

**MARTHA C. NUSSBAUM'S CAPABILITIES APPROACH:  
A PERSPECTIVE ON GENDER JUSTICE**

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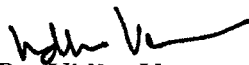
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*This is to certify that this M.Phil. Dissertation titled 'Martha Nussbaum's Capabilities Approach: A Perspective on Gender Justice' is a bonafide work of Ms Nupur Ray. This is being submitted to the Centre of Political Studies, Jawaharlal Nehru University in partial fulfillment for the award of the degree in Master of Philosophy.*

*To the best of our knowledge no part of this dissertation has comprised any monograph or book or has been submitted for any other degree or diploma in this or any other university. We recommend that this dissertation may be placed before the board of Examiners for evaluation.*

  
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***THIS WORK***

***IS***

***DEDICATED TO***

***TO***

***MA AND PAPA,***

***MY GREATEST PRIDE***

***AND***

***STRENGTH.***

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*No Escape*

“Everyday the ceiling gets lower, lower  
Till I could scream with the power  
It possesses over time,  
Please tell me what I am going to do,  
Just Smile and say I am fine  
How are you”?

*Jan Broadwood*

“The doctor was rightly upset about the unsanitary conditions in the women’s quarters; but he was wrong in one respect. He thought that it was a source of constant pain for us. Quite contrary to those with low self-regard, neglect does not seem unjust and so it does not cause them pain. That is why women feel ashamed to be upset about the injustice they encounter. If a woman must accept so much injustice in the life ordered for her, then it is perhaps less painful for her to be kept in total neglect; otherwise she is bound to suffer, and suffer pointlessly, the pain of injustice, if she cannot change the rules governing her life. Whatever the condition that you kept us in, it rarely occurred to me that there is pain and deprivation in it.” Rabindranath Tagore, “*Letters from the wife.*”<sup>i</sup>

## INTRODUCTION

Swami Vivekananda, the great Indian philosopher said that a society can not prosper if women of that society are neglected and not respected. It would be making a bird to fly with one wing. The irony of human civilization is that for ages, the bird has been flying with one wing, which is responsible for much of the impoverishment and violence on our society today.

Women in all parts of the world face injustice, recognized or unrecognized, in the public or private domain, with or without consent, in different ways, because they are 'women'. Based on all the theoretical and empirical work on women so far, the above statement is not an exaggeration. One wonders why is it so? The notion that it is divinely ordained was refuted long back. So is it economic, or social, or moral or psychological? In my view, gender injustice is a product of collective aggregate of mutually reinforcing male-dominated economic, cultural, political, moral and psychological forces that shape and deeply influence the structures; institutions and ideologies built up in society. This aggregative force could be called as 'patriarchy'. For any attempt to build up a society where women are given equal respect and status as men, this collective force needs to be challenged. Feminism, in spite of all its variations, seeks to challenge 'patriarchy'. Numerous theories have emerged in social and political theory, leading to plethora of debates on the sources of gender oppression, factors that sustain and strengthen it and the alternatives to evade it.<sup>ii</sup> In spite of irreconcilable interpretations, there is an underlying nobility in the vision it entails, that is the recognition of a woman as an independent entity deserving equal respect and dignity as men, a different sex but definitely not subordinate to the male sex.

In my view, these three issues in gender justice become more sophisticated in the Indian case as they engage with strong notions of culture and tradition. The sources of gender injustice are implicit and have assumed legitimacy due to perceived justness of dogmatic traditions. This is also one of the reasons for its

sustenance in the form of unjust arrangements in all political, moral, economic and cultural spheres. Hence, it is a pertinent task to scrutinize the underlying concepts of justice/injustice and to engage between theory and practice, specifically in the Indian context.

Contemporary political and social theory is in its most creative and dynamic phase (Fidel: 1999). One of the developments in this phase is the reducing charm of appeals to 'universals,' 'meta-narratives' and 'absolute truths' grounded in the 'Enlightenment tradition.' The emerging discourses on postmodernism, communitarianism, post-structuralism, multiculturalism and post-socialism are engaging and influencing the traditional discourses in liberalism, Marxism, feminism and the like. In the midst of these engagements, the conventionally accepted metaphysical foundations of 'political identity' have also come under attack for being exclusionary and discriminatory (Martin: 1999). This has led to the proliferation of political and social identities, embarking the emergence of what Charles Taylor famously coined "Politics of Identity" (Taylor: 1994). We are living in an era of urgent claims based on multiple identities where it has become a complicated task to locate common grounds for collective action and a common political consciousness. Feminism is also going through such a phase due to irreconcilable and contradictory perspectives that has led to loss of a common platform and a common voice to carry forward the vision it entails. As a notable feminist point out: "Feminism cannot afford to situate itself for difference against any universality, for the impulse that takes us beyond our immediate and specific difference and against universality. Difference is a vital necessity in any radical transformation" (Philips: 1993). Her view is thought-provoking looking at the growing disagreements between feminism and post-modernism.

Secondly, it is also a valid point that the theories on social justice based on the enlightenment values failed to incorporate the gender perspective, adhering to the public-private divide (Okin: 1989). This dilemma is a major concern of political philosophy, feminism in particular, today.



The Capabilities approach developed by Martha C. Nussbaum comes across as an interesting response to one of the most acclaimed and debated theories in contemporary political philosophy on social justice: John Rawls' 'Justice as Fairness' (Rawls: 1971). Her theory unfolds as a direct intervention in Rawls' theory in the social contract tradition.

The purpose of this study is to critically evaluate Martha Nussbaum's capabilities approach specifically in the context of its viability of addressing the issue of gender justice, its main concerns, in all its varying manifestations and the plausibility of her proposed theory to ensure an equally dignified and just life for women in all societies.

Keeping in mind that the capabilities approach is originally an innovation of Amartya Sen, this study investigates the perspective developed by Nussbaum. For a preliminary introduction of the study, I wish to discuss the following themes that would be an underlying link among all the chapters

### **Gender Justice**

Nussbaum's proposed theory is a theory of social justice. It is also an approach to human development that attempts to evade injustice/oppression of all kinds and forms, emanating from various identities of race, culture, ethnicity, economic status, mental disability and age in our society. Her focus on women of developing countries is due to two factors: first, they are the ones who pervasively suffer from lack of capabilities; second, they show the shortcomings of defects in the standard GNP and utilitarian approaches (Nussbaum: 2000:6). Her theory then becomes an intervention in traditional feminist philosophy, as she believes that feminist philosophy should focus on the urgent needs and interests of women in the developing world, whose material and social contexts must be well comprehended before policy recommendations (Nussbaum:2000:6).

There are three main issues that have preoccupied the subject of gender justice. First, the source of gender oppression, secondly the factors that sustain it and thirdly, the alternatives to eliminate them.<sup>iii</sup> My project is concerned with all three issues.

One of the widely accepted reasons for the sustenance of gender oppression has been a remarkable neglect of attention to gender dimension in both development studies and theories of justice in particular the systematic inequalities between the sexes (Okin: 1997). This point has been made about the theories of justice throughout the 1980s (Kearns: 1983, Okin: 1989, Crossthwaite: 1989). In the development literature, it was first made earlier, in the pioneering work by Ester Boserup but recently has been extensively put forward by many development theorists like Martha Chen (1983), Dasgupta (1993), Amartya Sen (1997, 1999), Mahbub-Ul-haq (1990), J Dreze (1998), Jelin (1990) etc. I shall be dealing with this issue of the missing gender perspective and the gender critique of the development and justice discourse extensively in chapter 1 and chapter two to carry forward the arguments made before.

There has been plethora of debates over the sources of gender oppression in feminist and non-feminist discourses during last few decades. Most recent interpretation of this conflict could be understood as what Nancy Fraser calls as the redistribution-recognition or Equality-Difference dilemma (Fraser: 1997). However, all conflicting interpretations in feminism converge on the pervasiveness and negative implications of public-private dichotomy as a normative principle and social arrangement. The dichotomy between the public (political and economic) and the private (domestic and personal) is assumed valid, where the former has been taken to be the appropriate sphere of investigation for the evaluation of development and justice. Both in development and justice literature, 'family,' a private domain for long, was considered as an inappropriate site of analysis due to highly misconceived notion of its foundations in mutual altruism, love and shared interests, which makes any issue of justice, which connotes conflicts of interests become inapplicable for its members (Okin: 1989). This meant complete indifference to nature of relationship among members of 'family,' which perceived as benign, could be exploitative also. In the past decade, 'family' as an analytical category of analysis has assumed great importance among the feminist writers. Some have argued that one of the main structural/institutional sources/sites and sustenance of gender oppression is

located in the private domain of 'family.' This is because it is in 'family' where an individual whether a male or a female develops a sense of 'self,' 'what is expected of the self' and the responsibilities of the 'self' (Walker: 1998). In other words, an individual learns to be a 'man' or a 'woman' in her 'family' that guides her relationships with the other sex in various spheres of life. He/she first recognizes what is just or unjust in his/her family through mutual relationships.

Hence as well argued by Okin, the failure to address the issue of just distribution within family is significant because the family is the first, and arguably the most influential, school of moral development (Okin: 1989). A 'family' based on mutually respectful relationships among members; allowing each member to develop one's moral autonomous self, can only produce individuals with a sense of justice and mutual respect for the other sex, especially for the 'weaker' female sex.

Third and most contested debate in feminism exists on the possible alternatives to eliminate gender oppression. The most prominent ones today are care-justice dichotomy (Gilligan: 1982; 1987; Tronto: 1993; Ruiz: 2006; Held: 1997), universalism-relativism (Nussbaum Spelman: 1988; Lorde: 1984, Minnow and Spelman: 1990; Kristeva: 1981) and redistribution-recognition politics (Fraser: 1997).

### **The 'Capabilities Approach'**

I got interested in the capabilities approach while doing my M.A dissertation, on 'The Concept of Human Development.' I got introduced to the Capability perspective in Human Development Approach pioneered by Amartya Sen, under United Nations Development Programme. Sen, in his famous book 'Development as Freedom' (1999) argues that expansion of human freedom should both be viewed as the primary end and the principle means of development. The freedom approach of Sen is coined in the language of 'capabilities and functioning.'

The concept of 'functioning', which has distinctly Aristotelian roots, reflects the various things a person may value doing or being. "A person's

‘capability’ refers to the alternative combination of functioning that is all feasible for her to achieve. Capability is thus a kind of freedom: the substantive freedom to achieve alternative functioning combinations” (Sen: 1999: 75).

There are three intrinsic features of capabilities approach, which make it a promising framework for evaluating and redefining gender justice. First, it focuses on what really matters when evaluating human well being, instead of limiting to instrumental resources like income or political rights. Secondly, it captures the multi-dimensional nature of the ends of development and human beings placed in different situations and locations, rather than any subsuming androcentric aggregation.<sup>iv</sup> Third it endorses ethical individualism but does not embrace ontological or explanatory individualism (Robeyns: 2004). Hence, it can deal with intra-household distributions and can also question how social structures; institutions and human relationships affect individual well-being, which is crucial when accounting for the gendered nature of societies.

### **Martha Nussbaum and Gender Justice**

It was during my reading of the development theories that I became acquainted with the work of Martha Nussbaum who though with same theoretical foundations as Sen’s, expands the horizon of capabilities perspective to new theoretical paradigms and gives it a new purpose. Her advancement of the theory gives it a potential of a breakthrough in feminist and justice discourses as capable of actually making significant difference in the lives of deprived and oppressed women of every society.

Her approach differs from Sen in its purpose, applicability and content (topic of discussion in chapter 4). Her approach is also more philosophical embedded in Aristotelian tradition,<sup>v</sup> probing deeply on human nature and its attributes whereas Sen’s is oriented to policy-making. In spite of its evaluative credibility, the ‘unspecified and general’ nature of Sen’s capabilities approach makes it inadequate in rectifying the implicitly structured form of gender oppression in different societies defended in the name of culture and tradition. It makes his theory vulnerable to androcentric applications and specifications

(Robeyns: 2004). Nussbaum argues that this limitation could be overcome by concretizing these capabilities in form of a list of ten essential capabilities and proposes it as a minimum threshold of gender justice in every society, irrespective of all inter-personal and inter-societal diversification. Secondly, the application of her theory is not limited to evaluative purpose but she defends it as a 'philosophical basis of constitutional principles in every state as a minimum threshold of what a life of human dignity requires' (Nussbaum: 2000; 2004; 2004; 2006). She seeks to bridge all gaps between women and the real opportunities of their access to resources by making these capabilities the foundation of social policy so that these capabilities actually become a reality in every woman's life, a condition pertinent for the realization of gender justice. Thirdly, Nussbaum has exemplified most of her theory in the context of Indian women. Thus, there was an urgent inquisition to explore a western philosopher's work so heavily based on India.

Lastly, Nussbaum's eclectically inter-disciplinary approach makes her work an interesting theoretical discourse of exploration. Embedded in Aristotelian philosophy, her theory seems to be an invocative intervention in moral philosophy, liberalism, development theory, feminist discourse and contemporary political philosophy.<sup>vi</sup> Her concern for gender justice cuts through these traditionally andocentric discourses, to arrive at an uncompromising specific list of minimum capabilities pertinent in every woman's life, irrespective of her location and status. This is a major reversal to ethical universalism, an idea that is under attack from all sides today. I am interested to throw some light on this claim in chapter three.

My main motive is to capture the relevance and contribution of Nussbaum's theory, something that I shall try to do in all the chapters, in different contexts. The crosscutting link across these themes would be a critical gender perspective and analysis of different defense arguments in favour of Nussbaum's capabilities approach made by her and other thinkers, as an alternative theory of social justice with special relevance to gender justice. First, I shall take up the Justice discourse (Chapter 1), then the Development discourse (chapter 2),

followed by analysis of the 'family' as a site of gender oppression and Nussbaum's perspective to reform it through the endorsement of capabilities approach framed by her (chapter four). I shall also be discussing the differences between Sen and Nussbaum (Chapter 3) as both of them have developed the approach envisaging the same vision of establishing a just society, though in different directions. Nussbaum perceives these capabilities as the basis of constitutional principles unlike Sen, condition necessary to actually reform 'family' from a 'hierarchical' to an 'egalitarian' unit and hence to realize gender justice, where it foremost required.

I wish to conclude this project with an exposition of the relevance and contribution of Nussbaum's approach in the Indian context.<sup>vii</sup> I shall try to point out the main features of her theory that could make it unique in the Indian context as compared to other theories and hence more applicable for realizing gender justice in India.

## ENDNOTES

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<sup>i</sup> In *Bardhan, Of Women, Outcastes*, p. 99

<sup>ii</sup> For an introduction to the main debates, refer Freedman Estelle and Barrie Thorne. 1984. "Introduction to the Feminist Sexuality Debates" *Signs*. 10(1): 102-105 and Anderson, Elizabeth 'Feminism' in Alison Jaggar and Iris Young (eds) .1998. '*A Companion to Feminist Philosophy*' Oxford: Blackwell Publishers

<sup>iii</sup> I limit my discussion to these three broad issues in feminism for conceptual clarity. There are many new issues in discussion today.

<sup>iv</sup> The first two points could be traced in various works of both Amartya Sen and Martha Nussbaum, whereas the third point is an interpretation of Ingrid Robeyns.

<sup>v</sup> For a detailed discussion of Nussbaum's work on Aristotle refer 1993. 'Non-Relative Virtues: An Aristotelian Approach' in Martha Nussbaum and Amartya Sen (eds.) *Quality of Life*, New York: OUP

<sup>vi</sup> This point will get explicit, as we will go through the forthcoming chapters.

<sup>vii</sup> Nussbaum's own book '*Women and Human Development*' (2000) is a work mostly in context of Indian women. Thus, most of her arguments in defense of Capabilities approach could be directly related to women in India.

