress our incapacity our helplessness is to bind us with more chains instead of

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[5] In response to these critiques, the mainstream social model theorist Paul Abberley argued that the social model should theorize impairment as socially constructed. See Abberley 1987. However as Lorela Terzi argues: "although some impairments for some individuals in some specific circumstances can have social components", the claim that all impairments are socially created is a disproportionate overstatement. Terzi 2004, 151.

[6] Narrating her own personal experience, Sally French, herself a visually impaired person, says that her visual impairment has caused her difficulty in active social participation to some extent. There are difficulties in recognizing people and sometimes communicating effectively. All these difficulties cannot be attributed to the society. For more, see French 1993.

emancipating us" (Oliver 1996, 25). David Wasserman considers this overwhelming faith as a problematic approach as "it is notoriously difficult to assess the limits of technological possibility" (Wasserman 2000, 228). An earlier investment in technology might have resulted in developments that can alter the life of the people with mobility or sensory impairments. But it can go the other way as well (see Wasserman 2000). The case for the social causation of disability is therefore an important inference in the understanding of disability, "one immediate intuition, the idea that impairment and disability are related proves prima facie difficult to deny" (Terzi 2004, 149). David Wassermann argues that the alignment of positions into treating disability only as a subject of stigma or one of restoration to a position of normality itself is an over simplification of the social response to the complex issue of disability (see Wasserman 2000).

Alternative Models

Various alternative models have been proposed in response to these critiques. These models generally attempt a synthesis of the medical as well as the social approaches towards the understanding of disability. The International Classification of Impairment, Disability, and Handicap as has been proposed by the World Health Organization and the model (Nagi model) developed by American medical sociologist Saad Nagi are examples on this line.

The ICIDH, later modified as the International Classification of Functioning (ICF), in 2001 signifies a classification scheme developed by the World Health Organization. The model developed by Philip Wood, Elizabeth Bradley and Mike Bury was first published in 1980, and thereafter it underwent a revision in 1999 as

ICIDH2 before it was modified as ICF in 2001 (see Thomas 2002, Mitra 2006). The WHO model tries to move away from the narrow domain of the biomedical model and attempts to bring in the elements of the social model into the framework. The three important concepts constituting the ICF framework thus are: impairment, disability and handicap (World Health Organization (henceforth WHO) 2001).

According to Sophie Mitra, "the ICF model posits that disability has its genesis in a health condition that gives rise to impairment, and then to activity limitations and participation restrictions within contextual factors". (Mitra 2006, 238). The ICF understands impairment as "problems in body function or structure such as a significant deviation or loss" (WHO 2001, 10). It represents "a deviation from certain generally accepted population standards in the biomedical status of the body and its functions, and definition of their constituents is primarily undertaken by those qualified to judge physical and mental functioning according to these standards" (WHO 2001, 12). This definition makes it clear that the ICF model treats impairment in strictly medical terms. However, when it comes to disability the definition is broadened adequately to incorporate the social dimension as well.

Disability is the condition when the individual faces certain activity restrictions. WHO holds that "disability is characterized as the outcome or result of a complex relationship between an individual's health condition and personal factors, and of the external factors that represent the circumstances in which the individual lives" (WHO 2001, 17). Here, the causal attributes of disability is not limited only to impairment. Although the WHO model does not deny the causal relationship

between impairments and disability, it argues that disability is a complex phenomena and it has certain external social determinants as well.

The third component of the WHO model is 'participation', which was originally conceived as 'Handicap'.[7] According to the ICF model, "participation is involvement in a life situation" (WHO 2001, 10). Here the emphasis is on social inclusion, as participation connotes taking part in social life, "being included or engaged in an area of life, being accepted, or having access to needed resources (WHO 2001, 15). Due to an individual's impairment or disability, he or she might face participation restrictions. Participation restrictions refer to the "problems an individual may experience in involvement in life situations" (WHO 2001, 10). Participation restrictions can be caused by personal, contextual, as well as environmental factors. Although the WHO model includes factors other than the personal ones, it does not specify them or elaborate the complex interrelations between these factors and disability or participation (see Mitra 2006).

The Nagi model, otherwise referred as functional limitation paradigm, developed by the American sociologist Saad Nagi has been considerably influential in American public policy making. Like the WHO model, Nagi also proceeds from a conception of pathology and impairment as the starting components of his model. For Nagi, pathology refers to an interruption in normal body processes. An active pathology then leads to impairment which is anatomical or physiological

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[7] The use of the term handicap in the WHO model had come in for serious criticism, particularly on the part of the social model theorists like Mike Oliver. The term handicapped has been regarded as demeaning as it connotes the disabled as begging for charity. Taking these criticisms into account, the WHO has replaced the term handicap with more inclusive term participation. See Thomas 2002, World Health Organization 2001.

abnormalities (see Mitra 2006). Functional limitation which refers to the inability to perform socially defined roles or tasks forms the third component of the Nagi model (see Altman 2000). Although functional limitation is caused by a particular impairment, it is ultimately a social construct, as the kind of roles or functions that an individual is supposed to perform are socially defined (see Altman 2000).

Although the WHO model and the Nagi model have tried to blend both the personal as well as social dimensions of disability, they remain too specific and narrow in scope. As far as the ICF is concerned, "the classification remains in the broad context of health and does not cover circumstances that are not health-related, such as those brought about by socioeconomic factors" (WHO 2001, 7). The Nagi model "was developed by a sociologist for the purpose of applying sociological theory and knowledge to the problems of disability, particularly in a rehabilitation context" (Altman 2000, 117). Although these models attempt to bring the social dimension of disability, a direct and substantive causal link between impairment and disability is maintained throughout; and this has been a point of criticism especially on the part of the social model theorists (see Thomas 2002). More importantly, larger questions of social recognition, care and dependence, inclusive conception of the person and citizenship, questions of rights, justice and allocation of resources and providing a sociopolitical agenda for the disability rights movement are not addressed in these models (see Thomas 2002, Mitra 2006).