## **CHAPTER 1**

### **THEORIES OF SOCIAL JUSTICE: A GENDER CRITIQUE**

#### **I. Critique of the Utilitarian Theory of Justice:**

- Amartya Sen's Critique
- John Rawls' Critique

#### **II. Critique of Rawls' 'Justice as fairness'**

- An Overview of 'Justice as fairness'

The scope of 'Justice as fairness': The 'included' and the 'excluded'

- Eva Kittay
- Harry Brighouse
- Martha Nussbaum

#### **III. Feminist Alternatives: In Response to Rawls**

- Susan Moller Okin
- Carol Gilligan
- Martha Nussbaum

#### **IV. Conclusions**



## Chapter: 1

### **THEORIES OF SOCIAL JUSTICE: A GENDER CRITIQUE**

This chapter reviews the recent debates in political philosophy that have unfolded the ethical and philosophical foundations of justice discourse. The aim of this chapter is to focus on the discrepancies and inadequacies in the dominant theories of justice from a critical gender perspective, considering women as a distinct/important category worthy of an equally just life and existence. G.A Cohen gave an interesting definition of justice as “.... there is something which requires people to have an equal amount of no matter what.... but to whatever extent is allowed by values which compete with distributive equality” (Cohen: 1993). Equality is a central theme of most theories in justice literature with varying perspectives on ‘something,’ and ‘values,’ that often put them in conflicting positions. There is also a third angle about who constitutes the ‘people.’ Is it inclusive or exclusive in nature? Since discussion of all the theories is beyond the reach of chapter, I shall focus on the two most widely accepted and discussed theories: The Utilitarian theory of Justice as an aggregative and John Rawls’ Theory of ‘Justice as Fairness’ as a distributive concept of justice. I focus on Rawls in this chapter whereas Amartya Sen will be discussed in the forthcoming chapters.

In the Utilitarian Theory of justice, I discuss two important thinkers who have criticized the theory from various perspectives, Amartya Sen and John Rawls, based on which they develop their own theories ‘The capabilities approach’ and ‘Justice as fairness’ respectively. Though they do not argue the fallacy of the discourse with reference to gender justice directly, I present them within that framework.

Further, in this chapter, I take up Rawls in detail. I discuss some points of criticism raised by Amartya Sen and then argue as to how these points of criticism are equally viable in endorsing a critical feminist perspective of Rawls’ theory. This is followed by feminist critique of Rawls by Susan Moller Okin in the liberal paradigm and Carol Gilligan in psychoanalytical approach. I shall end the chapter with Martha Nussbaum’s critical analysis of Rawls arguing that she overcomes the limitations of Okin and Gilligan’s critiques and suggests a more promising theory of social justice especially keeping women in mind.

My main line of argument in this chapter is that in spite of commitment to some form of equality, the prevalent theories of justice have failed to incorporate the obvious significance of feminist concerns and hence have failed to give a 'complete' and 'just' theory of justice.

## **Section 1**

### **Critique of Utilitarian Theory of Justice**

For a long time Utilitarianism had a dominant place in the justice and development literature, famously summed as 'greatest happiness of the greatest number' (Bentham: 1948). It is an aggregative theory, which focuses on the sum total of the 'good' enjoyed by a society or a community producing maximum happiness or net satisfaction. The logic behind this aggregative notion is that happiness and freedom are individual states and consequently freedom or happiness of a community can be assessed in terms of the sum total of individual happiness produced in a society. Hence, the main aim behind formulating principles of justice or freedom is to have maximum utility in terms of happiness. In other words, any principle of freedom or equality or justice should be designed such that it produces the aggregate of individual happiness. Broadly, from the utilitarian point of view, principles of justice become rules for distributing resources, which are vindicated by the beneficial results of their application (Miller: 1975). Thinkers have discussed various types of utilitarianism drawing attention to their strengths and weaknesses as the basis of critical foundation to the theories of justice (Sen: 1999; Miller: 1975; Rawls: 1971).

Two important features of this tradition, which limits its scope, are:

First as pointed out by David Hume, our respect for justice derives at least partly from its utility. Even if the basic moral demand of justice is not founded on utility as many theorists have argued for it's having own intrinsic value, its social utility is a powerful argument for its necessity in a society which is unequal and unjust. (In Miller: 1975). This is because under normal circumstances, conditions of injustice and discrimination in a society cannot produce aggregate happiness till some are actually excluded from the count itself (feminist critique). Hence, justice is relevant not only because it is a socially useful principle but also is recognition of equal respect and dignity

of all human beings, without discrimination on the basis of class, sex or race (Kymlicka: 1995).

Secondly, a distributive concept of justice focusing on an individual share cannot be reconciled with the aggregative utilitarian concept. They are two irreducibly different types of moral demands, which cannot be reduced to each other nor can be replaced for each other.

*Amartya Sen's Critique of Utilitarianism.*

Sen (1984) in his criticism of utilitarianism theory of justice first distinguishes its three features:

- 1) Consequentialism: The righteousness of actions – more generally the choice of control variables must be judged entirely by the goodness of the consequent state of affairs.
- 2) Welfarism: The goodness of state of affairs must be judged by the goodness of the set of individual utilities in the respective state of affairs.
- 3) Sum Ranking: The goodness of any set of individual utilities must be judged by their sum total.

Out of these three features, Sen's focuses on the feature of welfarism for it undergrids much of neoclassical economics and continues to function as a dominant outlook in philosophical ethics (Crocker: 1992). He recognizes that welfarism comes in various forms depending on whether individual utility is interpreted as happiness, desire fulfillment or informed choice between options. The dominants have relied upon happiness and desire fulfillment.

He identifies two fundamental shortcomings in this theory:

First, welfarism conceives of humans as no more than loci or 'sites (Sen and Williams: 1982) of certain 'mental states.' This angle of vision abstracts from what he calls as 'Agency' aspect of the person. Humans are not only experiencers or preference satisfiers; they are also judges, evaluators and doers. They also decide and revise on their conceptions of good as well as satisfy their desires based on these revised preferences. And this involvement of the 'agency' aspect involves much more than just pursuits of utility as the only premise for the righteousness of any action. Sen is trying to justify the Kantian emphasis on individual agency and autonomy. Hence, for Sen principles of

justice go beyond just their social utility and hold more intrinsic value for human beings. Only when justice could be perceived as intrinsically linked to human beings having a value in itself, that a more inclusive idea, considering its value for all man and women alike, could be envisaged. This critique of Sen defends justice as a principle relevant to every individual, and not to get lost in an illusion of aggregative sum of a group of individuals. This critique is useful in considerations of justice for women as 'end' in themselves.

Further, according to Sen, utility does not adequately represent principles like freedom or justice and especially if this utility is defined in terms of happiness or net satisfaction. Happiness is definitely an important aspect of human existence, however what is 'happiness' and how has it been defined is equally important. It could be what he calls as a 'momentous functioning' (Sen: 1985) or 'momentous achievement' (Sen: 1987). He shows his concern especially, because it is precisely the philosophical, political or religious traditions that mentally condition the oppressed to abstain from objecting to the unjust affairs.

I believe that injustice against women in India find much of its justification in religion and culture that continue even today in rural India that they don't even consider themselves worthy of justice. Any concept of justice derived from this false consciousness is a misplaced idea. The result of this 'false consciousness' is that acute inequalities often survive and perpetuate. The underdog mainly women and the racially lower groups, accept the legitimacy of unjust social order and become an implicit accomplice.

Third criticism, a common one against utilitarianism is the interpersonal variability argument. Individuals differ in their personal needs, requirements, preferences or characteristics that requires different resources for people in different conditions, if actually justice is to be pursued. Utilitarianism completely ignores this issue, as it is an aggregate idea. Sen points out the differences between individuals as following (Sen: 1990).

- a) Personal characteristics: Different physical characteristics connected with disability, illness age or gender making their need diverse.
- b) Environmental Diversities: Variations in environmental conditions such as climatic circumstances or natural calamity that calls for different needs.
- c) Variations in social climate: Social conditions like public health and epistemology, public educational arrangements and the prevalence or absence of crime and violence, which would then need different, specific principle of justice.
- d) Differences in relational perspectives: Requirements of justice differ with conventions and customs of a society. For example, being relatively poor in a rich community can prevent a person from achieving some elementary functioning as taking part in the social life of a community in spite of having a standard income status. The same can be argued as what is required to safeguard one's self-respect not necessarily determined by income levels.
- e) Distribution within the family: Distribution of resources in form of income or nutrients as well other resources like education of health facilities within a family are important determinants to define justice which may differ from society to society. Justice entails addressing to the needs and rectifying any deprivation of every individual in a family.

Sen's main idea in this criticism is to undermine the wrong assumptions on which utilitarianism thrives on as extending the logic of an individual interest to the whole society without distinguishing mutual differences and variations due to different circumstances in which individuals are living. This is an important point for gender justice because most of the earlier notions of justice of which utilitarianism is dominant theory, didn't look at the share and the resource requirements of different individuals by virtue of different variations mentioned above, gender being an important category.

He considers the utilitarian approach to justice as a variant of the welfare approach, concerned mainly with the aggregative welfare of a group or a community rather than the commodities themselves (Williams and Sen: 1982). Utilitarianism overemphasizes people's mental states and neglects other aspects of their well-being it does advance beyond the commodity approach by emphasizing on the pertinence of

principles of justice and freedom in a society by virtue of their being socially useful. However here in lies its main limitation as to paying exclusive attention to just one aspect of well-being and that is utility. The 'mental reaction' of utility, however interpreted, is an inaccurate and incomplete conception to assess the value of justice and fails as argued below by Sen, to yield an appropriate concept of social justice.

With these arguments, Sen shows the moral and practical deficiencies of the Utilitarianism theory of justice. His arguments are promising to endorse a feminist critique of utilitarianism along with its own foundations. Human actions and intentions cannot be reduced to utility only and for Sen human good cannot always be identified with justice.

### *John Rawls' Critique of Utilitarianism*

Since the publication of 'A theory of Justice'(1971), John Rawls has dominated the study of political philosophy as an original, insightful and controversial figure whose work has set the standards of theoretical political discourse. A revised version of the theory emerged in 'Political liberalism' in 1993 where he takes a more 'political' turn away from what he came to see as the comprehensive liberal doctrine of theory of justice and its inability to deal with the real diversity of opinions, beliefs and values in any liberal society. Rawls locates his theory in the social contract tradition as an alternative to the discourse on utilitarianism and brings out the main contrasts between 'Justice as Fairness' and 'classical utilitarianism' as theorized by Sidgwick (1907).

Rawls perceives utilitarian theory of justice based on the premise that a just society is one where the major institutions are arranged so as to achieve the greatest net balance of satisfaction summed over all the individuals belonging to it. The argument behind this logic is that since any rational person pursues the maximization of his interests-same principle could be advanced for the whole society "... to advance as far as possible the welfare of the group, to realize to the greatest extent the comprehensive system of desire arrived at from the desires of its members"(Rawls: 1971). Social justice is the principle of rational prudence applied to an aggregative conception of the welfare of the group (Rawls: 1971). However, this overemphasis on the aggregate desires or

satisfaction completely ignores the point as to how this sum of 'satisfaction' has been distributed among individuals.

Whatever are the means of satisfaction-rights/ opportunities, goods or privileges- its aggregative maximization is insufficient to establish social justice in a society till the manner of this aggregation is not analysed. This point is crucial to expose the inequalities and discrimination in accessibility to various resources within societies claiming a just social and political order based on aggregative indicators of economic growth or GNP growth. Social justice is about the share of each individual in all forms of human association: society, associations, family-and utilitarianism overlooks this issue due to which share of women in allocation of 'means of satisfaction' are not even considered an issue to be invoked in social justice.

Rawls in his discussion presents four contrasts between the social contract tradition in which his theory is rooted and Utilitarianism (Rawls: 1971: 28).

First in the Social Contract tradition-justice is a valuable virtue in itself, which cannot be compromised for any other principle like the issue of claims of rights, liberty and the desirability of aggregate social welfare.

In utilitarianism-'justice' as a principle has subordinate validity to the principle of utility. These principles arise from the conviction that the principle has a great social utility in a civilized society. Hence, it could be easily replaced and is more of a socially useful illusion.

Secondly, utilitarianism is based on the logic of extension of the principle of choice for one man to the whole society, whereas in the social contract principles of social choice i.e. due principle of justice is the object of an original agreement. The implication of this difference is that in utilitarianism two important and practical issues of *human diversity* and *interpersonal with intersocietal differences* which pertains to variation in interpersonal 'needs' get neglected in considering principles of justice. Rawls shares this point of criticism with Sen who also distinguishes different kinds of variations (mentioned before) pertaining to different requirements of justice This subsuming of particular needs and desires which could vary with class, gender, race or ethnicity as well as physical and social conditions of human life in the name of aggregative social utility is in itself a great source of injustice.

Third contrast drawn by Rawls is that utilitarianism is a teleological theory whereas Justice as Fairness is deontological. In the sense that it does not specify the 'good' independently of 'right' and does not interpret the 'right' as maximizing the 'good' (Rawls: 1971:28). This point can be illustrated through an example. If people in a certain society take pleasure in oppressing women as a means of enhancing the ego of men then maximization of his 'ego' is a justified principle of justice in utilitarianism – because the goal is 'maximization of good' whatever that 'good' may be – and is not different from what could be 'right.' In the social contract tradition, however there is a clear priority of 'Right' over 'good,' which constitutes a central feature of Justice as Fairness. In the social contract tradition, the pleasure in oppressing others is wrong in itself as individuals entering the contract implicitly conform their conception of good to what the principle of justice require. Hence, what is 'right' is not distinguished from what is 'good.' The principles of right and so of justice put limits on the value of satisfactions and hence on the conception of 'good' of individuals to make it compatible with a viable principle of justice and 'liberty.' Thus, the maximization of 'male ego' based on the oppression of women would never be justified in 'Justice as Fairness' whereas it could be in utilitarianism if it has social utility.

The contrasts drawn by Rawls, I believe, are also strong arguments to show how utilitarian theory of justice fails to look into the issue of gender justice and reaffirm the very sources of injustices by relying on natural facts/ and fallacies of human life and nature without making an attempt to rectify them, an absolute necessity for a true 'social justice' in general and gender justice in particular.

## **Section 2**

### **Critique of Rawls' 'Justice as Fairness'**

In order to reconcile to the enormous diversity in needs, requirements and lived conditions, Rawls reframed his theory by limiting it to a 'political conception of justice' (Rawls: 1993) grounded in the social contract tradition in which individuals enter a contract under the 'veil of ignorance' to arrive at objective and impartial principles of justice. Most of the theories thereafter have emerged as critical responses to various aspects of his theory as a premise to develop their own theories. However, his



contribution to the discourse remains indispensable. One of his finest critiques, Amartya Sen commented on his theory as being a 'far reaching theory of justice' for having 'contributed greatly to a radical regeneration of modern political philosophy and ethics' (Sen: 1990). He expresses an enormous personal debt to Rawls and even says that his own view is 'but one possible extension of the Rawlsian perspective' (Sen: 1984). The theory opened new insights and different set of debates that contributed in bringing about the issues of gender injustice explicitly for deliberation in social justice. Responses from Feminist theory, Communitarianism, Human Rights discourse, Post-modernism, Welfare Economics and the Social Choice theory to his theory have enriched and enhanced the whole discourse on social justice and highly influenced the policy making of countries as well. As Miller said that he not only added a fundamentally new principle to our ideas of justice through his 'Difference principle' but also has rather presented a variation on a well-established theme (Miller: 1975).

The debate started off with Sen's contention that theories of justice are limited in their interpersonal comparisons based on social primary goods, as justice as fairness claims, but rather in the space of capabilities. He argues that primary goods would be insufficiently able to take into account the interpersonal differences in the conversion of goods into functioning. A second line of critique on justice as fairness focuses on the limitations of its social contractarian nature, which would restrict the scope of the people that this theory can include. A third critique holds that its scope is also restricted with respect to the societies to which it applies. Finally, its ideal theoretical character has also created some worries. I will assess each of the critiques in turn and relate to the feminist critique.