Re-conceptualizing Disability in a Capability Framework

The capability approach marked its entry into the field of theories of equality and justice by posing the 'Equality of What?' question. The two closely related questions that the approach has engaged with over time has been the question of the choice of the space of measuring inequality and the unit of measuring inequalities (see Terzi 2005a). The capability approach argues that the space of measuring inequality should be broad enough to include various human diversities, and there should be a plurality of factors on which the measurement should be based on. The practical opportunities that the people have to do or achieve should be the unit on the basis of which disadvantages and inequality has to be understood (see Sen 1992).

Much of the engagement that the capability approach has so far had with the issue of disability has been on the basis of the theoretical puzzle within mainstream debates of justice as to what the society owes to the disabled (see Anderson 1999, Nussbaum 2006b). Although their understanding of disability implicitly reflects elements of the feminist as well as the social model understanding of disability, neither Martha Nussbaum, (see Nussbaum 2006b), nor Elizabeth Anderson, (see Anderson 1999), tried to develop a framework within which the very issue of disability can be re-conceptualized. It is imperative for any theoretical model to first conceptualize the issue of disability before addressing its larger theoretical dimensions in relation to the society or any other social institution for that matter. The conceptual tools of the capability approach can be used to develop a model of disability that can explain not only the theoretical puzzle of what society owes to its disabled citizens, but also understand disability in a broader canvas without

attributing exclusive causal link to one single factor (see Terzi 2005a, 2005b, Mitra 2006).

According to Lorella Terzi, "the first fundamental insight provided by the capability approach for the reconceptualization of disability relates to its specific and complex understanding of human heterogeneity as encompassing personal, external and circumstantial elements, including the individual differential conversion of resources into valuable functionings" (Terzi 2005a, 451). One of the major criticisms that the capability approach has against mainstream theories of justice like that of John Rawls is regarding the inability of these theories to account for human diversities within the theoretical fold (see Sen 1992).[8] Sen identifies five factors that influence human heterogeneity. They are: 'personal heterogeneities', 'environmental diversities', 'variations in social climate', 'differences in relational perspectives' and 'income within the family' (see Sen 1999). The capability approach argues that a theory based on a single metric like income, utility or primary goods to measure interpersonal diversities will not be able to encompass the entire range of human diversity. The capability approach therefore lays thrust on capabilities, or set of functionings that an individual can really achieve, and it holds that all human beings are entitled to certain basic capabilities at least at a threshold level regardless of their different kind of diversities (see Sen 1992, Nussbaum 2006b).[9]

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[8] The critique of the Rawlsian theory that the capability approach presents has been discussed in the second chapter. Also see Sen 1980, 1992, 1999, Nussbaum 2000, 2006b.

[9] The idea of a basic threshold level of central human capabilities being available to all individuals is a contribution of Martha Nussbaum. This idea of a threshold level of capabilities is important in

This inclusive conception of diversity that is at the core of the capability approach has great significance in the context of understanding disability. As the capability approach argues, human beings are diverse due to various factors including personal factors like impairments as well as social conditions like the structure of the public educational system, design of system of transport and so on. So the functional and capability deprivation any individual may experience can be attributed to different causal factors, and these differences should not deny any individuals the basic entitlements of a flourishing human life (see Nussbaum 1992, 2006b).

In a capability framework of disability, the duality between impairment and the social environment is denied. Instead the approach looks at disability as intrinsically relational in the sense that the functional limitation that an individual may experience due to impairment should be understood in relation with the kind of environment he or she is in (see Terzi 2005a, Mitra 2006). The capability approach suggests a "conceptualization of disability as emerging from the interlocking of personal, social and circumstantial factors" (Terzi 2005a, 452).

The capability approach articulates disability in terms of functioning and capability deprivation (see Terzi 2005a, 2005b, Mitra 2006). At the personal level, the approach employs the concept of impairment, which can be defined as "physiological, mental or anatomical loss" (Mitra 2006, 241). Impairment is a

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the understanding of a capability framework of disability. However, Nussbaum's idea of a threshold level of capabilities has attracted criticisms from many egalitarian theorists, particularly Richard Arneson. He argues that Nussbaum's insistence on a basic threshold level of capabilities being available to all individuals make the approach sufficient. For more on this, see Arneson 2006. For a critique of Arneson's argument, see Kauffman 2006.

personal feature that may limit certain functionings, and therefore is disabling (see Terzi 2005a).[10] Disability is that situation in which an individual is deprived of the practical opportunities to achieve certain doings and beings that are valuable (see Mitra 2006). This can be termed as capability deprivation. So in a capability framework, disability refers to the condition in which a physically or mentally impaired person is deprived of valuable sets of capabilities (see Terzi 2005b, Mitra 2006).

However, the capability approach understands capability deprivation at various levels, and does not reduce it to impairment alone (see Burchardt 2004, Mitra 2006). According to Mitra, in a capability framework of disability, capability deprivation can be understood at three levels: "the nature of the impairment and other personal characteristics, the amount of resources available to the individual, and the environment" (Mitra 2006, 241).

Sometimes, the intrinsic nature of the impairment itself can be disabling. For example, a person who suffers from constant and severe pain might have a reduced set of capabilities, because of the intrinsic nature of the impairment might affect

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[10] The concept of functionings is used not only in the capability approach, but also in other models like the WHO model as well as the Nagi model. However, the way the concept is used in the capability approach is much broader in scope than the way it is used in other models. In the WHO model, functionings refer to body functions. Although it has environmental connotations, it is used in a health related sense. In the Nagi model the concept is used in a cultural and social relativist sense. In the capability approach, the concept is used as doings and beings that people value. It has a physical as well as environmental dimension. The concept of functioning as has been used in the capability approach has been discussed in detail in the second chapter. See also Sen 1992. For more on the different kind of usage of the concept within other disability models, see Mitra 2006.

his or her ability to move freely, to work, to have leisure and so on (see Mitra 2006).