#### *Rawls's theory of 'Justice as fairness'*

Rawls's theory of justice is a theory in the social contract tradition. This tradition imagines people in the state of nature, that is, before a society is formed. Society is viewed as a fair system of cooperation between free and equal persons. A social contract theory asks which political principles individuals in this state of nature would unanimously agree to respect in the society that follows the state of nature.<sup>1</sup> Rawls develops in his theory the concept of the original position, which corresponds to the state

of nature. The individuals in the original position are representative parties, that is, hypothetical persons who represent the actual people living in society for which they are deciding on the principles of justice. Rawls further introduces the 'veil of ignorance,' a theoretical device that imposes a lack of information of the parties in the original position. The parties have no knowledge about their place in society, nor do they have any information about which race, gender or class they would belong to, or regarding their natural abilities like intelligence or strength. Nor do the parties in the original position know their conceptions of the good. The parties do, however, know all the general facts about the society, such as basic economic and political principles, and general knowledge about human psychology, and about the relation between people and their social background. As the parties in the original position have no information about their place in society, circumstances or life plans, the agreement that they will reach in the original position regarding the principles of justice will be fair to everyone (Rawls: 1971:136).

Two aspects of the contractarian nature of Rawls's theory require special attention in the debate between Rawls and capability theorists like Nussbaum. The first aspect is Rawls' use of Hume's account of the circumstances of justice, that is, the "normal conditions under which human cooperation is both possible and necessary" (In Rawls: 1971: 127). Hence, these are the circumstances in which it is reasonable that a social contract can be decided upon.<sup>ii</sup>

Second characteristic of 'justice as fairness' is the concept of person. As Rawls puts it, "... we start by assuming that citizens are free and equal moral persons who can contribute to, and honor the constraints of, social cooperation for the mutual benefit of all.' In addition, "*Justice as fairness regards each person as someone who can and who desires to take part in social cooperation for mutual advantage*" (in Sen and Williams: 1982). Rawls perceives each person as being moved by an interest to realize the two powers of moral personality, which are the capacity for a sense of right and justice, and the capacity to form and pursue a conception of the good. While in *Theory of Justice* there was some ambiguity about whether Rawls was relying on a metaphysical account of the person, later Rawls has stressed that justice as fairness does not rely on a metaphysical but on a political account of the person, i.e. a characterization of those

aspect of personhood that are relevant when deciding on the basic political principles of society (Rawls: 1993).

The parties in the original position who decide on the principles of justice are assumed to mutually benefit from social cooperation and to possess certain cognitive abilities that allow them to take part in the decision. In the original position, the parties only decide on the principles of justice, and not on the concrete institutional design and policies that will give these principles content in the actual world. That is done in later stages, whereby the 'veil of ignorance' is gradually lifted and more and more information about their own position becomes available to the parties when they decide about the design of institutions, laws, and actual policies. The representative parties will choose some principles from a list of possible principles of justice such that they are rational for them to choose, given the information that they have and have not. Rawls argues that the parties will choose the following two principles (Rawls: 1971:60)

1. Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all (Liberty Principle).
2. Social and economic inequalities are to satisfy two conditions: a) they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and b) they are to be to the greatest benefit of the least advantaged members of society (the Difference principle).

The basic liberties are listed as follows: "freedom of thought and liberty of conscience; political liberties (for example, the right to vote and to participate in politics) and freedom of association, as well as the rights and liberties specified by the liberty and integrity (physical and psychological) of the person; and finally, the rights and liberties covered by the rule of law"(Rawls: 1971:61). Rawls stressed repeatedly that the two principles have to be seen as working in a tandem. The first principle, the principle of equal basic liberties, has priority over the second principle; in addition, (2a), the principle of fair equality of opportunity, has priority over the difference principle (2b).

Applying the 'difference principle' requires interpersonal comparisons of some notion of advantage. Rawls holds that a person's advantage should be specified by social primary goods, which are all-purpose means that every person is presumed to want, as

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they are useful “for a sufficiently wide range of ends.” Because the parties in the original position do not know which notion of the good life they will endorse, nor their natural abilities, they choose for general all-purpose means. In response to some of the critiques on the original publication of *A Theory of Justice*, Rawls has stressed that it is not actual persons who are assumed to want those primary goods, but rather persons in their capacity as citizens, as conceptualized by the political conception of the person in justice as fairness.

The social primary goods can be classified in five groups (Rawls: 1971: 9).

- (a) Basic rights and liberties;
- (b) Freedom of movement and choice of occupation;
- (c) Powers and prerogatives of offices and positions of authority and Responsibility;
- (d) Income and wealth;
- (e) The social bases of self-respect.

Due to the priority of the first principle over the second, and the principle of fair equality of opportunity (2a) over the difference principle (2b), the first three groups of primary goods are effectively equalized among all persons before the difference principle plays any role. This leaves us with only income and wealth, and the social basis of self-respect (categories d and e) to identify the worst-off person or group in society. Rawls considers the social bases of self-respect probably the most important primary good, and argues that the best way to provide the social bases of self-respect is by treating every citizen as an equal, that is, by giving every citizen the same rights and liberties. Thus, based on Rawls’s assumptions on human psychology, it follows that if both the first principle of justice and the principle of fair equality of opportunity are met, then everyone is provided with the same social basis of self-respect. As a consequence, the difference principle will make interpersonal comparisons based on estimating the lifetime expectations in terms of income and wealth.

Based on Rawls’s first outline of justice as fairness in *A Theory of Justice*, it could be well interpreted that income and wealth connotes personal income and personal wealth held by an individual. However, Rawls has later clarified that the primary goods like income and wealth also includes our partial control of the property and income of groups

and associations to which we belong, and the goods and services provided to us by public goods or government spending (Rawls: 1993). Rawls's principles of justice apply to the 'basic structures' of society, which he defines as "the way in which the main political and social institutions of society fit together into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages that arise from social cooperation over time"(Rawls: 1971:7). Because basic structures can differ over time and space, it is not possible to list all the institutions of the basic structure in general; however, Rawls does mention some, like the political constitution and economic and social arrangements such as the legal protection of basic liberties, competitive markets and the family. The fact that he does include 'family' as a basic structure and yet endorse a 'political conception of justice' involving people who have a 'sense of justice' has raised debates on the significance of questioning 'family' as a site of injustice (Okin: 1994).

Thus, in contrast to much other theorizing in contemporary moral and political theory that focuses primarily or exclusively on the distribution of particular goods and thus would fall under what Rawls calls "allocative justice" (Rawls: 1971: 64), Rawls's theory is a theory of institutional or political justice.

Finally, because Rawls is deeply concerned about the possibility that people with very different comprehensive moral views on the good life can come to a reasonable agreement on the principles of political justice, he stresses that the conception of justice must be public and the information necessary to make a claim of injustice must be verifiable to all, and preferably easy to collect (Rawls: 1971: 233). A theory of social justice needs a public standard of interpersonal comparisons, as otherwise the obtained principles of justice between citizens with divers views on the good life will not prove stable.

*The scope of 'Justice as Fairness': Are Women included in this vision?*

Over the years, Sen has formulated two lines of critique of Rawls - one related to Rawls's use of primary goods for interpersonal comparisons, and a second critique related to the restricted domain of Rawls's theory of justice. We will deal with the latter critique below. First, we turn to Sen's critique on the Rawlsian conceptualization of a

person's advantage, identification of the worst off in terms of primary goods, and its consequences for 'abnormal' individuals.

Sen's begins with the argument that 'justice as fairness' deals in an unsatisfactory way with severely disabled people (Sen: 1980) The difference principle, which determines how well-off someone is in terms of income and wealth *only*, would not justify any redistribution to the disabled on grounds of her disability. This disability could be due to physical characteristics, environmental diversities, variations in social climate, differences in relational perspectives and distribution within the family. The disability could be related to on different identities of class, race and our main concern of gender that could be responsible for discrimination in allocation of 'primary goods.' Rawls postpones the question of our obligations towards the disabled to be dealt with after the ideal concept has been established. The underlying reason is that he prefers to focus on the classical problems in the history of political thought. He argues that justice as fairness addresses what he regards the fundamental question of political philosophy, namely "what principles of justice are most appropriate to specify the fair terms of cooperation when society is viewed as a system of cooperation between citizens regarded as 'free and equal persons,' and as 'normal and fully cooperating members of society' over a complete life"(Rawls: 2001).

He certainly does not want to deny our moral duties towards the people that fall outside the scope of his theory, but he thinks that we should first work on a robust and convincing theory of justice for the "normal" cases and only then try to extend it to the "more extreme cases"(Rawls: 2001). The neglect of the needs of the disabled is thus not so much situated in the conceptualization of the social primary goods, but rather determined by the limited scope of justice as fairness as a social contract theory.

With reference to feminist concerns this limitation has adverse implications for gender justice because as the situation exists, women in most part of the world historically lack basic support and resources to be capable of acting as 'free and equal persons' and as 'normal and fully cooperating members of society' that automatically excludes them from this contract. Statistically Rawls' principles of justice has been formulated for less than half of population as more than half constitute women and physically/mentally population. Its postponement simply reflects the indifference, which

Rawls could have had towards the vulnerable and deprived groups in society, genuinely in need of a just life of which women are a considerable category.

Sen's critique on the inflexibility of primary goods goes beyond the case of the severely disabled. As Sen puts it, the problem does not end with the hard cases of the severely disabled. He believes that the more general problem with the use of primary goods is that it cannot adequately deal with the pervasive inter-individual differences among people, "...the primary goods approach seems to take little note of the diversity of human beings. ...If people were basically very similar, then an index or primary goods might be quite a good way of judging advantage. But, in fact, people seem to have very different needs varying with health, longevity, climatic conditions, location, work conditions, temperament, and even body size. ... So what is being involved is not merely ignoring a few hard cases, but overlooking very widespread and real differences" (Sen: 1980).

His critique of primary goods boils down to the argument that primary goods cannot adequately account for inter individual differences in people's abilities to convert these primary goods into what people are able to be and to do in their lives. In contrast, so Sen argues, we should focus directly on people's beings and doings, that is, on their capabilities to function. Primary goods are the means to pursue one's life plan. But the real opportunities or possibilities that a person has to pursue her own life plan, are not only determined by the primary goods that she has at her disposal, but also by a range of factors that determine to what extent she can turn these primary goods into valuable states of being and doing. Hence, he claims that we should focus on the extent of freedom that a person actually has, which he calls her capabilities (Sen: 1984).

Rawls has indeed stated that in his theory "everyone has physical needs and psychological capacities within the normal range" (Rawls: 1971:83-84), and therefore he excludes people with severe physical or mental disabilities from the scope of justice as fairness.

He justifies this by arguing that a theory of justice should in any case apply for 'normal cases'-if the theory is inconsistent or implausible for the normal cases, then it ~~will certainly not be an~~ attractive theory for the more difficult cases, such as people with severe disabilities. ~~In his earlier work, Rawls suggested that issues of disability might~~ take us beyond the theory of justice, and his methodological choice of focusing on the

core issues discussed in the history of political thought implicitly suggested that we could postpone the question of how to treat people with disabilities to one of the later stages of the design of the basic structure of society (Rawls: 1971:84). However, Sen argues: “...a substantial theory of justice cannot sensibly postpone this question in developing the basic structure of the theory. Need differences –of which ‘hard cases’ are just extreme examples—are pervasive, and they deserve a more central place in a theory of justice such as Rawls” (Sen: 1980).

In later work Rawls no longer argued that the case of justice towards the disabled had to be postponed to the legislative phase, but rather that we had to try to extend justice as fairness to include those cases. He added, “I don’t know how far justice as fairness can be successfully extended to cover the more extreme kinds of cases. If Sen can work out a plausible view on these, it would be an important question whether, with certain adjustments, it could be included in justice as fairness when suitably extended, or else adapted to it as an essential complementary part” (Rawls: 2001).

In the light of this debate, two important questions emerge:

First, is it *in principle* possible to include the physical and mentally disabled in Rawls’s theory by extending the social contract drawn up in the original position? And second, if it is not possible to include the mentally and physically disabled within justice as fairness, and the only way to deal with them is in an *ad hoc* fashion, should this be considered to be a problem?

The first question has been investigated by Eva Kittay (1997; 1999) Harry Brighthouse (2005), and Martha Nussbaum (2000; 2000a; 2006), among others.

Kittay’s argues that there are five presuppositions in justice as fairness that omit the concerns of the disabled and those who care for them mainly women as care-givers: the circumstances of justice; the assumption that citizens are fully cooperating members of society over their lifetime; the characterizations of persons as free; the characterization of persons as possessing the two moral powers and, based on this characterization, the choice of primary goods as the informational basis for inter-personal comparisons of well-being; and, finally, the assumption of rough equality between the persons, which is a necessary condition for the idea of social cooperation (Kittay:1997:219-66).



She tries to extend and modify 'justice as fairness' to include issues regarding the distribution of care work and the need for care by dependents. Her first modification is that human dependency should be included as a circumstance of justice, as otherwise; there is no guarantee that the parties in the original position will take dependency considerations into account. Second, the idealization that all citizens are fully cooperating members of society should be dropped to allow the full inclusion of the severely disabled. Third, the Rawlsian characterization of free persons needs to be dropped, as dependency workers are not free in the Rawlsian sense. Fourth, the list of moral powers should include a capacity to respond to vulnerability with care. Fifth, Rawls's notion of reciprocity needs to be expanded to include dependency work, thereby accounting for the reproduction of generations, and care should be included as a primary good (Kittay: 1999:88; 1999) Nevertheless, despite her attempts to extend justice as fairness to include the disabled, Kittay concludes that the difference principle will fail to meet the needs of dependent people (including disabled persons) and dependency workers, and argues that she sees no way in which the theory can be modified to sufficiently account for dependency concerns, without fundamentally abandoning Rawls's theoretical framework.

Though Kittay's critique is not limited to considerations of justice for women only, it very well explains how Rawls fails to acknowledge the need of 'care' itself and hence agents involved in 'care giving' and in need of care, traditionally undertaken by women on economic, social and moral grounds.

Harry Brighouse argues that as far as the physically disabled are concerned, justice as fairness can be extended to incorporate them, as they possess the two moral powers (Brighouse: 2005). Such extension of the Rawlsian framework requires that we give up the assumption that persons are economically productive over their complete lives. He holds this is a defensible move, as it is only a simplifying assumption in Rawls's theory, and not a foundational one. Hence, the original position is then modified to deprive the contracting parties of knowledge about their natural endowments. He further speculates that the disabled will then be considered the worst-off in society, and a considerable amount of resources will be devoted to improving the quality of their lives. However, while this extension of justice as fairness will yield very extensive obligations towards the physically disabled, Brighouse is worried that the Rawlsian assumption of

the two moral powers that make it impossible to include the severely mentally disabled within such extended version also. Within the Rawlsian framework, one could only argue on other grounds than those of justice, such as charity, that we have obligations towards the mentally disabled. But, to many it will certainly seem implausible that we have no obligations based on justice, especially since Rawls considers justice to be the first virtue of social institutions.

Kittay and Brighthouse's work mainly deal with assumptions underlying 'justice as fairness' that may be altered in order to count as an extension of the Rawlsian framework, rather than an abandonment of his framework. Kittay doesn't think it is possible to include the disabled (and dependents and dependency workers) in justice as fairness, and Brighthouse's analysis ends with the pessimistically phrased question whether Rawls's theory can accommodate the mentally, physically, socially<sup>iii</sup> disabled. I discuss Martha Nussbaum's view along with the other two feminist writers later in this chapter.

Analyzing in the context of gender justice, 'justice as fairness' can only accommodate the socially disabled 'women' by giving up the assumptions that the parties are socially productive over their life span, which makes one doubt whether this sits comfortably with the core idea of the social contract as social cooperation for mutual advantage. And more importantly, justice as fairness is not at all able to include women without definitely moving beyond some of its core presuppositions. This then brings us to the second question. If justice towards the women cannot be theorized within Rawls's framework, and the only way to deal with the disabled is in an *ad hoc* fashion, how problematic is that? By postponing the question of our obligations towards the disabled to the legislative stage, we are no longer discussing this as a matter of justice, but as a matter of charity or compassion, as both Nussbaum (Nussbaum: 2000a) and Brighthouse (2005) point out. Kittay (1997) and Nussbaum (Nussbaum: 2003) rightly argue that this postponement is deeply problematic, since dependency and care are central to everybody's lives and are a crucial factor in determining our quality of life. In addition, care and dependency are not just 'special cases,' but are important aspects of human life that at any particular point in time affect a large share of the population, and affect everyone at some point in their lives. This is an argument that feminist political philosophy has been making for some time now. Perhaps more importantly, the

distribution of burdens and benefits of being cared for (as a child, an ill or disabled person, or a frail elderly), and the distribution of burdens and benefits of caring (as a parent or a caregiver) are as much concerns of social and distributive justice as the distribution of income, wealth, liberties and opportunities. There is no theoretical justification for postponing these aspects of distributive justice, nor for keeping them outside the boundaries of our theories of social and political justice.

One could, of course, try to modify and extend justice as fairness to include the socially and culturally disabled, but this would raise the problem of which aspects of the Rawlsian framework are its absolute core and should therefore not be altered. If one stresses the social contract aspect of justice as fairness, as Nussbaum does, modifications are highly unlikely to include all people. If one holds that only the idea of the original position and veil of ignorance are unalterable, again new theoretical possibilities open up. In any of these modifications and extensions, it could also possibly be argued that the parties in the original position would not choose to assess their individual advantage in terms of social primary goods, but rather in terms of another metric, such as capabilities. However, any of these extensions require an agreement on which are the core and unchangeable aspects of 'justice as fairness.'

### **SECTION 3**

#### **Feminist Alternatives**

In this section, I will now review three feminist critiques of the Rawlsian model from three perspectives, though having common concerns. I begin with Susan Okin whose is primarily a liberal standpoint followed by Carol Gilligan who emphasizes on the distinct moral voice of women, ignored in Rawls. I take up Nussbaum then, pointing out the limitations in their critiques, arguing for a more plausible approach taken by Martha Nussbaum who is rooted in Aristotelian tradition.

#### *Susan Moller Okin's Critique of Rawls' Theory:*

One of the most well analyzed and indisputable critiques of Rawls theory has come from Susan Okin in the Feminist discourse. What makes her analysis unique is an evaluation of the Rawlsian principles to social institutions like family, in the light of which she

addresses the issue of justice in 'family' for women, overlooked in the Rawlsian framework (Okin: 1987; 1989; 1994). She begins with an argument that the issues of gender justice, which she calls as 'gender system' (Okin: 1987:43) has always been kept on the backburner based on false assumptions like the public-private divide, or family as an association based on 'affection' rather than 'justice' or women don't need justice so far they are happy and are incapable of developing a sense of justice (Okin: 1989:8-9). The sexual division of labour within 'the family,' in particular, is not only a fundamental character of marriage contract but deeply influences the whole paraphernalia of social, political and economic structures, most important being the psychological and cultural aspects, responsible for generating and reinforcing male domination as well as power relationships in other realms of human life.

Okin's careful analysis of Rawls points out its limitations to protect gender justice in family as well as its credibility as 'a potential critique of gender structured institutions social institutions' (Okin: 1987:68). She begins with a minor observation of repeated linguistic usage of male generic terms by Rawls as "Men," "mankind" and "his" for non-sexist terms of reference as "individual" or "moral persons"(Okin: 1987: 45).

The problem for a feminist reading of Rawls' theory, according to Okin, is encapsulated in that ambiguous 'He.' While Rawls briefly rules out formal, legal discrimination on grounds of sex, he fails entirely to address gender justice, which with its roots in the sex roles of the family and with its branching in to virtually every aspect of our lives- is one of the fundamental structural fallacies of our society.

Her criticism can be broadly discussed under three themes (1987):

First, she challenges two assumptions of contracting individuals in 'Original position' entering the contract under the veil of ignorance. First they are ignorant of their 'sex,' which would let them construct an impartial concept of justice. However, she argues that it is very important to acknowledge the different needs and experiences of both the sexes and include their incumbent positions in formulating principles of justice. In particular, those in the 'Original position' must take special account of the position of women, since their knowledge of the of 'the general facts about human society' (Okin: 1987: 46) must include the information that women have been and continue to be discriminated due to their 'gender' against men, in various political, economic and

cultural institutions and structures, 'family' being a prevalent one. Hence, going by the concern and the impartial attitude of the contracting persons, it becomes obvious that a social institution like family which is the very site of exploitation and oppression of women pervasively, cannot be ignored. However, Rawls in 'A theory of Justice' dismisses the case of 'family' to be put to scrutiny for its being a private institution based on affection and mutual concern and hence outside the preview of justice. This argument reinforces the public-private divide principle, as the basis of gender inequalities and injustice. Later in 'Political Liberalism' (1993) he justifies his stand by saying that his theory is a 'political conception of justice' and not suggesting a moral comprehensive conception of good. Secondly, they don't enter the contract as 'single individuals' but as "heads of families" or "representative of families" (Rawls: 1971). His intention behind this proposition is though not sexist but to address the problem of savings between generations. However, according to Okin, Rawls couldn't escape the dogmatic thinking that relations between sexes and generations are not to be regarded as subject matter of social justice as those entering are representing the families. A more simplistic observation is that the heads of families are men most pervasively. Woman headed families are considered as aberrations, without male heads (Okin: 1987: 47, 50, 51). This feature of family is a prevalent in most part of the world, which shows that this assumption of Rawls actually excludes women from being part of the contract itself.

Second point of her critique is Rawls' 'difference principle', which requires that inequalities be "to the greatest benefit to the least advantage" and "attached to offices and positions open to all" (Rawls: 1971: 60). This means that if any of the roles or positions analogous to our current sex roles, including those of husband and wife, mother and father, were to survive the demands of the first requirement, the second requirement would disallow any linkage between these roles and sex. Gender, as she defines with its ascriptive designation of positions and expectations of behaviour in accordance with the inborn characteristic of sex (Okin: 1989: 6). It could no longer form a legitimate part of the social structure, whether inside or outside the family. She explains this point through illustration of a major requirement according to Rawls for a just or a well -ordered society. The abolition of gender seems essential for the fulfillment of Rawls' criteria of political justice. For he argues that not only would equal formal liberties be espoused by

those in the original position, but that any inequalities in the worth of these liberties must be justified by the difference principle. Indeed, "the constitutional process should preserve the equal representation of the original position to the degree that is practicable" (Rawls: 1971:222). While Rawls discusses the requirement in the context of class differences, it is equally applicable to sex differences. However, equal political representation of women and men, especially if they are parents, is clearly inconsistent with the power relationships that operate in family.

Lastly, she puts forth that Rawls' theory is itself insufficient for the complete development of a fully human theory of justice (Okin: 1987: 71). For if principles are to be adopted by individuals ignorant of their particular characteristics and positions in society, they must be persons whose psychological and moral development is in all essentials identical. This would require the involvement and participation of both males and females in each others' spheres of life, understanding and respecting each others specific needs and differences to arrive at a more complete understanding of the social and political world. In other words, all social factors responsible for aggravating the differences between the two sexes need to be replaced by the genderless institutions (Okin: 1987:71; 1989: 171-172) and structures as all references to 'person' or 'individuals' connotes 'men' in theory and practice of discourses in justice, moral philosophy and human rationality resulting in the absence of the women's perspective. However, paradoxically she also sees in Rawls' theory, a potential critique of gender structured social institutions, which can be made explicit by seriously taking the fact that those formulating the principles of justice do not know their sex (Okin: 1987: 68)). In other words the theory is in principle an idealistically inclusive concept if individuals enter as 'sexless, free equal and rational partners' because then they won't adhere to any grounds of discrimination based on gender or any other determinant. However, this a problematic proposition as most societies are structured along the lines of gender. Gender hierarchy run deep into the social, political and cultural institutions and structures need to be altered and restructured from inside for an actual transformation.

Grounded in liberal tradition, it was not problematic for her to suggest that following Rawlsian theory with careful consideration, ideally disappearance of gender is a pre-requisite for the complete development of a non-sexist, fully human theory of

justice. By genderless, she means a condition where "...psychological and moral development is in all essentials identical" (Okin: 1987: 70). This could be possible through blurring all boundaries between male and female spheres of actions and thoughts with women actively participating in male-dominated realm of 'production, government and intellectual and creative life' and men trying to understand and share the role of women in family. This line of thought indicates the main theme of the first wave of Feminism (Fraser: 1997) in U.S that is the demand of equal representation of women in public institutions and citizenship rights. However, this simplistic suggestion of having genderless or gender-neutral institutions has been under attack by feminists emphasizing on the need to recognize and preserve the difference of women in discourses and policies as genderless often implies gender-bias or gender-blind which could be more unjust especially when we consider an institution like 'family'. One of the most widely discussed exponents of this critique is Carol Gilligan, whom I am discussing below.

#### *Carol Gilligan's Critique*

Carol Gilligan has drawn the world's attention to a different 'lens' through which women judge their actions, thoughts, intentions, beliefs and values, quite distinctly from the 'lens' used by men. She calls it as 'Ethics of Care' in contrast to 'Ethics of Justice' in men (Gilligan: 1982; 1997a; 1997b). Her main proposition is that men and women are guided by two different moral orientations – which is derived from their distinct conceptions of the 'Self,' the 'Other' and the world. Moral sensitivity of women responds best to values of compassion, care and responsibility in moral dilemmas in contrast to men who are oriented towards more independent and abstract ethical conception in which association with others is determined by principles of justice and rights (Gilligan: 1997b: 552-553).

This 'Ethics of Care vs. Ethics of Justice' position has aroused much debate on what should a feminist theory of justice entail or whether justice itself is anti-feminist if justice is not a natural trait of women? An important contribution of her work has been to question the foundations of Social Contract Tradition especially Rawls', premised on Kantian notion of 'Personhood,' devoid of 'gender' and 'care' perspective together and separately. Gilligan's hypothesis is primarily a critique of overlapping theory of moral

development from 'childhood' to 'adulthood' set by Piaget, Erikson and mainly L. Kohlberg (1969). Their theory is an extension and fine refinement of Kant's idea that moral development is an evolutionary process of expanding conception of the social world through 'understanding' and 'conflict resolution' arising out of engagement between 'Self' and 'Others.' Based on this premise, Kohlberg theorized six stages of moral development –each successive stage representing a progressive analysis of moral problems and approach to moral judgments. The capacity of the judgment expands from a personal egocentric approach through societal consideration to a more universal ethical conception. The highest stage is devoid of all psychological and egocentric constraints at which an individual, usually a man, develops capacity for objective autonomous thinking, independent judgment and universally rational conceptions of principles of social life (Gilligan: 1997a; 1997b; 1982).

What invoked Gilligan's criticism is Kohlberg's assumption that 'women' as a group are stuck at the third stage, which suggests that their moral development is incomplete, or a deviation falling short of reaching the highest stage imbibed in 'men.' At third stage, morality is conceived in inter-personal terms and goodness is identified with "...what pleases or helps others and is approved by them" (Kohlberg: 1971; in Gilligan: 1997b).

Two thought-provoking thoughts emanate from his theory:

First, an inevitable and natural subordination of women to men gets explicitly reflected in such a hypothesis Secondly, the theory further affirms the age-old public-private dichotomy as 'goodness of women, their care and sensitivity gets best expressed in domestic lives. However, Kohlberg unlike Freud, at least opens the scope for women that women could realize and overcome their limitation by moving in public sphere and hence reach stage five (determination by rules) and stage six (determination by principles of justice) (in Gilligan: 1997:551). But, their moral development or capacity of moral judgment is naturally inadequate, insufficient and incomplete as compared to men, which indicates their natural subordination as an evident inference in Kohlberg's theory and the likes. She goes beyond Kohlberg to attack the Kantian concept of personhood by unfolding the issue of a rational and morally autonomous self of Kant central to Rawls' theory of 'justice as fairness.'



Her theory is significant in raising the following issues in feminism and political philosophy:

First, she criticizes that the very traits which define 'goodness' in women, their caring, compassionate nature and sensitivity to others' needs are also traits which describe her as deficient, a case of aberration in a complete moral development (Gilligan: 1997a: 147). This 'personhood-womanhood' dichotomy is evident because the whole theory is based on male experiences, thoughts and perception of the world.<sup>iv</sup> Moral development defined in terms of masculine terms fails to incorporate a perspective that is characteristic of women reflecting a gender bias in the theory of moral development. Thus, the righteousness and wrongness of any thought and action in our world has long been evaluated through the male lens of 'Ethics of Justice' till feminist intervention took place.

Second argument by Gilligan, which made a kind of breakthrough in feminism is an assertion that moral sensitivity of women are oriented towards values of care, compassion and responsibility in their relation with other individuals, famously phrased by her as 'Ethics of care.' This inclination is not an aberration or a deviation but reflects a different mode of thinking 'a different voice' (Gilligan: 1982; 1997a; 1997b). It is in contrast to male orientation affirmed by Kohlberg as the highest stage of moral development, towards respect for rights of others and principles of justice (Kohlberg: 1971 in Gilligan: 1997b: 551). A noteworthy point made by her is that women abstain from moral judgment in terms of justice not due to their personal vulnerability but from cognizance of the discrepancy in moral understandings of men. Women, according to Gilligan have a distinctive construction of moral problems, seeing moral dilemmas in terms of 'conflicting responsibilities' and moral concern around the activity of 'care' just as the morality as fairness ties moral concern to understandings of rights and rules (Gilligan: 1997:579). Her claim addresses both the issue of equality for women in social and political life through incorporation of 'Ethics of Care' as well as addresses the issue of recognition and respect of this difference through laws and institutions, which allow women to value their moral orientation. It brought into forefront the idea that 'Ethics of Care' is equally valuable and significant as 'Ethics of justice' and should be given

opportunity of expression through reflection in political principles, institutions and structures of society.

Thirdly her theory addressed the larger issues of 'care,' its relegation and secondary status attached to the secondary status of women and its implications on the fate of compulsive caregivers like women in family and compulsive care-receivers like the mentally and physically disabled in society. The limitation in the theories of Piaget, Erickson and Kohlberg is the subordination of 'Care' to 'Justice' as an end in normal and exceptional circumstances. The old dichotomy between the rational, autonomous, thinking, public and justice-oriented masculinity against the irrational, dependent, emotional, private and care-oriented womanhood gets reaffirming this perception.

Her theory brought into forefront the idea that 'care' is not a principle of contingency but a principle that nurtures interdependence of intimacy and responsibility in human relationships binding them in common thread of humanity. She suggests therefore an integration of ethics of care and ethics of justice to conceptualize an integrative/complete picture of all moral, social and political understandings of the world. It is pertinent for an equal cognizance of the distinctive voice of women that is of 'care.' In her words, "it entails an integration of rights and responsibilities through a principled understandings of equity and reciprocity" (Gilligan: 1997).

These three issues raised by Gilligan also question the foundations of Social Contract Tradition premised in Kantian notion of 'personhood' as rational and morally autonomous. Rawls' theory comes under attack in the same context as precluding both 'gender' perspective and 'care' perspective, separately and together. Individuals entering the contract in Rawls theory possess two equal moral powers. First, it is the capacity for a sense of rights and justice and secondly to be able to form and pursue a conception of the 'good.' They are free and equal moral persons. It won't be wrong to assume that the conception of 'good' has to be in terms of justice and rights. An individual falling short of these powers won't be part of the contract. Taking Gilligan's stand, this assumption of 'personhood' is exclusionary as it excludes the perspective of women who are by natural or socialization, have a better capacity to develop a sense of 'care' and 'responsibility' rather than rights and justice. The fact that this orientation is different does not mean that they should be excluded from forming shared conceptions of the social and political

world. However, Rawls' assumption seems to be prioritizing principles of justice to principles of care, limiting the scope of theory to inclusion of women as caregivers. The limitation gets further obvious as he abstains from applying the principles of justice to 'family' where the contradiction between ethics of Justice and Care is most explicit. He also maintains the public-private, rationality-emotional and justice-care dichotomy through the assumption of contracting individuals having these moral powers. Though Rawls does say that the contracting individuals in 'original position are not even aware of their gender identities (Rawls: 1971), the assumption of their possessing capacity for a sense of justice and rights suggest exclusion of women's perspective as they are inclined to think in terms of 'care' and 'responsibility.'