At another level, deprivation can occur as a result of "the economic constrains that impairment may place on the availability of, and demand for resources, or may induce higher costs to achieve a given level of advantage or well-being" (Mitra 2006, 241). As Amartya Sen argues the disabled faces both earning handicap, as well as conversion handicap. To achieve the same level of advantage compatible with that of a so called normal person who has a similar level of income the disabled might need extra resources, and if these extra resources are not available, then his or her practical opportunities to achieve well-being should be considered as limited (see Sen 1992, 2004, Mitra 2006).

Capability deprivation can be the result of the barriers in the environment in its physical, economic, social, political and cultural aspects. Often it is the case that the disabled are deprived of the chance to engage in the public domain as a result of the stigma and prejudice to which they are subjected. The capability approach, unlike mainstream theories of equality or the medical model of disability argues for removing the stigmatizing elements in society, rather than attributing inferiority to the person (see Anderson 1999). The design of the environment is discriminating not only in the sociocultural sense, but in the economic and the political sense also. Like the social model of disability the capability approach also argues for the restructuring of the public domain so that the disabled are able to participate as dignified human beings (see Anderson 1999, Nussbaum 2006b).

A capability framework of disability rejects the duality between the medical or social origin of disability. At the same time, it includes both dimensions of the issue. In this framework the emphasis is on the practical opportunities that people have to achieve valuable functionings. Unlike the medical model it does not make any normative judgments about impairment. At the same time, by including a personal dimension of disability, it stays clear of the theory of exclusive social causation of disability as has been propounded by the social model. The capability approach understands functionings at a very broad level unlike the ICF model or the Nagi model which use the concept in a health related sense only. However, selecting relevant capabilities and indexing them are questions that need greater exploration, and these will be dealt with in the next section.

Disability, Social Justice, and the Capability Approach

The capability approach and its engagement with the issue of disability by and large have been in the domain of social justice. Although disability constitutes serious social discrimination and exclusion; and therefore it should form part of any debate on justice.

There can be two kinds of responses to this theoretical dilemma. Firstly, attempts can be made to modify the contractarian theories to include disability (see Daniels 1990; Pogge 2002; Brighouse 2005). The second kind of response is to formulate an alternative theoretical formulation to the contractarian theories. The capability approach has adopted the latter root. The approach proposes a different metric to measure difference and social disadvantage: a different conception of dignity and

personhood based on the intrinsic value of justice as the basis of social cooperation.

As has been already discussed, the case for the inclusion of various human diversities has been one of the strongpoint of the capability approach. The capability approach which is a non-idealistic theory, argues that human beings are diverse at different levels, and their needs and requirements are accordingly different.[11] For example, the needs of a lactating woman would be different from that of a disabled man. As Sen rightly points out people's ability to convert resources into valuable doings and things is dependent on many factors such as physical and mental abilities, the nature of the society, the state of the economy, existing cultural practices and so on (see Sen 1992). A fair theory of justice therefore should make sure that all individuals despite their varying circumstances should be able to access certain basic human entitlements, since they all have equal moral worth (see Sen 1992, Nussbaum 2006b). As has been already discussed, the approach to understand disability as a kind of human diversity caused by various factors that operate at different levels: personal as well as environmental. In an income based measurement of disadvantage the disabled and non-disabled would be treated as similar if their income levels are the same. That in turn would end up discriminating the disabled (see Sen 1992, 2004). Moreover, the kind of discriminations that the disabled are to face is often socially created, and therefore it cannot be rectified through monetary compensation. Justice for the disabled has

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[11] A non-idealistic theory is one which is based on real world circumstances. In an idealistic theory, many assumptions are made in the context of ideal circumstances. The Rawlsian theory is an example for an idealistic theory. For more, see Pierik and Robeyns 2007.

more to do with redesigning the environment, rather than trying to change the person as such. As Martha Nussbaum argues, "redesign of public space is essential to the dignity and selfrespect of people with impairment. In short, the task of integrating people with impairment is a public task, which requires public planning and a public use of resources" (Nussbaum 2006b, 167-168).

The capability approach proposes a plural metric to assess inequalities. The approach contends that inequalities should be measured in terms of the practical opportunities or capabilities that are available to people for achieving certain doings and beings or functionings that are valuable. Although there are different kinds of functionings, the approach demands capability equality in the domain of basic functionings that are fundamental to a dignified human life (see Nussbaum 2000, 2006b, Anderson 1999).

To take the argument further, it is imperative on the capability approach to address the question of specifying or delineating the idea of core human entitlements. This question has been in dispute within the capability school. Amartya Sen who has been the pioneer of the approach so far has resisted the calls to specify a list of core human entitlements. Sen argues that this question is not the one that should be settled by pure philosophy: "pure theory cannot 'freeze' a list of capabilities for all societies for all time to come, irrespective of what the citizens come to understand and value. That would be not only a denial of the reach of democracy, but also a misunderstanding of what pure theory can do, completely divorced from the

particular social reality that any particular society face" (Sen 2006a, 363).[12] While arguing for the process of preparing a list of capabilities Sen holds that it should be context specific and should be undertaken through a public deliberative process. Both Elizabeth Anderson and Martha Nussbaum, who have directly engaged with the disability question within the capability framework, also employ pure theory to propose specific core human entitlements.[13]

Following scholars like David Miller and Amy Gudman, Elizabeth Anderson argues for the adoption of a thin metric of equality in theories of justice (see Wasserman 2000, 2006).[14] Her conception of democratic equality uses a thin metric of equality framed in the mold of the capability approach. She argues that individuals should be provided with those capabilities that would enable them to effectively function as citizens in a democratic society. She notes, "negatively, people are entitled to whatever capabilities are necessary to enable them to avoid or escape entanglement in oppressive social relationships. Positively, they are

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[12] The question of specifying the list of core capabilities has been discussed in the second chapter. See chapter two, note 19. See also Robeyns 2005, Nussbaum 2006a, Sen 2006a.

[13] Nussbaum argues that her list of capabilities should be applicable to the disabled as well. Anderson does not endorse a universal list of specific core entitlements, but proposes supporting a broad range of capabilities within the framework of democratic citizenship.

[14] Theories of justice like that of John Rawls adopt a more comprehensive conception of equality in the understanding of justice. Influenced by relational theories of justice theorists like Miller, Gudman and Anderson suggests that since injustice most often takes place due to exclusion, theories of justice needs to address it. So these theories argue that what justice requires is to ensure equal standing of individuals when it comes to their citizenship rights and participation in civil society. For more on this, see Wasserman 2006.

entitled to the capabilities necessary for functioning as an equal citizen in a democratic state" (Anderson 1999, 316).

Anderson conceptualizes citizenship in a broad canvas and this conception entails a broad range of capabilities to be supported. Citizenship is not just limited to formal political rights like right to vote alone; rather "citizenship involves functioning not only as a political agent—voting, engaging in political speech, petitioning government, and so forth—but participating as an equal in the civil society" (Anderson 1999, 317). Therefore all the capabilities that would enable an individual to participate in the civil society should be supported within the framework of democratic equality. Three aspects of functionings should be ensured in this framework, they are: "as a human being, as a participant in a system of cooperative production, and as a citizen of a democratic state" (Anderson 1999, 317).

However, these three levels of capabilities entail a large subset of related capabilities, thus Anderson's list of basic entitlements turns out to be large in scope. This elaborate list exhaustively enumerating the fundamental entitlements is so important that it permits the widest possible latitude for the pursuit of developing a much more tenable theoretical framework for addressing the question of marginalization. She enumerates:

> ...to be capable of functioning as a human being requires effective access to the means of sustaining one's biological existence—food, shelter, clothing, medical care—and access to the basic conditions of human agency— knowledge of one's circumstances and options, the ability to deliberate about means and ends, the psychological conditions of autonomy, including the self-confidence to think and judge for oneself, freedom of thought and

movement. To be capable of functioning as an equal participant in a system of cooperative production requires effective access to the means of production, access to the education needed to develop one's talents, freedom of occupational choice, the right to make contracts and enter into cooperative agreements with others, the right to receive fair value for one's labor, and recognition by others of one's productive contributions. To be capable of functioning as a citizen requires rights to political participation, such as freedom of speech and the franchise, and also effective access to the goods and relationships of civil society (Anderson 1999, 317-318).

This democratic equality framework guarantees not equal levels of functionings, but effective access to those levels. Therefore the approach operates at the level of capabilities rather than that of actual functionings (see Anderson 1999). However the capability approach does not argue for effective access to equal levels of functionings for all the individuals. Anderson comments: "democratic equality guarantees not effective access to equal levels of functioning but effective access to levels of functioning sufficient to stand as an equal in society" (Anderson 1999, 318). So, rather than adopting any comprehensive metric of equality, the approach argues for a threshold level of capabilities that would enable the disabled individual to stand as an equal citizen. Thus, Anderson's approach is similar to Nussbaum's arguments for setting a threshold level of capabilities that any just society is expected to guarantee to its citizens (see Wasserman 2006).[15]

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[15] Since Anderson supports Nussbaum's idea of a threshold level of capabilities to be guaranteed by the society, Richard Arneson's 'sufficientarian critique' of the capability approach can be extended to the democratic equality framework as well. The charge of liberal perfectionism, which is a charge against the capability approach, in general, is another critique extended to the framework. However, Anderson argues that both the claims are misplaced; and, since the approach treats basic capabilities as part of citizen's obligation to one another, subjective evaluations or preferences of the individual can only assume less priority. According to Anderson, the distinction is one of "what

The main components of Nussbaum's list of central human capabilities are quite central to any variant of normative philosophy aspiring to realize social justice as well as any widest possible descriptive account of the human social world that human sciences can offer. They are: (1). Life; (2). Bodily Health; (3). Bodily Integrity; (4) Senses, Imagination and Thought (5) Emotions; (6) Practical Reason; (7) Affiliation; (8) Other Species; (9) Play; and (10) Control over One's Environment (see Nussbaum 2006b). The list itself is an evolving one and therefore not a final one. Each item in the list contains a subset of related capabilities (see Nussbaum 2006b). [16]

The versions of the capability approach as has been developed by Elizabeth Anderson and Martha Nussbaum has serious implications for the question of disability and social justice. Both Nussbaum and Anderson have developed their approaches partly in response to the emerging disability scholarship (see Wasserman 2006). Like the social model theorists, both Anderson and Nussbaum argue for the public domain to be made accessible to the disabled. Anderson's stress on effective functionings to be available to all individuals is important in the particular context of disability. By emphasizing effective functionings, Anderson is able to bring in the notion of alternative functionings to the fold. A particular functioning can be performed in different ways, and there should not be any normative judgments about the way a particular functioning should be performed.

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people want and what other people are obligated to give them" Anderson 1999, 329. See also Arneson 2006, Kaufman 2006, Wasserman 2006.

[16] The complete version of the list of Nussbaum's capabilities has been included in the second chapter. See Nussbaum 2006b, 76-79.

For example, walking is a way of moving about, which can be considered as a basic human functioning. However, a man in the wheelchair is also able to move about, and perform the basic functioning. So for a man who might need a wheelchair access to perform this basic functioning, the society has the obligation to see to it as effective physical and environmental conditions provided to the wheelchair user, so that he or she can stand as an equal citizen (see Anderson 1999, Wasserman 2000). Anderson's emphasis on equal citizenship and recognition of equal moral worth of all individuals are directly in tune with the political agenda set out by the disability rights movement.

Nussbaum's list of central human capabilities has undergone many significant changes in response to the disability question. In the earlier versions of her list of capabilities, Nussbaum had insisted on the use of all five senses as a basic condition of a flourishing human life. This was interpreted as excluding the blind and the deaf from conditions of a flourishing human life (see Wasserman 2006). However, in *Frontiers of Justice*, Nussbaum has used this capability in a general sense. She says;

> ...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 ones 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 nonbenefitial pain (Nussbaum 2005b, 76).