In spite of this insightful proposition by Gilligan, which did bring out gender perspective explicitly, her theory is problematic in certain aspects:

First, going by Simon De Beauvoir's famous statement 'One is not a born a woman but becomes a woman' (Beauvoir: 1982), different moral orientations of justice and care in men and women respectively is a product of social conditioning through vestiges of patriarchy which operates in the psychological, cultural and social realms of all individuals, which make them a man or a woman. Hence women's sensitivity towards care, responsibility and sacrifice is not natural but moral construction done across a time, to make realize that it is only through these qualities that she would be able to feel worthy of her identity as a woman. Gilligan's theory actually strengthens this social construction by calling a woman's voice as distinctively oriented towards 'care.' This moral construction has been responsible for abstaining women from thinking that they too can think in terms of rights and justice and there is nothing morally wrong about it. Hence, for long they suffered injustice and oppression to live up to the image of being caring, responsible, and never stood of their rights or justice in private or public sphere. Thus, Gilligan's essentialism of manhood and womanhood could be fatal, if the attributes attached to them are not well considered.

Secondly, her concern for care is limited to its being associated to women and hence to be valued. Care is not a virtue to exclusive to women and to be done only by women nor does it take place only in times of contingency as for old and disabled. It is a virtue, which all individuals feel to give and receive in all times of their lives. Her

restriction of 'care' to moral domain of women, limits its importance in the lives of men also as caregivers and takers. Gilligan's hypothesis raised questions like is then justice antifeminist and care beyond the scope of justice? 'Care' has been highlighted as a value in itself to be recognized and preserved through reframing of laws, institutions and social structures so that women as caregivers and the old and disabled as care-receivers don't face injustice in public and private domain (Fraser: 1998; Tronto: 1993, Held: 1997 Nussbaum: 2000).

Thirdly, Gilligan does talk about an integration of ethics of care and justice through combining equity and reciprocity, however, how would that be accomplished has not been adequately dealt by her.

It is with reference to these limitations in Gilligan's theory that Nussbaum, according to me has more plausible arguments and theory for social justice in particular and gender justice in particular.

### *Nussbaum's Critique of Rawls*

Martha Nussbaum overcomes the three limitations in Gilligan's perspective, which makes her critique and theory more justifiable and plausible in my view. In this section I shall discuss her critique of various features of Rawlsian framework based on which a major part of her theory is framed. Though there are common points of critique of Rawls shared by Amartya Sen and Nussbaum, she goes further in developing her own critique in a different direction. Three specific issues could be identified as follows:

1. Critique of the Social Contract tradition.
2. Critique of the Kantian notion of 'man' in Rawls' theory
3. Critique of the 'Original Position'

#### *1. Critique of Social Contract Tradition*

Nussbaum argues that the contractarian tradition imagine society as a contract for mutual advantage, premised in the assumption that the contracting parties as roughly equals, without any relations of domination and asymmetry in power relations. This is drawn from the Kantian notion of contracting persons as "free, equal and rational" (In Rawls: 1980). Same idea has been adopted in Rawls' theory where the citizens in well-

ordered society are “fully cooperative members of society over a complete life” (Rawls: 1980; 546, 1996: 183). This very idea makes his theory exclusive for persons who are unfree, unequal and suffer from various kinds of social/ physical and mental dependency. Women in most parts of the world come in this category, which means that he hardly cared for their presence or absence during the formulation of the principles. She develops same lines of arguments for the physically and mentally challenged people in society and for those who are perpetually in need of dependency for lifetime (Nussbaum: 2000; 2005). This emerges as a complete paradox because in a way the very principles of justice theorized by Rawls exclude the groups who really ‘need’ them. She argues that any real society is a care giving and care receiving society, and must therefore develop institutions and structures to reconcile to “these facts of human neediness and dependency that are compatible with the self respect of the recipients and do not exploit the care givers” (Nussbaum: 2006:59). This point is crucial for endorsement of gender justice because it is women who get exploited as caregivers in ‘family’ or in the public domain.

This misplaced premise has profoundly adverse implications because Rawls’ defends his theory as a ‘political conception of justice’ to be institutionalized in political, social and economic structures of any society. However, it is not only limited, but leaves less scope of inclusion in future for a considerable population.

## *2. Critique of the Kantian concept of human beings*

The same assumption of Kantian person as ‘free, equal and independent’ in Rawls’ theory-further limits the scope of his conception to ‘arrivals’ not capable of ‘reciprocity’ (Rawls: 1971); they are owed “compassion and humanity”, but “... they are outside the scope of the theory of justice and it does not seem possible to extend the contract doctrine so as to include them in a natural way” (Rawls: 1971: 512). Nussbaum goes on to invoke Eva Kittay’s work who criticizes Rawls’ theory and ‘primary goods’ as an account of the needs of citizens who are characterized by the two moral powers and by the capacity to be ‘fully cooperating,’ has no place for the need of many real people for the kind of care we give to people who are independent (Kittay: 1999). Care for women, children, the elderly and the mentally and physically disabled is responsibility of any just

society (Nussbaum: 2003). It cannot be made secondary to idealistic formulations based on false assumptions of equality but needs to be addressed foremost to form a just society.

### *3. Critique of the 'Original position'*

Another dimension of the political and social contract in Rawls which is a divergence from Kant in the sense that Rawls' contracting parties are fully aware of their need for material goods; for they are imagined as competent contracting adults, roughly similar in need and capable of a level of social cooperation that makes them able to make a contract with others. (in Nussbaum: 2003).

This idea ignores the magnificence of human diversity needs and the difference access to the fulfillment of these '*needs*.' Men and women have distinctly different needs depending upon this socio/ economic political and cultural context. Secondly, not all women are aware of their material '*needs*'-due to what Nussbaum calls as '*adaptive preferences*' (Nussbaum: 2000: 137) developed and inculcated through structured patriarchal gender relations in almost all communities. Women, for long have been denied minimum education and political freedom. This has across periods of history, led to exploitation and oppression of women of which they became conscious, quite lately, due to '*adaptive preferences*.' Hence, this assumption of Rawls is false. Any theory of justice should include measures to resurrect these adaptive preferences' and '*develop a sense of justice*' for oneself – by women and other socially deprived groups.

Based on this critique, she suggests changes in Rawls' theory to make it an '*inclusive*' and a viable discourse on social justice. First, following Eva Kittay's formulation, she suggests to add '*the need for care*' during periods of extreme and asymmetrical dependency to the list of Rawls' primary goods (Nussbaum: 2006:62). Secondly, endorsing to what Sen has also argued – she recommends the understanding of the list not in terms of material needs or things but of central capabilities This is one of the strongest criticisms by Sen who argues to look beyond the '*well being*' of an individual in terms of wealth and income. There is much more to the well-being or justice or development than income and economic growth – which he comprehends as '*capabilities*.' Rather both Sen and Nussbaum consider Rawls' primary goods as

important capabilities – but they need to be supplemented with other capabilities like items of basic goods – social basis of imagination and emotional well-being. Nussbaum has developed her own list of ‘basic capabilities’ in her capabilities approach as the minimum criteria of social justice in society’ (Nussbaum: 2006:62-64). The theory in detail would be discussed later.

Another important change suggested by her in Rawlsian theory, which would rather alter its whole foundation is his political conception of the person. She proposes to change the political conception of person in Kant as ‘equal and independent’ to Aristotelian conception of person as both ‘capable and needy,’ like Marx puts it “in need of a rich plurality of life activities” (In Nussbaum: 2006:63). This conception touches human life the way it is for the most: in need and capable to fulfill that need – and any concept of justice ought to recognize and acknowledge the ‘dignity of human need’ itself. This changed perception from Kant to Aristotle automatically involves consideration of the human needs – needs of men as well as women, Nussbaum based on this conception – with a suitable list of the central capabilities as primary goods – formulates her ‘capabilities approach’ as an alternative to Rawls’ Theory of ‘Justice as Fairness.’

## **Conclusions**

This chapter is a theoretical discussion on the dominant theories of justice from a critical perspective, analyzing their limitations in light of their scope, their normative foundations and their proponents. Since my concern is gender justice I have delved on their implications and credibility for women in a society.

In my view Nussbaum’s critique and her suggestions for change in Rawlsian framework deal with these dilemmas in a more plausible way. She rather combines Okin and Gilligan’s stand in a consistent way that answers much of the issues that arose. She is also critical of Kantian notion of ‘person.’ Unlike the other two thinkers, suggests a more Aristotelian concept of person as an alternative who is ‘needy as well as capable’ (Nussbaum: 2003). Secondly, recognizing the need to value ‘care’ in society, she suggests that ‘care’ should be included in the list of primary goods. Lastly, she recommends that if Rawls’ lists of primary goods are replaced by a list of basic capabilities, then his theory would be more complete and realizable for gender justice.

(Nussbaum: 2003). There are overlapping points shared by all the three thinkers on Rawls, dealing with some very relevant issues. However, Okin and Gilligan take a more extremist stand that could be problematic for a realizable concept of gender justice. Nussbaum, on the other hand negotiates between the two stands to deal with same issues and suggests practical changes in Rawls' theory that devoid it of its limitations. The theory then becomes adequate to deal with the problematized issues of 'Care,' 'gender justice in family,' concept of 'person,' scope of the theory and its feminist ramifications.

However, she points out some inherent limitation in Rawls theory which if altered would change the basic premise of the theory (Nussbaum: 2003). In response to which she proposes "the Capabilities Approach" as an alternative which according to her is a philosophical project for the construction of a normative political principles entailing a partial theory of justice" (Nussbaum: 2000).<sup>vi</sup>

Nussbaum's 'Capabilities Approach' could be introduced from a different perspective. Capabilities Approach based on functioning and capability was pioneered by Amartya Sen in development Economics as a normative framework of thought for an evaluative purpose in terms of capabilities, focusing on what people are able to do and be and not on what they can consume or on their incomes (In Robeyns: 2006). His approach has been used extensively in Human Development Approach and in framing of the Human Development Reports by UNDP. Capability approach has been dealt extensively in the development discourse, in terms of its comparison with other prevailing theories like Economic Growth model, Resource model and various others. Sen's concern is mainly to use it as an evaluative pace to understand poverty, or inequality or quality of life or human development across nations and more importantly among individuals. One of its advantages over other theories of development is found to be its use for comparing the relative status in the chosen realm between individuals within a society. This made the approach very significant in grasping the relative position of women as compared to men in a given society going beyond GDP figures and opened up some bottled-up issues concerning the development of women. Theories of development came under the scrutiny of specific feminist critiques, questioning their normative foundations and basic premises. So, we have an interesting literature on critical analysis of the theories of development from a gender justice perspective. I intend to take up this discussion in the next chapter. It



is a critical review of theories of development through a gender justice perspective, followed by their adverse practical implications on women due to unjust development policies in various realms of life.

Another reason for taking up this discussion is Nussbaum's own concern to develop a universal political project on international development. Although she originally developed her idea in independence from Sen, their projects became fused while they were working together in 1986 at the World Institute for Development Economics Research (WIDER) and noticed that her ideas in the context of Aristotelian scholarship bore a striking resemblance to his approach in development economics (Nussbaum:2000). What makes her work outstanding from Sen's is her credibility of using the theory specifically to endorse a partial theory of justice as a universal minimum threshold for all societies and all individuals (social justice as we would understand). For this she goes beyond Sen and gives a concrete list of ten capabilities as a minimum criteria of what a life of human dignity would require (Nussbaum: 2000; 2003; 2006). She progresses the unspecified feature of capability approach by Sen, in development economics to a specified theory of social justice with women being the central concern in the justice discourse. Its purpose as an evaluative space, according to her is though a weaker purpose, but an important one for a theory of development. Discourse on development and justice come very close through the capability approach, which is an important topic of discussion, considering my topic and thinkers.

## Endnotes:

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- <sup>i</sup> Thomas Hobbes and John Locke are considered to be the pioneers of the social contract tradition , carried forward by John Rawls and Mártha Nussbaum.
- <sup>ii</sup> Two aspects of the contractarian nature of Rawls’s theory require special attention in the debate between Rawls and capability theorists like Nussbaum. The first aspect is Rawls’ use of Hume’s account of the circumstances of justice, that is, the “normal conditions under which human cooperation is both possible and necessary”(In Rawls: 1971: 127). Hence these are the circumstances in which it is reasonable that a social contract can be decided upon.
- <sup>iii</sup> The have phrased ‘socially disabled’ for women to suggest their social disability in form of lack of adequate opportunities and resources to be participate in the development of their society.
- <sup>iv</sup> L.Kohlberg used a sample of 84 boys. For a detailed discussion of the experiment and human stages of moral development by Kohlberg along with Gilligan’s critique see Carol Gilligan. 1997. In a Different Voice: Women’s Conceptions of Self and of Morality. In D.T Meyers (ed) *Feminist Social Thought: A Reader*. New York and London: Rout ledge.
- <sup>v</sup> For the latest version of list along with its contents refer Bina Agarwal, Jane Humphries and Ingrid Robeyns(ed). 2006. *Capabilities, Freedom and Equality: Amartya Sen’s Work from a Gender Perspective*. Oxford: Oxford University Press.
- <sup>vi</sup> An elaboration and discussion of various aspects of her theory from the perspective of gender justice will be the crosscutting theme in the chapters that follow.

## **CHAPTER 2**

### **GENDER JUSTICE IN THE DEVELOPMENT DISCOURSE: A CRITIQUE**

- I. Gender Justice and the Development Discourse: Main Themes**
  - The Tradition-Modernity Dichotomy
  - The Public-Private Divide
  - Evolutionary Model of Development
  - Feminist Methodological Standpoint
  
- II. The Impact of Development on Women:**
  - The Statistical bias
  - Exploitation/under-valuation of Women's work
  - Alienation from the Development Process
  - Absence of Control Over Resources/Decisions
  - Discrimination in Education, Extension and Technology
  - Gender-based division of Labour
  - Dual Role of Women: Farm and Family
  
- III. Martha Nussbaum's critique of the Development Discourse**
  - Resource-based Approaches
  - Preference-based approaches
  
- IV. Amartya Sen's and Martha Nussbaum's 'Capabilities Development Ethic':**
  - Features and Similarities
  
- V. Conclusions**

## CHAPTER 2

### GENDER JUSTICE IN THE DEVELOPMENT DISCOURSE

The place of women in theory and practice of development, in terms of their participation and involvement in the process, its impact on their lives and the structural/institutional constraints to their effective participation, have been on the priority agenda of feminism. This engagement is part of one of the most creative endeavors in feminist philosophy, which has put new questions on the agenda of moral, political, social and legal thought from redefining human nature to policy making. Gender justice is the central concern of the mainstream development discourse today.

For too long, it was assumed that development is a positive change that uplifts all individuals in a society, its benefits trickle down to all the classes and that it was gender neutral in its impact. Experience teaches us otherwise. Wide gender disparities in political, social, economic and technological spheres, stare in the face of all societies (HDR: 1993). Women have not only been deprived of the benefits of development but for long were not involved in the process as independent agents.

“Although women represent fifty percent of the human population and one third of the official labor force, they perform nearly two-third of all working hours, receive only one-tenth of the world income and own less than one percent of the world property” (UN Report: 1980).

On the other hand, critique of the development discourse has been part of the relentless struggle for gender equality in the twentieth century. There has been a change in the questions that feminist thinkers and policymakers are asking that is from ‘what’ of the development to ‘whose development’ and ‘development by whom,’ which has opened a plethora of serious issues and debates concerning gender justice in social and political philosophy. The recognition of ‘gender’ as an analytical category for both micro and macro levels is visible. Feminist interventions in the theory and practice of development at the level of research, grass roots politics and public policy have led to major changes in thinking about certain elementary notions like ‘equity,’ ‘freedom,’ ‘sustainability,’ ‘productivity,’ ‘empowerment,’ ‘public sphere’ and ‘development’ itself (Verma: 2003).