This generalization means that people with certain sensory impairment are not left out of the framework. In fact, Nussbaum recognizes that the people who have some kind of sensory impairment are capable of exercising other senses, and the society has an obligation to provide adequate environmental conditions for the same (see Nussbaum 2006b).

Nussbaum presents her list of capabilities as one that can be the object of a universal overlapping consensus (see Nussbaum 2006b).[17] Each component of the list should be equally applicable to all the individuals. The underlying principle here is the equal dignity and moral worth of all human beings regardless of their various diversities that should be taken into consideration in a theory of justice (see Terzi 2005a). Nussbaum rejects the idea of a separate list of capabilities for the disabled. She argues that the disabled are part of the human species, and has equal moral worth like any other human beings. Another reason for the rejection of the idea of a separate list is the fact that a separate list would only strengthen the false notion of the disabled being separate from the normal, and therefore would only contribute to further discrimination and stigmatization (see Nussbaum 2006b). Some of the cognitively disabled may face a situation where they might be lacking in one or more capabilities even after all the efforts on the part of the society. However, in Nussbaum's view, this should be considered as an unfortunate situation, and the society should ensure the attainment of a desirable threshold

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[17] The notion of overlapping consensus has been used by John Rawls. He argues that the principles of justice gain legitimacy due to the fact that they are agreed upon by citizens regardless of their varying comprehensive conceptions of the good. Overlapping consensus refers to the common agreement among citizens regarding principles that can be generally agreed upon regardless of the different conceptions of the good, which can be opposed to one another. For more, see Rawls 1993.

level of other capabilities that can be attained in such a particular case (see Nussbaum 2006b).

Both Nussbaum and Anderson reject trade off of capabilities. More of one capability cannot be the substitute for less of another capability (see Anderson 1999, Nussbaum 2006b).[18] Availability of all the central capabilities is essential for a life with dignity. Therefore trade off of one capability is tantamount to trading off human dignity (see Anderson 1999, Nussbaum 2006b).

Another contrast between the contractarian theories of justice and the capability approach which is of significance with regard to the disability question has been the difference in the perspective on the basis of social cooperation. The contractarian theories in general, and the Rawlsian theory in particular hold that the basis of individuals coming out of the state of nature and cooperating with one another is the possibility of mutual advantage or reciprocity (see Rawls 1993, 2000). These theories are influenced by the notion of circumstances of justice as has been propounded by David Hume. Rawls himself has by and large reproduced the Humean account of the circumstances of justice in his theory of justice as

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[18] Scholars like David Wasserman, despite agreeing with much of the capability framework, question the rigidity of Nussbaum's and Anderson's arguments regarding the trade off of any of the capabilities. Wasserman argues that in some particular circumstances trade off of capabilities might be required. For example in a situation where the society is not sure of bringing up a cognitively impaired person to a threshold level of education even after spending huge amount of resources and at the same time there exists a possibility of improving the quality of life of even less impaired persons, the society might have to give consideration to trading off some of the capabilities in favor of a project, which is more assured of a positive outcome. For more on this point, see Wasserman 2000, 2006.

fairness (see Rawls 2000).[19] The contractarian conception argues that the parties to the contract are motivated by self-interest, and they are roughly equal in terms of physical and mental abilities; for the resources available in the society are scarce. Only through mutual cooperation can these resources be maximized (see Vanderschraaf 2006, Nussbaum 2006b). So the parties who are roughly equal in terms of their physical and mental abilities come together and enter into a social contract for mutual advantage.

The contractarian conception of social cooperation has been debilitating for the disabled. Rawls considers the disabled as incapable of participating in the process of social cooperation, in his view, they lack the physical and mental abilities required to become citizens. This position of Rawls has come in for criticism. G. A. Cohen, Martha Nussbaum, and others have contended that the contractarian framework with the idea of mutual advantage at its center cannot address the question of disability within the framework of justice (see Cohen 1995, Nussbaum 2006b).[20]

The capability approach rejects the contractarian conception of the basis of social

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[19] The implications of the Humean circumstances of justice on contractarian theories and particularly on the disability question has been discussed in the first chapter. See chapter 1 notes 11 and 12. Also see Rawls 2000, Vanderschraaf 2006.

[20] Some theorists like Anita Silvers and Lawrence P. Becker have argued that the idea of mutual reciprocity is not essential for the contractarian framework. Silvers and Francis argue that rather than emphasizing reciprocity, the contractarian theories should address the question of disability within a framework based on trust. Becker argues that Rawls oversimplifies the notion of reciprocity, and if the notion is correctly applied, it becomes obvious that the disabled are also to be included within the framework of social cooperation. For more, see Silvers and Francis 2005, Becker 2005.

cooperation (see Nussbaum 2006b). Adopting a moralized and socialized approach

from the outset, the capability approach argues that human beings cooperate with

one another because of the inherent value of such an engagement. As Nussbaum

notes that "although the approach does not employ a hypothetical initial situation

being an outcome-oriented rather than a procedural approach, it envisages human

beings as cooperating out of a wide range of motives, including a love of justice

itself, and prominently including a moralized compassion for those who have less

than they need to lead decent and dignified lives" (Nussbaum 2006b, 156-157).

The capability approach thus rejects the contractarian commitment to the Humean

circumstances of justice. So there is no underlying assumption of rough equality of

the parties who are motivated by self-interest. Rather than mutual advantage in the

economic sense, it is a wide range of motives including benevolence, and the

inherent value of social cooperation that brings the individuals together in the

process of social cooperation. The public conception of the person in the capability

approach is that of individuals who have shared goals and shared ends, and it is

due to these goals and ends that individuals cooperate, rather than with a view to

gain mutual advantage (see Nussbaum 2006b).