Amartya Sen and Martha C. Nussbaum have given a new language and a new perspective to the whole concept and practice of development. In spite of clear theoretical differences between the two, their works converge on an enterprising idea of 'Capabilities Perspective' in development discourse. They have constructed what they call as "a philosophical and conceptual framework within which to discuss some urgent problems that arise in the course of 'development,' especially economic development" (Nussbaum and Sen: 1989). These problems are both theoretical and practical. Further, they not only redefine development but also propose an explicit 'Capability Development ethic' (Crocker: 1992), a normative framework in terms of capabilities to define and assess development.

Amartya Sen has made a significant contribution in developing the concept of development as expansion of 'human capabilities' and its realization as 'freedom' (Sen: 1999), which also constitutes the central idea of Human Development approach of UNDP. In *Resources, Values and Development* (1984) he articulates a 'social ethic' (Sen: 1989) in form of 'capability perspective' as an evaluative space for assessment of various dimensions of social and political life. Nussbaum's concern about matters of gender equality and development starts from an observation that women are deprived of essential support in form of opportunities and capabilities for leading lives that are fully human and this deprivation is because they are women. Therefore she argues: "International political and economic thought should be feminist, attentive (among other things) to the special problems women face because of sex in more or less every nation in the world....An approach to international development, should be assessed for its ability to recognize these problems and to make recommendations for their solution" (Nussbaum: 2000: 4).

In order to substantiate this argument, she analyses the dominant theories of development from a critical gender perspective of distributive justice and its implications on women in our society. Most of her points of criticism are along the same lines as Sen with some specific differences.

Before coming to her criticisms, I wish to discuss some main themes in the feminist critique of development theories, with their impact. In other words, I am trying to locate the challenges in meeting the demands of gender justice in development. Another important reason for this discussion is that Nussbaum's feminist intervention and interrogation begins in the development discourse.

This chapter is a critical analysis of various dimensions of development from a gender justice perspective. It is divided into four themes; first, I elaborate on main debates on gender justice in development discourse followed by its implications on women in general. Then I shall take up Nussbaum's own take on development theories and her proposed combined 'Capabilities Development Ethic' along with Sen as an alternative proposition or approach to development.

## **Section 1**

### **Gender Justice and Development Discourse**

Over the past few decades, dominant theories of development and the policies/programmes framed around them have been broadly framed by and for men, with little concern for almost half of the human population i.e. women. Any initiative that neglects half of the whole population would obviously result in a failure as gender face of human poverty reflects today. Hence, "many development planners now realize that the full participation of women in development directly involves, half the available human resources, holds, the greatest potential for break-through in many difficult sectors, and offers the key to unlock the development dilemma" (Mehra: 1997).

There are four main prominent themes in the feminist critique of development theories that I intend to discuss: The Tradition-Modernity Dichotomy, the Public-Private Divide, the critique of Evolutionary model and the Feminist standpoint theory.

#### *The Tradition-Modernity Dichotomy:*

The development discourse for long was preoccupied with modernization theory, based on false assumptions and generalizations that pushed women behind in the development process. The liberal underpinning of the conventional modernization theory is based on a distinction between tradition and modernity that further gets transcended in the dichotomies of culture/nature, male/female, public/private and east/west. Women were deeply embedded in tradition, with men symbolizing modernity. Hence, development was conceived as a break away from tradition, struggle for domination of culture over nature, male over female, public over private and west over the third world. Underlying this was an unconscious and pervasive psychological preoccupation with separation and differentiation

from the household. This distancing is accomplished by the presentation of tradition as a bundle of characteristics that have been associated to women and have been used to subordinate women, by degenerating the social relations associated with them, especially mothers (Ortner: 1974; Lloyd: 1984; Rooney: 1991).

Underlying this construction are ideas about women, family, community that function as points of con-transform modernization theorists' idealization of a rational, forward looking, male-dominated public sphere. As Inkles and Smith put it, "Mounting evidence suggests that it is possible for a state to move into the twentieth century if its people continue to live in an earlier era" (Inkles and Smith: 1974). For the development theorists seeking to construct the antimony of tradition and modernity, it became important to distance one from the other and stress the importance of autonomy of tradition and modernity of men from the household and the feminine traits associated with it. A number of thinkers have traced the connection between nature, women and the private sphere in Western political thought. Ortner argues that the reason behind 'universal fact of women's subordination' is based on the premise that every society views women as close to or part of nature and therefore a natural inclination to subordinate women (Ortner: 1974).

Lloyd's discussion of the 'maleness' of reason locates the Greek connection between women and nature in women's capacity to conceive. In sexual reproduction, the 'clear determination of maleness' was contrasted with the passivity of mother, who only provided the matter that received the determination (Lloyd: 1984).

Broadly, in Modernization theory, psycho-cultural approaches (Inkles: 1969; Inkles and Smith: 1974; Lerner: 1958; McClelland: 1976) examines that attitudinal prerequisites of modernity while the structural-functional approaches (Parsons: 1960; Chodrow: 1989; Rostow: 1960) focusing on the institutional changes needed for modernity, have been the target of feminist philosophy. The feminists' critiques of western philosophical tradition have noted the persistent degradation of the 'feminine' within this tradition. Lloyd for example notes that in the triumph of reason over darkness, the early Greeks used symbolic associations of the female that was ought "...to be shed in developing culturally prized rationality" (Lloyd: 1984).

Jordanova's presentation of the dichotomies that emerged in the biomedical sciences in the eighteenth and nineteenth centuries showed similarities with the contrasts between traditional and modern man presented by Inkles and Smith. (See table).

Table: 1

Eighteenth and Nineteenth Century Dichotomies:

Traditional	Modern
Nature	Culture
Woman	Man
Physical	Mental
Mothering	Thinking
Feeling and Superstition	Abstract Knowledge and Thought
Country	City
Darkness	Light
Nature	Science and Civilization

*Source: Jordanova: 1980:44*

Jordanova suggests that the oppositions contain an important gender dimension and connotations of battle: the struggle between the forces of tradition and modernity is also a struggle between the sexes, with the increasing assertion of masculinity over, 'irrational, backward-looking women.' Further she shows how science and medicine use sexual metaphors that portray 'nature' as 'woman' to be penetrated, unclothed and unveiled by masculine science (Jordanova: 1980).

The Dependency Theory, which emerged to challenge the dualistic structure upon which the modernization theory rested, reasserted this dichotomy and 'subordinated position of women' by conceptualizing capitalism as a dynamic, rational and technologically superior phenomenon, an emblem of the gradual realization of an end to material necessity. This image was projected mainly by juxtaposing capitalist modernity with 'unproductive' sectors of society (Scott: 1995).



*The Public-Private dichotomy:*

Critique of the public-private divides both as a normative principle and as an institutional arrangement is a crucial theme, a common issue under speculation, by nearly all schools in feminism. A gender based perspective entails an analysis of the household beyond conventional division of labor to determine the actual position of women in economy and society. The conventional theories of development failed to recognize their relevance in economic, social, political, and cultural processes of a society, due to this deeply embedded dichotomy. It is a complicated tradition that at times treats private sphere of women as inferior to the public sphere, traditionally occupied by men and at other times complimentary to the 'male paradigm of Excellence' (Lloyd: 1984). The crux of this thought is that modernity, rationality, technological progress and good government are achieved in public realm, inhabited by rational and autonomous men in contrast to the irrational, inferior and backward private sphere, consisting of weaker and depended women. This rigid divide has been highly responsible for the sustenance and strengthening of 'patriarchy' cutting across all dimensions of human life. A number of feminist thinkers have brought out this critique in western political thought. Brown (1988) and Di Stefano (1991) have illuminated the influence of masculinity in the work of Aristotle, Hobbes, Marx, Mill and Weber. Brown argues "The historical relationship between constructions of manhood and constructions of politics emerges through and is traced upon formulations of political foundations, political order, citizenship, action, rationality, freedom and justice (Brown: 1988).

Locke's breakaway with traditional authority in arguments on the benefits of contracts and the rationalization of public life led to a firmer split between gendered conceptions of public-private, with the latter associated to women's, "sense, impression and desires"(Elshtain: 1981).

In the political sphere, this divide exists in terms of prohibition of women to be part of the public sphere, traditionally controlled by men. It entails not only their passivity in the political affairs of a country, decision-making, and public deliberation but also a more severe consequence. Issues like justice, development, equality and rights have been conventionally considered as issues to be dealt in the public sphere, hence they hardly came to be addressed in the context of women, associated with private sphere. This misplaced notion has been existing for long and still exists in some parts of the world that women don't need justice and

development as the purpose of their existence is to serve as means to the happiness and pleasure of men. There is nothing, rather there not ought to be anything that exists for themselves (Okin: 1989; Pateman: 1988).

G. Rose (1993) explains this divide in terms of the everyday spaces that men and women think, belongs to them. She says how a woman is made to feel uncomfortable as she steps in the public domain by a male gaze that and it's through this lens that she evaluates herself too. Another interesting example she gives is that how the voice of women automatically raises in kitchen as its her 'domain' and how it reduces in bedroom which is the male domain as it is here that men exercise their sexual prowess over their wives. The divide was prominent in the earlier theories of development especially in the writings of Parsons (1960) and Rostow (1960). In reaction to this McClelland remarked that development requires a shift in the allegiance from the private to the public realm (McClelland: 1976). However now the fallibility of the divide has been accepted widely both by the theorists and practitioners of development as this has been attacked repeatedly in various forms in all phases of feminism whether in the politics of distribution or the politics of identity (Pateman: 1988; Fraser: 1997, Mohanty: 1991, Agarwal: 1997).

#### *The Evolutionary Model of Development:*

Feminist theories have challenged the evolutionary assumptions underlying the conventional development theories and those that are central to Marxist theory: the idea that human history is a movement towards development of productive forces. The early development theorists, implicitly or explicitly, have relied upon evolutionary models of social and political change; have shaped their ideas about development, modernization and gender. In their reliance upon an evolutionary model, they inevitably portray development as the ever-widening ability of men to create and transform their environment. Within this linear framework of evolutionary social and political change, women are 'left behind,' confined to the household and denied citizenship. Women's continued subordination in fact defines male citizenship. Three important works have been the target of the feminist theory: Talcott parsons' 'Evolutionary Universals in Society' (1964), W.W Rostow's 'Stages of Economic Growth' and SSSRC Committee on Comparative Politics ( in Scott: 1995).

Rostow contrasts the world of family, mother and household with modern world of markets, technology and science. In fact, traditional societies become eligible for take off in their individual ability to perform certain specific, increasingly specialized functions (Rostow: 1960). This requires attitudinal changes towards science, propensities to calculate and take risks and willingness to work (Rostow: 1960). His appeals to male heroic leadership in his analysis of the take-off from modernity and exclusivity of the concept of 'boredom to men, suggest the one-sided male view in his theory.

Parsons relied explicitly upon an evolutionary model of development. He argued that certain "Organizational complexes" are necessary for societies to emerge from 'primitiveness.' In order to evolve along the scale of development, a society requires stratification, necessary to emerge from the seamless web of relationships that characterize societies governed by strong kinship and family ties (Parsons: 1964:34).

While he produces a legitimation of capitalism and markets, he also implicitly presents male/ culture triumphant over female/nature. The evolutionary universals considered fundamental for understanding development are also justifications for male dominance and denigration of traits historically associated with women. Liberal ideology and evolutionary functionalism join together to legitimize masculinity, individualism and domination and exclusionary practices with regard to the household (Scott: 1955).

The SSRC Committee on Comparative Politics has been the other target of the current feminist theory, banking on evolutionary models. They defined the obstacles to the achievement of development as "crisis" of identity, legitimacy, participation, penetration and distribution, faced by every society in "building both state and nation" (Pye: 1971). His discussion of the identity crisis in the Third World countries and the idea of capacity, performance, individual identity and overcoming the challenges of development, represents an exclusionary "syndrome" of development in becoming a "mature male adult" with no role of women. (Scott: 1995).

Another interesting criticism comes from La Palombara (1971:206) who perceives the crisis of penetration (whether (leaders) can get what they want from people from people over whom they seek to exercise power), with an explicit sexual connotation of male dominance over female. Hence, development in their theory is also control over women's sexuality. Evolutionary paradigms of development also assume that "security is inevitable

and in turn demands competition, which is expressed in dominance relationship in gender, ethnicity, class that makes for evolutionary “progress” (Gross and Averill 1983: 82).

### *Feminist Methodological Standpoint*

The feminist theories have explored questions of epistemology and methodology in social science that have altered the nature, approach and whole perspective towards dealing with political concepts and ideas like development, justice, equality etc. This involves a critique of techniques for gathering evidence and theorization based on this evidence excluding the experience of women as separate entities. Feminist critique on the production of knowledge is based on the claim that knowledge inferred from the male experiences represents partial truth. There is a growing urgency in feminist studies today to explore the ways in which representations of women inform their subjectivity. Great emphasis is being given to valorize women’s experience as means of challenging gender oppression by juxtaposing the conventional norms and pre conceived notions formed through patriarchy, about the needs and aspirations of women that went into the making of various theories, hence excluding the unique lived experiences of women. Embracing diversity and calling for the expression of each woman’s authentic (and superior) experience is a position that valorizes ‘permissive heterogeneity’ and ‘a rigid differentiation of outlooks between authentic female viewpoints’ (Goetz: 1991).

Female standpoint theories attempt to go beyond the experience of ‘male’ and accommodate ‘females’ as well in order to ground the epistemology, methodology and ontology in social sciences in the lives of women. On these lines, much criticism has come about the misconceived gender-blind development and various forms of discrimination that exist, due to the missing women’s perspective. Sarah Harding describes feminist standpoint theory as an effort to give women a ‘voice of authority’ and opportunity for considering what counts as knowledge’ (Harding: 1991). Hartsock argues that “the articulation of a feminist standpoint based on women’s relational self-definition and activity exposes the world men have constructed....as partial and perverse” (Hartsock: 1983). A. Jaggar makes an interesting comment that a feminist standpoint is a political achievement (Jaggar: 1983). This endeavor is relevant in the recent context of upsurge in politics of identity and recognition.

At another level, feminist standpoint theory has drawn attention to the importance of studying acts of resistance and challenges the practices of revolutionary states, capitalist states and international donors (Scott: 1995).

The strength of the standpoint theory is its refusal to embrace an empiricist vision of experience in which the individual subject's relationship to her world is taken to be direct and concrete, unmediated by the ways of making sense historically available to her (Hennessy: 1993). However, Hennessy also points the gap between feminist theory and women's lives. The latter is especially problematic because it assumes a coherent category of women ignores differences and recreates the very practices that feminist theories seek to subvert. To fill this gap, thinkers like Goetz and Lazarus (1990) suggest that a feminist standpoint theory should be sensitive to the systemic aspects of power and the systemic ways in which race, class, gender structure people's lives and become the basis of political institutions and structures as well as determine the identity of women. On the other hand, it also becomes pertinent to redefine 'democracy' and 'public sphere' that not only facilitates their participation but also involve them in the redefinition that would provide them broader meanings, and hence to be able to accept differently and equally relevant meanings of these issues from women's perspective.

## **Section 2**

### **The Impact of Development on Women**

The themes discussed above have had strong implications on the development of women in various spheres of lives by limiting their accessibility to different resources in society and as well as their freedom of choice in availing the economic and social opportunities in a given society. Development is assumed sex-neutral. However, national development policies and programmes largely have neglected gender dimension in the practice of development, under the pretext that they are either the bread-winners or physically superior. Even with legal protections and regulations, men can be unfair to the fairer sex as family head, employer, programmes personnel, organizational leader etc. The gender bias perceived and practiced in various fields of development process pervasive in social, political, cultural and economic lives of women has been illustrated in this section.

Molly Joseph identifies seven such areas, which is an important derivation to understand gender inequality in development (1997). I use these themes briefly below to show various forms of injustice women face in different areas.

*Statistical Bias:*

Many studies show statistical bias in underestimating women's role in development, which is a result of lack of understanding regarding the actual role of women, conceptual deficiencies and operational deficiencies, hence an incorrect computational quantification of the data.