Another point on which there exists a fundamental difference between the

capability approach and the social contract theories like that of Rawls is regarding

the conception of personhood and human dignity. The contractarian theories like

that of Rawls adopt a Kantian conception of human dignity and personhood. Here

human beings are distinguished from other animals on the basis of human

rationality. For Rawls, it is this rationality that becomes the basis for citizenship

and the ability to formulate principles of justice. In the contractarian conception,

human beings are considered as rational and independent. However, such a conception based on an idealized view of rationality denies the basic human entitlements to the cognitively disabled people (see Kittay 1999, 2001, 2002, Nussbaum 2006b).

The capability approach adopts a more Aristotelian conception of human dignity (see Nussbaum 1992, 1993, 2006b). Taking its cue from Aristotle's idea that human being is a political animal; the capability approach rejects the strict distinction between rationality and animality, which has been the basic idea of the contractarian theories. Instead, the approach argues that both these dimensions are unified (see Nussbaum 2006b). While not denying rationality all together, the capability approach argues that it is just one dimension of the human life, which is guided by a plurality of activities and needs. Rationality itself is not constant, and there can be a situation in life, where the rational faculty may experience a decline. The capability approach challenges the contractarian notion of the idealized fiction of rational and independent human being. Thus, Nussbaum notes that, "in the design of the political conception of the person out of which basic political principles grow, we build an acknowledgement that we are needy temporal animal being who begin as babies and end, often in other forms of dependency" (Nussbaum 2006b, 160).

The concept of the circumstances of social cooperation and the conception of human dignity in the capability approach helps the approach address the important question of dignified care for the disabled. The question of care has been one of serious tension within both disability theory as well as mainstream theories of justice. The social model with its sidelining the issue of impairment and emphasis

on independent living often neglect the significance of care. In fact, the rejection of dependency on the part of the social model has been an issue of disagreement between the social model and feminist theories (see Morris 2001).[21] The contractarian theories that do not incorporate any kind of dependency into its conception of the person cannot adequately address the issue (see Kittay 1999, 2001, Nussbaum 2006b). The luck egalitarian theories end up discriminating against the care givers with its egoistic conception of egalitarianism (see Anderson 1999).[22]

Unlike these approaches, the capability approach puts forward a project of care that takes into consideration both the dependent, as well as the care giver (see Nussbaum 2006b, Anderson 1999). Nussbaum argues that since some forms of dependency is inevitable at some point of any human life, it is imperative on any theory of justice to accommodate the issue within the theoretical framework. In her view, care is not a single thing, it entails many capabilities. According to Nussbaum: "good care for dependents, whether children, elderly, ill, or the disabled, focuses on capabilities of life, health, and bodily integrity. It also provides stimulation for senses, imagination, and thought. Indeed good care is a valuable form of attachment" (Nussbaum 2006b, 168).

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[21] For a discussion of the tension between Feminist Theories and Disability Theory on the issue of care, see Watson, McKie, Hughes, Hopkins, and Gregory 2004.

[22] The luck egalitarian project argues that the care givers deliberately opt to perform the economically underpaid care giving duties, and since the resultant economic deprivation is the consequence of a deliberate choice, the society is not obliged to compensate them in any way. See Rakowski 1991, Anderson 1999.

Nussbaum also argues that care giving activities should be undertaken at an individual level. Each individual is different in terms of their capabilities, and generalizations might lead to stigmatization. Good care should envisage the shortfalls of capabilities at the individual level and adequately address these specific problems (see Nussbaum 2006b).

The capability approach argues that the caregivers should be able to attain decent levels of central human capabilities, and every society has the obligation to see to it that they do not face economic or social vulnerability due to the performance of care giving activities (see Nussbaum 2006b, Anderson 1999). Both Anderson and Nussbaum reject the traditional liberal notion of the public/private divide that confines care giving activities to the domain of the family, and thereby exclude these activities from the process of production. Anderson argues that rather than focusing on market as the domain of production, the entire society should be considered as a system of production, and the care givers, often women, should be considered as contributors to the production process by their performance of the duties of dependent caretaking, which is a collective moral obligation of the society (see Anderson 1999). By performing the care giving duties the care takers allow others to engage in other domains of production. Therefore, the society has the obligation to ensure the financial security of the care givers, and at the policy level, the capability approach supports Eva Kittay's proposal of the state providing financial support to care givers (see Kittay 1999, Anderson 1999, Nussbaum 2006b).

The capability approach has significant implications for public policy on disability. The stipulation of the approach that the space of rights should be understood in

terms of capabilities means: rather than an abstract recognition of the claims of the disabled, what is needed is the real guarantee of practical opportunities (see Nussbaum 2006b). Nussbaum argues that central human capabilities should be understood as constitutionally guaranteed rights (see Nussbaum 2006a). However unlike traditional liberal principles, the capabilities approach takes a positive view of rights in the sense that it argues that each state has the obligation to ensure a basic threshold level of all the capabilities to all its citizens in a positive sense. Thus the list of capabilities is supposed to be a guideline for public policy.

The environmentally mediated nature of the capabilities means that in the domain of disability, the capability approach would argue for the environment to be modified or restructured to ensure the availability of all the capabilities to the disabled, and thereby guarantee equal citizenship to the disabled (see Nussbaum 2006b, Anderson 1999). The modification of the environment becomes a public task that has to be performed by using public resources. Thus the capability approach supports the claim of the social model of disability that providing accessibility to public transport, creation of an inclusive system of education, reasonable access to technology in work places, are rights of the disabled people as dignified human beings. Further, the capability approach also recommends that the educational system should be designed in such a way that a need based understanding of justice is promoted, and a sense of inclusion and understanding developed (see Terzi 2005a). Nussbaum also suggests that youngsters should be trained in care giving duties, and even a period of compulsory public care giving duties can be enforced (see Nussbaum 2006b). However the stipulation that society is expected to provide only a basic threshold level of capabilities, which is to be

fixed through a democratic process implies that the utilization of public resources is not unlimited either (see Wassermann 2000, 2006).

In a nut shell, the capability approach offers powerful theoretical tools to address the various dimensions of the disability question. The approach offers a profound critique of the inadequate response of the mainstream contractarian theories of justice to the disability question. It opens up a way to link normative political philosophy with the ever growing field of disability studies, and thereby promotes a more enriched conception of disability. The conceptual tools of the capability approach can be used to formulate a new model of disability that is free from the oversimplified and misrepresenting duality of the social and medical causality of disability. In fact, the capability model of disability is able to sustain the political agenda of recognition that the social model of disability has upheld without taking recourse to theories of exclusive social causality. The plurality of variables to measure disadvantages that the capability approach argues means that various levels of disadvantages that the disabled face are fairly represented in the theory of justice and equality. The rich conception of human diversity rests in a need based conception of personhood that entails mutual dependents, the rejection of an idealized rationality, the rejection of the Humean circumstance of justice, the narrow contractarian conception of mutual advantage, a moralized view of care which strikes a balance between the needs of the dependents and the rights of the care giver and a radical yet practical conception of public policy. These are some of the strongpoints of a capability approach on disability.

This does not suggest that the capability approach has been able to address all dimensions of the disability question. As Nussbaum has pointed out, the capability

approach is only a partial theory of justice, and it only proposes a basic conception of justice. It has not entailed a comprehensive theory of justice to deal with the situation after societies attain basic threshold levels of capabilities. The questions of selecting relevant capabilities as well as that of the need for some trade off of some of the capabilities are difficult questions that the approach has to deal with at some stage. However, the capability approach has played a crucial role in bringing disability to the center of the debates of justice and equality, and offers a broader conceptual canvas to address the issue of disability and social justice.

Conclusion

Over the last three decades, the issue of disability has moved from the margins to the center of the social justice debate. A number of factors have contributed to this change. The United Nations as well as other international organizations has assumed the leading role in addressing the issue of disability at policy level for the pursuit of realizing a more inclusive society. Different civil rights movements have actively taken up the cause of marginalized sections of the society. The emergence of the disability rights movement particularly in Britain also forms part of the wider civil society activisms which catalyzed the process of foregrounding the issue of disability.

The wide currency that the social model of disability acquired from the 1970s onwards has altered the way disability was looked upon. The social model, by arguing that disability is the creation of a recalcitrant society that refuses to accommodate the disabled, has established that disability is a social issue increasingly deserving a serious social response at large; rather than leaving it the individualized medical approach of medical sociology. A simultaneous attempt of John Rawls has reinvigorated the social justice debate within political theory through his moral contractarian theory of justice. Subsequently the liberal egalitarian theories have also played an important role in bringing the question of disability to the fore as an important component of the debates on justice and equality. Although Rawls' theory has a strong foundation based on equal moral worth of all human beings, he has shied away from addressing disability due to certain constrains of his conceptual architecture. There have been two kinds of response to this theoretical lacuna from the mainstream liberal egalitarian theorists.

On the one hand, scholars like Ronald Dworkin, Thomas Pogge, Harry Brighouse and others have tried to address disability within the broad structure of liberal contractarianism by modifying some of the Rawlsian assumptions. On the other hand, approaches like the 'capability approach' developed by Amartya Sen and Martha Nussbaum addresses the issue outside the framework of contractarianism.

In this study, I have argued that the contractarian theories like that of Rawls and Dworkin have failed to adequately address the theoretical puzzle of an appropriate social response to disability. I have argued that the capability approach has developed effective conceptual tools for addressing disability more comprehensively; and such an approach can bridge the gap between the issue of disability and the mainstream debates on justice and equality.

The first chapter argues that the contractarian theories, particularly the theory of justice as fairness advanced by John Rawls, have failed to address the issue of social inclusion of the disabled. Although Rawls recognizes disability as an issue of social justice, he postpones it to be considered later. I argued that this proposed postponement of the issue of disability is against the very moral foundation of the Rawlsian theory; and an issue of such a magnitude cannot be postponed as a hard case. Through an engagement with the critical works of Amartya Sen, Martha Nussbaum, G. A. Cohen, Eva Kittay and Elizabeth Anderson, I argued that Rawls is not able to address the issue of disability due to certain structural constrains of his theory. Relying on income and wealth to measure relative social advantage, the adoption of mutual advantage based contractarian framework and the commitment to the Humean circumstances of justice as the basis of social cooperation, the conception of the individual as free, equal, rational and independent, and an

oversimplifying strive for methodological simplicity have forced Rawls to postpone the issue of disability. In the chapter, I have also briefly touched upon the luck egalitarian theory, particularly that of Ronald Dworkin, and other post-Rawlsian modifications of the theory like that of Norman Daniels, Harry Brighouse an Thomas Pogge, and argued that these theories also suffer from similar conceptual constrains, and therefore they cannot address the issue of disability adequately.

In the second chapter, I examined the conceptual framework of the capability approach. Since this chapter was supposed to be a theoretical introduction to the capability approach, I have limited the enquiry to the main works of the pioneers of the school of thought like Amartya Sen and Martha Nussbaum. The analysis was based on the critique of mainstream theories of justice and equality advanced by the capability approach and the conceptual alternative it has put forward. I have argued that the capability approach is able to expose the limitations of the narrow informational basis of utilitarianism and Rawlsian theory. The plural metric of functioning and capabilities that the capability approach puts forth can better represent human diversities and thereby reflect the real world situations within its theoretical fold. I then argued that the capability approach, with its broader inclusive conception of human diversity and the focus on the actual freedoms or abilities of people to achieve valuable doings, can address questions concerning social marginalization like disability in a better way. I also traced the difference between Sen's and Nussbaum's perspectives on the issue of selecting relevant capabilities, and presented Nussbaum's list of central human capabilities.