Women's work in home-based production and as a homemaker are rarely mentioned or included in the data on labour and work of women. According to Shahnaz Aiyer, the biased statistics on workforce is best reflected in statistics dealing with female labour (Aiyer: 1989). This reflects the rigid public-private dichotomy, which prevents the data-analysts to include considerable work done by women in household (private sphere) contributing in the economy of the nation. If the gender biases in data collection are changed, the differences in figure will be revealing the contribution of women in development. Another study revealed that the census definition of labour force keeps nearly half of the active women population outside the usual notion of labour force. According to Joseph, 30 percent of the active women are engaged in productive work within the household (Joseph: 1997).

The concept of worker in the Census of India had been pointed out as one of the important factors identified for the declining female work participation rate. Ahar Baza Bilgrani also points out that main reason for declining secular trend in women's participation in economic activities is the underestimation of their work by census. The overall data on women's participation in agriculture understate the importance of their work in producing food they account for over 40 percent of Asia's and over 75 percent of Africa's production. The role of women in food production in Africa is so crucial that United Nations' view women as vital instruments in dealing with food crisis especially in rural parts (Zubeida: 1985). Yet this work is not part of the official labour force. It is also reported that many women are reported as non-workers as they themselves report that they are neither available for work nor seeking jobs though they have good amount of work at home.

Dr. D. Jayalakshmi (1980) observed that the statistics pertaining to women's participation in the workforce is deceptive as they under represent the number of women actually engaged in productive work and neglect their contribution. The definition of 'worker' by Census fails to account many types of workers engaged in agriculture, animal husbandry, cottage industries and small trade as gainfully employed. Besides this their economic contribution at home are not recognized as it lacks monetary or market value and assumed as natural to woman's task.

Bina Agarwal has pointed out cultural bias in Census due to respondent bias and conceptual bias. The respondent bias arises mainly from the fact that the enumerator and respondent are usually males and due to the biased framework of questions coming out of the biased minds. The conceptual bias arises from the fact that apart from the wage work, other works performed by women are not accounted as economic contribution (Agrawal: 1985).

The National Commission on Self Employed women pointed out that although women work for longer hours and contribute substantially to family income, they are considered as workers by the data collecting agencies and government (SEWA Report: 1989, in Joseph: 1997)

Such statistical bias not only degrades the important contribution by women in development process but also presents a misleading picture of GNP and maintains a lower status of women in economy and society. It further affects the development policies and programmes in adversely affecting women.

#### *Exploitation /Under-valuation of Women's Work:*

Women's work and worth are degraded, undervalued and underpaid. This is due to the assumptions that females are inferior in capacity to males and a female's income is always supplementary to the earning of a male. This is a clear violation of the principle of equal wage for equal work. It is also it is a clear fact that women are, generally given the subordinate positions in office and rarely are managers or CEOs reflecting the underlying assumption that women cannot lead men.

Women labour force is predominant in agriculture in Third world Countries. Since women's work is under-valued, subsistence agriculture is nurturing a large army of cheap labour (Devi: 1989). Few case studies show that in central Nigeria female's contribution is

100 percent in cases of weeding, storage and processing for almost all crops. In Asia women work 14-17 hours per day. Yet most of their work goes undervalued in an economy, which puts premium on marketable work (Mehra:1997). The major causes of differential income are reservation of better opportunities of employment through policy prerogatives and unduly long working hours for women. Ashok Mitra and others have remarked that women labour force in India is a reserve pool of helpless labour (Mitra: 1980)

There is no country where the earnings of men and women are same and just. (Sullerot: 1968). This is because either they are concentrated in traditionally poor paid women's work or they are discriminated in wage fixing. Nina Rao finds concentration in low paid or non-preferred jobs, discrimination in hiring/pay/promotion, conflict between maternal and work rules and prevalence of male superiority as the characteristics of the working conditions of modern female workers (Rao: 1985).

Moser and Young point out the reasons for poor pay of women's work and putting of women as subsidiary workers (Moser and Young: 1981). According to Banerjee, women's economic development was worsening because their role in the traditional economy became redundant while their gains in the modern sector remain negligible (Banerjee: 1985).

#### *Alienation from Development Process:*

Women are not only disadvantaged in terms of receiving benefits of development but their own contribution and importance as an actor in the development process, has been ignored repeatedly. The policy and practice of economic development in India has not been inclusive in acknowledging women's work. They either are left out or are relegated to subordinate status. The factors like falling participation work, labour market segmentation, wage discrimination, declining sex ratio and decrease in nutritional status of women prove this fact. However, the proportion of women in the total work force has gone up in all OECD countries (Gubbels: 1970). One of the essential factors for this trend is the increase in the number of married women going out to work.

B.N Choudhary observes that development plans and supportive measures in the country have overlooked the need to strengthen women's production roles. The reason is that the development policies and programmes tend not to view women as integral to economic development process. This is reflected in the higher investments in women's reproductive



rather than productive roles, mainly in population programs. Policies and investments also emphasize on improvements in women's health and education. Unfortunately, investments in health and education are made to have an impact on lowering birth rates and on improving on the health of children. The policies are hardly framed to improve the health and status of women by virtue of their being independent beings, an end in themselves and not always means to something else. There has hardly been an attempt to make policies, which could open new opportunities and expand her choice over resources for her own wellbeing (Mehra: 1997). This observation becomes evident in patterns of donor and national government funding that have emphasized, on the one hand, fertility reduction primarily through women - centered contraceptive technologies and approaches, and on the other, the promotion of women's welfare through improved health and education. This is strikingly reflected in the budget allocations of the US Agency for international development, the main vehicle for the United States' bilateral foreign assistance programs. Over the past five years, investments in the agency's population programs have averaged \$440 million as compared with \$5-10 million for women in development programs (Mehra:1997).

In 1970, Ester Boserup became the first to empirically demonstrate the extensive roles that women traditionally played in agricultural production throughout the developing world, particularly in Africa. The first International Conference on women in Mexico in 1975 publicized the theme, and attention was drawn to the fact that development policies had ignored women's economic roles and that women were left out of the development process.

According to Ruth and Richard (1988) one reason for the negative impact of development on women has been the tendency of planning to concentrate in the industrialized and monetised sectors of the economy, which are dominated by men. Informal and subsistence sectors where women's contribution is generally high are not given the priority they deserve.

Though a shift has taken place from targeting women to all welfare policies to development aspects in the sixth plan, well articulated national policies for increasing women's participation in development is still lacking (Joseph: 1997).

*Absence of Control over Resources /Decisions:*

The social status of men as well as women largely, is determined by their accessibility to resources available in society. This accessibility should be determined and availed by an individual in a manner that it is for her own well-being. Due to the non-recognition of the role played by women, she does not have the choice and freedom to access the public resources, credit and technology (Chakravarty: 1985). This is the basis of all social discriminations against her. Women as a group have had a lower proportion of the economic resources in the world system (Kathryn: 1988). With the arrival of the 'footloose capital' through 'monetary economy,' women in subsistence economies found that they had limited access to monetary resources.

Lot of work is being done on exposing the manner globalization has further deteriorated the economic status and limited her freedom to exercise her choice over opportunities and resources.

One of the reasons for this limitation is also lack of women's participation in decision-making and regulatory institutions this lack of participation not only limits the scope of development policies and programmes but also deprives women of an important role of decision-making. Farmwomen's participation in decision-making on agricultural practices, marketing etc varies from region to region. Permitting farmwomen to have access to their earnings will confer them with decision-making authority in their families. In the primary sector, women contribute sometimes more than men but enjoy no control over their earnings (Raj Sen: 1989).

It is generally observed that one of the chief reasons for a female's lack of familial status in the absence of control over income or earnings (Desai: 1986) Middle class women, inspite of having their earning hardly have any authority to possess or use them for their own individual needs. The irony is that even if they are told to do so, they are so conditioned that they don't think beyond their husbands and children to take care of their own needs and requirements. This trend, which has been followed since ages in the most middle class families, is responsible of the great sacrificing image which Indian women are often associated. Self-denial and self-deprivation are the virtues glorified in to become an ideal woman. This further justifies the unequal distribution of resources in society.

*Discrimination in Education, Extension and Technology:*

Education, Extension and technology are important means to empower women. Since women constitute half of the human capital, their involvement and utilization of technology, especially in the context of rural development, is of prime importance for national development. Women in rural areas raise children, take care of the cattle and the household, cook, process the food, and work nearly as hard as the men in fields, yet when new technologies are introduced, they are usually directed towards making life of a man easier than women make, and sometimes result in even more work for women. They generally learn the skill as understood and practiced by men. Y.K. Alagh is of the opinion that modernization and mechanization tend to marginalize women workers. In many traditional areas of women's employment, technology replaces women. In many countries, transfer of technology has worsened the employment and health conditions of women. Mechanization in agriculture is mainly to help men's work (Dauber: 1981). This has led to technology gap or what is famously known as the 'Digital Divide' between men and women, which makes it, part of the problem as well as solution. If the same technology easily accessible to men could also be made available to women in her day-to-day life, life could be much better for them.

Technological changes in production methods call for the new skills. Women handicapped by the lack of new skills find themselves unwanted by the new economy (ICSSR: 1988). Despite the important role of women in agriculture, agricultural extension programmes hardly reach any women (Duvvury: 1989). All programmes of transfer of technology in agriculture tend to bypass women who deprive them the status of skilled labourers and to get rightful return (Chakravarty: 1985). Decay of village industries and negative impact of industrial technology also affects women. Hence, it is a necessary for the development planners to be sensitive to the impact of new technology on women as well as involve them in decision-making and support them to organize and assert their interests making their lives easier through appropriate technology.

It is a known truth that the present high illiteracy among women is one of the major constraints on their scope of employment and social status. It is also a widely known truth that educating a woman is more beneficial for the society than educating a man because an educated woman educates her own children too not only in terms of school education but in becoming human beings as she is closest to her children. Buxi is of the opinion that literacy

alone can make women realize their potential and equip them for better employment and wages (Buxi: 1989).

However, statistics reveal that sex-wise educational imbalance and more so the discrimination in vocational training has deprived women of very valuable employment opportunities and benefits (Human development Report: 1995) Education of a girl child is an issue in India. There are several social and economic constraints that exist in our society, which restrict a girl child to get school education. Even those girls who manage to join schools are later drawn back due to family responsibilities or lack of economic resources or forced marriages. Since the mother of the child is herself uneducated, she hardly knows the importance of being educated. However, this is one area where the government has been most vigilant. Education of girl child and adult literacy programmes have been on top of the agenda which have shown positive results by benefiting women in various ways. It is clearly evident that education of her children is the top most priority of an educated mother, which in itself is a very positive development. But as mentioned before the emphasis on women's education is to ensure the well-being of family and children and not enhancement of her own potential. This perspective needs to be changed. The educational and vocational training programmes should be so organized that they benefit women in creating more opportunities for her own self so that she need not suffer oppression in her own or husband's family. The aim should be to provide her the freedom and necessary support to 'exit' and could afford an individual independent existence. Hence, both literacy and vocational training are equally important for women's development and their participation in development.

#### *Gender-based Division of labour:*

Whether there exists any separation of jobs in the basis of sex or the existence of preferred or non-preferred jobs for men and women. This rigid dichotomy exists more in minds of both men and women that gets transcended in social, cultural and economic spheres. The traditional labour market is divided into female and male sectors (Knudsen: OECD report: 1985).

Differentiated use of women in gainful or non-gainful employment is the result of not only unequal opportunities in education/training but also adverse attitude of employers. Concentration of female workers in low paid or non-preferred jobs is generally observed

(Rao: 1985). Women are pushed from skilled to unskilled tasks. In a paper on the role of women in USSR it was stated that sexual division of labour persists inside and outside the family (Lapidus: 1980). Soviet women are concentrated in economic sectors that rank low in status and pay (SEWA Report: 1989 in Joseph: 1997). It is also observed that the labour market is not neutral in almost all countries, which limits economic opportunities for women. The division of labour is also highly sex-biased. Operations that fetch higher wages are lame privileges whereas work of arduous nature, bringing lower wages is earmarked for women. The urban informal sector, which is a low paid one, has higher proportion of women. In the organized sector, 90 percent of the women are found in the unskilled jobs (Joseph: 1997).

When modern techniques are introduced, women are displaced since they have no requisite skill and become scapegoat of technological unemployment. The best available jobs are safeguarded for men. Not only technology, but also policy formulation like new agricultural Strategy resulted in displacement of female labour. The commercialization of agriculture and fisheries displaced female labour. It has been widely noted in India that female tasks become male tasks with a higher wage when new equipments are introduced (Duvvury: 1989).

A study of Bengal shows that men pushed out women when they needed jobs. Even in tea industry where women are considered essential, women lost their jobs in times of depression in favour of men. Computer technology has replaced the routine work of women (Mallier: 1987).

According to the nature of job and the degree of drudgery, there exist apparent division of labour because of sex, especially in agriculture and the informal sector. Women are ill-treated, paid less, work for longer hours, get no employment benefits, and in some cases even sexually exploited leaving them in miserably helpless situation.

#### *Dual Role of Women-Farm and Family*

Women are invisible input for work in the family and farm. While undertaking work in the farm or in the home-based industries along with routine family work, how far her work load is distributed and why does she struggle for a job over and above routine work are questions that need to be reviewed. The dual role of women as paid workers outside the family and as unpaid workers in their family lead to the real contribution to an economy.

However, her contribution is not only ignored but she pays heavily for her own hard work. A normal housewife in most lower class and middle class families is mainly responsible for all the household chores managing food, children, cleaning, washing and well being of the family. According to Asha Kachru, women have a larger role to play as feeders in the family and as workers in farm or cottage industries (Kachru: 1987). It is argued that peasant women are significant providers of family subsistence. The invisibility of women's work is part of the cultural system, which views men as breadwinners (Agarwal: 1989). Hence, any contribution made by her is regarded as supplementary and never the main source of income. Hence, she is at disadvantage in two ways: First, her household work is not recognized nor she is acclaimed for it as it is assumed to be a 'given' duty of hers. Secondly, even if she manages to do some outside work, her income is considered secondary and beyond her own reaches. It is this invisibility of woman's work and neglect of her existence as an independent economic entity that accounts for most of her misery in social and cultural life.

Contrary to the image build up that women are inefficient when it comes to managing the budget of the family as they are not as rational as their husbands (in Joseph: 1997) However studies reveal when a woman controls a family, it is relatively more benefited because ninety-percent of her income is generally spent for the family. She hardly spends anything on herself, trying to give better lives to her children. Though slowly there are families coming up, where employed women look after the budget of the family which is again not too much of a benefit to her as she feels more responsible and hardly takes care of her body and health. Women headed households are there in the society, mainly due to widowhood, desertion or illness/unemployment of her husbands (SEWA: 1989). A study also reveals that there are more women-headed households among the poorest in the population (upto 35%) (in Joseph: 1997). Figures suggest that income generation by women is considered as a contingency and not recognized as the main income, Thus, what we see here again is a missing recognition of women as end in themselves who deserve equal freedom to earn their livelihood, become economically independent, and use their income for themselves and not just as a means to the welfare of family and children.

### Section 3

#### Nussbaum's critique of the Development Discourse

Nussbaum proposes an ethical perspective to international development in form of central human capabilities measured by an Aristotelian substantive account of human flourishing. Nussbaum goes a step ahead of Sen in suggesting this perspective as a “philosophical underpinning for an account of basic constitutional principles that should be respected and implemented by the governments of all nations, as a bare minimum of what respect for human dignity requires” (Nussbaum: 1999; 2000). Its use as an evaluative space for development or equality is a weaker aim according to her.

Before an elaboration on her theory, it would be useful to throw some light on her criticism of the dominant theories of development. She criticizes the Resource-based approaches and Preference-based approaches, with some similarities and differences from Sen's work.