In the third chapter, I discussed the possibilities of a capability framework in understanding disability. Major argument is that the capability approach can critically engage with the various models within disability studies, so that it can bridge the gap between disability studies and the mainstream theories of justice and equality. Through an engagement with the main models of understanding disability, I argued that these approaches lack a sense of comprehensiveness and balance. The medical model neglects the social dimension of disability, while the social model bases itself on the platform of exclusive social causality of disability, and thereby lacks a perspective on impairment. It also fails to give an adequate account of care and dependency. The alternative models like the WHO model and the Nagi model also fail to balance their view on disability. In this respect, I have argued that the capability approach can provide a model of disability without attributing causal exclusivity to any single factor. Disability, in a capability framework, can be understood as functional or capability deprivation as a result of various factors such as environmental and personal. Thus the focus here is on the actual ability of the person to choose from sets of available functionings, rather than the cause or origin of disability. At the same time, both the social and personal dimensions of disability are included within the framework. Since the approach relates capabilities to the framework of constitutionally guaranteed rights, the capability model of disability can sustain the political struggle for the social recognition that in fact has been the hallmark of the social model of disability.

Thereafter I have then argued that the versions of the capability approach presented by Martha Nussbaum and Elizabeth Anderson could address the issue of disability within the space of social justice; unlike the contractarian theories of Rawls and

Dworkin that have either postponed the issue or misrepresented it. Unlike the contractarian theories that measure disadvantage in terms of a single metric of primary goods or resources, the capability approach understands social and economic disadvantage through a plural metric of capabilities that are influenced by various factors. Thus, the disadvantage faced by disabled individuals can be understood in terms of the additional need for resources as well as the need to avoid structural constrains created by the physical and social environment.

The capability approach attributes the basis of social cooperation to the inherent value of justice and the need for such mutual engagement. I argued that this conception of social cooperation could avoid the pitfalls of the mutual advantages based on contractarian conception acting as theoretical constrains to include disability.

The conception of the person as needy, temporal and interdependent is another strongpoint of the capability approach as far as the question of disability is concerned. Along with the conception of social cooperation the capability approach puts forward the conception of the person enables it to conceptualize a model of care that take into account the interest of both the cared as well as that of the care giver.

I further argued that at the level of public policy, the capability approach takes a balanced view of disability. Since the approach stipulates that basic capabilities are to be considered as constitutionally guaranteed rights that are to be accessible to all citizens, the responsibility is on the state to ensure that the disabled are able to access the basic capabilities like all other citizens. The suggestion that the process

of inclusive environmental restructuring is a social responsibility that is to be publicly funded, the capability approach is able to emphasize the social dimension of disability that requires a public policy response. However, the prescription that equal citizenship requires effective access to basic capabilities only at a democratically set threshold level means that the capability approach is able to balance concerns of need, equality and the availability of resources.

The last three decades have seen a transformation within the social justice debate, with the issue of disability slowly moving from the margins to the center. It is no longer the fictional happy cripple Tiny Tim, but the very real person of Setia Kittay, who dominates philosophical discourse on disability. The capability approach has played a significant role in this transformation. However, it does not mean that the debate is concluded ones and for all. There are important questions that merit future academic consideration. First of all, as the capability theorists themselves accept that the capability approach is not yet developed into a comprehensive theory of justice. Considerations beyond the democratic threshold are still outside the framework of the approach. The capability approach is yet to settle the methodological questions regarding relevant capability selection in different contexts and the process of setting the democratic threshold level. Another subject for future academic pursuits concerns the potential of the capability approach in the comparative assessment of affirmative action policies of different countries with regard to the disability question. For example, the reservation policy in India has tried to ensure representation of the marginalized sections like the disabled in various social institutions. However, the ongoing process of globalization and economic liberalization poses serious challenges to

disabled individuals in many ways. A political consensus on the question of reservation in private sector is yet to emerge. Liberal democratic discourses do not seem to focus their attention on the importance of adopting necessary legislative measures to address the social marginalization inbuilt in the private sector. Therefore, the question of disability in the present era of increasing liberalization stands a better possibility to be an issue of paramount concern. This concern suggests leaving a few important questions open.

Has reservation policy enhanced the substantive ability of the disabled to perform basic human function? Can mere representation alone guarantee basic entitlements to the disabled? How would reservation policy facilitate the kind of environmental restructuring that is essential for guaranteeing basic capabilities to the disabled? What are the possible ways of approaching the question of reservation in private and corporate sector etc.?

Although the capability approach and the disability theory have a lot of common concerns and ground for convergence, a wholehearted mutual engagement is conspicuously absent. The capability approach has addressed many of the concerns that are addressed by the disability theory as well. However, so far the engagement has remained a parallel one. Martha Nussbaum, who directly addresses the issue of disability has mostly engaged with the Rawlsian theory and used some of the arguments advanced by the disability theory to challenge Rawls' own assumptions. A more direct engagement between the capability approach and the disability theory can be more productive for public policy to address the aforementioned concerns. The efforts of scholars like Lorella Terzi to apply the capability approach to develop an inclusive pedagogical model in the field of special education are

important in this context, and such efforts presents opportunities for future academic enquiries in the fields of public policy research and educational theory.

The capability approach considers itself as part of the broad liberal egalitarian paradigm. So, the engagement in this study is limited only to the liberal egalitarian contractarian theories of justice and equality. However, this broad theoretical paradigm has faced vehement criticisms from other schools of thought outside the framework of liberalism. In particular, the theories of Iris Marion Young and Nancy Fraser offer major insights into disability; and of late, these theories have considerably influenced the disability theory. A simultaneous engagement with these theories and the capability approach can be a fruitful academic endeavor that can provide a more enriched conception of disability and social justice. The centrality that both sets of theories accord to diversity presents an interesting similarity, while the strong universalistic overtones of Nussbaum's version of the capability approach, in particular, is in contrast with the more relativist framework that theorists like Young and all. I feel that the similarities and contrasts of concepts like recognition, resource distribution, and basis of social cooperation, personhood, dependency and care can be questions of great importance to any future academic endeavor that tries to link the capability approach and the relativist theories of justice to understand the question of disability.

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