She begins with the criticism of conventional resource based models evaluating development in terms of resources as intrinsically good for human beings. She attacks the Income- based, GNP per capita and Economic growth models (goods and resources), dominate theories in development economics, to evaluate development. Since her concern about human dignity and justice begins with an individual, her main criticism of the resource-based models is their failure to reflect on ‘what is the share of each individual’ or ‘how has each individual fared in the overall growth?’ She further points out that many countries with same aggregate figures exhibit distributional variations. South Africa has always shown high GNP figures along with high instances of gross violations of basic justice and inequality (Nussbaum: 2000a).

She shares the second criticism with Sen that the resources are not good in themselves but by virtue of their relationship to- what they do for- human beings. Thirdly, she along with Sen, points out that the resource-based approaches neglect the interpersonal variability, which makes different goods serve different purposes in an individual's life depending upon her socio-economic-cultural-psychological situation in society. This contains a critique of Dworkin's generalization to perceive justice in terms of ‘equality of resources.’ A concept of human well- being that focuses on goods rather than persons neglects the distinctness of each individual from another in needs and

capacities, how each is doing considering each as a separate life (Nussbaum: 2000). For example, pregnant and lactating women have different nutritional requirements than normal women hence justice for them would be providing them resources for their healthy motherhood. On the other hand, there might be women who lack resources for education. Thus, overall, each individual as an end has a different need and requirement, and any concept of development should look in to the needs of each rather than an aggregative idea, which clearly lacks in the resource based models. Fourthly, a focus on resources easily leads to a kind of cultural relativity or conventionality. For example clothing that promotes basic functioning differs in the rain forests of Costa Rica than Alaska. The problem becomes serious when the unjust practices violating human dignity are justified in the name of culture. Nussbaum's wants to resolve this problem by suggesting a list of universal, though flexible list of ten capabilities to assess justice, who is grounded in the concept of life that 'human dignity requires' (Nussbaum: 1990).

Nussbaum, inspired by Aristotle, states a fifth criticism of the resource model. Not only are goods neither ultimate ends nor invariant means to such ends: they can also be bad when we get too much of them. Goods and hunger for them often make people excessively competitive, domineering arrogant and 'have a mercenary attitude towards other kinds of good things' (Nussbaum: 1990). This attitude can go so far as to result in what Nussbaum calls 'a commodification of parts of the self' (Nussbaum: 1992). For example, commodification of women's bodies in market transactions and use in advertisements today reflect the lack of dignity and respect of a woman's body, which is violation of her dignity and justice.

She then turns to the 'preference-based approaches' like utilitarianism to evaluate development, which does look at people and assess the role of resources as they figure in improving actual people's lives. However, the problem with this approach is that the role of resources in people's lives is simply to ask them about the satisfaction of their current preferences on an aggregative basis. She argues that there are four drawbacks in this approach, which is a threat to gender justice. First, the problem in the resource model continues in this approach. An aggregative notion of utility in terms of satisfaction does not give any information on who gets what, thus neglecting an individual entity as separate and different. Secondly, she argues that utilitarianism not only aggregates across



distinct and different lives but also gives an overall picture of different elements of lives (Nussbaum: 2002). Thus relevance of liberty, well-being, education, economic growth, though quite distinct, are subsumed in one overarching frame of preferences based on satisfaction. Third criticism by Nussbaum is an important one to think on the reasons behind gender injustice. Preferences and conditions of satisfactions are not independent of economic and social conditions, but socially constructed. For a long time women had no preference of economic independence and education because they the social norms and traditions in India devalued the independent nature of women. They had to depend on men starting from father, husband and then son all their lives. A female from childhood to adulthood has been conditioned such that her preferences are shaped according to the male dominated patriarchal norms, which she never questions. Nussbaum calls them as 'adaptive preferences' that reinforce inequalities, especially those forming desires (Nussbaum: 2000:135). An evaluation of development based on these aggregate conditioned preferences would only mean internalization of unjust practices, norms and misguided policies. It is therefore important to rethink on the preferences that women and men might have in a society, shaping development theories and policies. Keeping this in perspective, Nussbaum develops a list of basic capabilities in concomitance with a life of human dignity, as a minimum criterion of social justice and an evaluative framework to assess quality of life and well-being of individuals across societies and cultures.

A more sophisticated thinker John Rawls in his 'A Theory of Justice' (see Nussbaum and Sen's critique in chapter 1) has conceptualized progressive version of the resource model.

#### **Section 4**

##### **Sen's and Nussbaum's 'Capability Development Ethic'**

The 'Capability Development Ethic' in its present form was pioneered by the economist and philosopher Amartya Sen in the mainstream development economics and social choice theory, and was further developed by Nussbaum in new paradigms of thoughts. Sen argues that our evaluations and policies should focus on what people are actually able to do or be, on 'the quality of their life,' 'development' and 'freedom,' and on removing obstacles in their lives so that they have more freedom, to live the kind of life that, upon

reflection, they have reason to value. In academia, the perspective has also provided theoretical foundations to the human development paradigm. Nussbaum however advances the perspective in different direction by using it as the foundation for a partial theory of justice. She enters the capability approach from a perspective of moral –legal-political philosophy with the specific and different aim from Sen’s providing the “...philosophical underpinning for the constitutional law of every state, so that the capabilities are established in every nation as a fare social minimum of what respect for human dignity requires”(Nussbaum: 2000; 2002; 2006). The list is explicitly introduced for political purposes only and ‘without any grounding in metaphysical ideas of the sort that divide people along lines of culture and religions’ (Nussbaum: 2000; 2003). To perform this task, Nussbaum develops and argues for a well-defined but general list of ‘central human capabilities’ as an ethical foundation of constitutional law of every state (Nussbaum, 2000).

This is one of the main differences between Sen and Nussbaum: the different aims of the capability ethic they argue for, apart from other differences (Robeyns, 2006). Nussbaum’s ethical perspective has a more universalistic and specified claim as compared to Sen’s perspective.<sup>1</sup> Before discussing Nussbaum, a comment on the uniqueness of their perspective would be useful.

First Nussbaum and Sen formulate a broader and more progressive ethical premise of development as compared to earlier theories. For Sen and Nussbaum, the concept of development is inherently value-laden, in that it yields criteria of what counts as good social change, ‘beneficial alteration’ (Sen and Nussbaum: 1989) and most fundamentally ‘the achievement of better life’ for human beings (Chenery and Srinivasan: 1988). Both thinkers critically examine different definitions of development and their evaluative components. They successfully question the conventional economic growth model of development and argue that economic growth is merely a means to higher concept of development. Realizing this hypothesis, Sen and Nussbaum employ the term ‘capabilities’ and ‘functioning’ to cover these beings and doings. Development then becomes the enhancement of certain human functioning and expansion of human capabilities to perform these functioning (in Crocker: 1992).

Secondly, Sen and Nussbaum not only redefine the concept of development, they articulate and defend a concrete development framework. Both have sketched out a basic

ethical outlook as 'capability perspective' in contrast to alternative concepts as commodity and utility (Nussbaum: 2000a). Sen also considers what should count as valuable functioning and basic capabilities, however Nussbaum goes beyond a general framework of capabilities by Sen and concretizes a list of ten essential capabilities to be endorsed by all societies to ensure justice. Development is the enrichment of these capabilities in an individual and society (Nussbaum: 2000).

Thirdly, they both together and individually have dealt on deeply related metaphysical questions concerning the nature, method, informational constraints and objectivity of 'the capability perspective in the face of ethical global disagreement and cultural differences' (in Crocker: 1992). The 'capability perspective' argued by them seeks to resolve the rigid dichotomies as objectivism/subjectivism, absolutism/relativism, essentialism/ antiessentialism and universalism/particularism.

Fourthly, both recognize that a development ethic must be constructed in dialectical relation with empirical investigation into what causes and impedes (good) development as well as what produces and prevents poverty, famine, exploitation, sexism and other development failures (Sen and Nussbaum: 1993). In order to actually understand the process of development, it is pertinent to explore empirically as to what is happening and why is it happening to arrive at the required changes in perspectives and action.

Finally, Sen and Nussbaum are concerned not only with normative and empirical development theory but also with development policy and practice. In the light of the 'capability approach,' Sen argues that the objective of public action can be seen to be enhancement of the capability of people to undertake valuable and valued 'doings and being' (Sen and Dreze: 1989). Sen also applies ethical criteria to assess policy lessons, achievements and failure in countries and regions such as India, Africa, Sri Lanka and China (Sen: 1989). One also sees the practical implication of 'capability perspective' in the UNDP's Human Development Report (1990). HDR adopted 'Human Development approach' which defines development in terms of formation, expansion and use of human capabilities. The UNDP report proposes a new 'Human development index' as a way to measure development success and failure. Nussbaum on other hand analyses the implications of the 'capability ethic' for development projects and policy in Bangladesh, India and Scandinavia. In the Indian context, she applies the importance of ten capabilities to the work done by

SEWA, a non-profit organization in India, which is working efficiently to make women as independent economic agents, making them capable of earning livelihood for themselves. She also relates their contribution in the flourishing of other capabilities in women to make her 'live life with human dignity' (Nussbaum: 2000; 2002; 2006).

## Conclusions

Given gender bias in development literature, I conclude that the discrepancy in the theory and practice of development is mainly due to three factors.

First, women are not treated as an end in themselves. They deserve a life of equal dignity and respect that should be reflected in laws and social/political institutions. Secondly, patriarchy has seeped not only in the social structures and institutions but also in the psychological and moral development of both men and women. Due to being deprived of education and any sense of rights for so long, women suffer from what Nussbaum calls as 'adaptive preferences' (Nussbaum: 2000) and Sen calls it as 'momentous functioning' (Sen: 1985). Thirdly, the absence of women from participation in the process of formulation of theories and development policies for themselves is another factor, which sustains gender oppression. Next chapter is an investigation of how well Nussbaum's theory incorporates these issues independently and in association with Sen's perspective.

## End Note

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<sup>1</sup> For a detailed discussion on differences and similarities on 'Capability Ethic' sketched by between Sen and Nussbaum and their debate on the list refer Chapters 4,14, and 15 Bina Agarwal, Jane Humphries and Ingrid Robeyns (eds.) ' *Capabilities, Freedom and Equality: Amartya Sen's Work from a Gender Perspective.*' Oxford and New York: OUP

## **CHAPTER 3**

### **THE CAPABILITIES APPROACH: AMARTYA SEN AND MARTHA NUSSBAUM**

- I. Martha Nussbaum on the ‘Capabilities Approach’: An Overview**
- II. Amartya Sen and Martha Nussbaum: Theoretical Differences**
- III. The Debate on Capabilities List**
  - Amartya Sen
  - Martha Nussbaum
  - Ingrid Robeyns
  - Sabina Alkire
- IV. In Defense of Nussbaum’s Capabilities list**
  - Aristotelian Tradition
- V. Conclusions**

## CHAPTER 3

### THE CAPABILITIES APPROACH

This chapter is mainly an exploration of the capabilities approach proposed by Martha Nussbaum independently and in association with Amartya Sen. First, I present the main features of this theory as developed by Nussbaum followed by her theoretical differences with Sen. One of the contentious issues between Sen and Nussbaum is the necessity and relevance of a definite list of capabilities as a minimum criterion of social justice. I shall take up this debate, bringing forth their disagreements with each other. Nussbaum's main inspiration behind determination of the list is Aristotle's Ethical theory of Virtue, apart from Immanuel Kant and Karl Marx (Nussbaum: 2003).<sup>1</sup> I shall end this chapter with a brief discussion on Nussbaum's defense of Aristotle and my arguments in favour of the list, drawn from her theory.

#### Section 1

##### **Nussbaum on Capabilities Approach: An Overview**

Nussbaum's concern about matters of human dignity, women's equality, public policy or economic development starts with a reflection on a conception of a human being. The capabilities approach, developed by her, aims to ensure that every individual has the capability to function 'in a truly human way' as measured by an Aristotelian inspired substantive account of human flourishing. It is also Rawlsian /Neo Kantian in its reliance upon a political and not metaphysical justification as well as in the respect it shows for persons to pursue their own comprehensive doctrines of what they consider as good (Kao: 2002).

Her theoretically overlapping ideas with Sen's work notwithstanding, I wish to mention certain important points about her approach, relevant for this paper. First, her theory is highly normative and evaluative with its central idea being a moral claim that only certain human abilities should be developed by distinguishing between those capabilities worthy of promotion and those which should not be encouraged (e.g., capabilities for cruelty or aggression). The central human functional capabilities

according to her are *life; Bodily health; Bodily integrity; Senses, Imagination and Thought; Emotions; Practical Reason; Affiliation; other species; Play; Control over one's environment-political and material.*<sup>ii</sup> The list, according to her, is composed of 'separate and indispensable components,' reflecting Aristotle's insistence on the incommensurable and plural goods. The underlying idea is that not one item on the list can be substituted for a larger portion of another, for all items are to be regarded as equally valuable in themselves even as they additionally are instrumental to further pursuits. (Nussbaum: 2000). Seen in this light, the list can be compared further to Rawls's account of primary goods, an analogy being that both items make choices in life possible and thereby hold a claim for political purpose in a pluralistic society.

In her list, two capabilities play 'architectonic' role in human life 'Practical Reason and Affiliation,' since the two purportedly "organize and suffuse all the other capabilities, making their pursuit truly human"(Nussbaum: 2000). This is in continuation or support of Aristotle's argument that these two elements are parts of human nature—broadly and deeply shared, having a self-validating structure. Special attention to affiliation mirrors Aristotle's contention that human being is by nature a political being, that friendship is important to *eudaimonia* and that the 'polis' is natural (In Nussbaum: 1993). It is also important to note that these capabilities are not the end – but make rest of the capabilities worthy of the dignity of the human being.

Secondly, the realization of any one of these capabilities will require both the development of 'innate capabilities' as well as environment that is favorable to their inculcation and functioning. That is why the list for Nussbaum is one of 'combined capabilities' by which she means the appropriate combination of "internal fitness" and "external conditions" (Nussbaum: 2000:84).

Thirdly, as she puts it, "the list remains open ended and humble. It can always be contested and remade ... indeed a part of the idea of list is its multiple realization, its members can be more concretely specified in accordance with local beliefs and customs." (Nussbaum: 2000:105). Flexibility of her approach and its nature to adapt to specific social and cultural conditions is evident in her "methodological commitment to cross cultural deliberation and criticism" as well as her efforts to "emphasize the affiliations of this approach with liberal right based theories" (Nussbaum: 2000:105). However, this

nod to pluralism notwithstanding, Nussbaum's capabilities list coupled with her demands for reform of institutions such as religion or the family whenever they impinge upon the exercise of central capabilities suggest a limited approach to accommodate multiple conceptions of the good (Kao: 1992).

Fourthly, another important dimension of her approach is the emphasis on capability, not functioning as the appropriate political goal (Nussbaum: 2000:87). What is ultimately important is that people have the freedoms or valuable opportunities (capabilities) to lead the kind of lives they want to lead, to do what they want to do and be the person they want to be. Thus, her approach is a theory within the liberal philosophy, arguably of a critical strand emphasizing 'choice as good' but it is not neo liberal as it necessitates material and institutional conditions for the 'choice' to be actually exercised and it is duty of political action to provide these to all citizens.

Lastly, and most important aspect is the concept of human being in her theory. Capabilities approach begins with the individual in society – treating each individual as an end and strongly upholding the 'dignity of every individual' as worthy of regard (Nussbaum: 2000:5). Her idea is to redress injustice against women in name of the good of 'family' or 'community' and treat every woman as an end rather than a means to man's happiness and comfort. Inspired from Aristotelian thought– it sees human beings from the first as animal beings whose lives are characterized by profound neediness as well as by dignity. Hence there is a need to endorse the value of 'care' provided in such a way that the capability for self-respect of the receiver is not injured and also in such a way that the caregiver (women in most cases) is not exploited and discriminated against on account of performing that role. Nussbaum defends her theory fulfilling this task.

Nussbaum's theory has two main aims. First she intends to provide a philosophical underpinning for the constitutional law of every state, so that the capabilities are established in every nation as a fare social minimum of what 'respect for human dignity requires.' The list is explicitly introduced for political purposes only and "without any grounding in metaphysical ideas of the sort that divide people along lines of culture and religions" (Nussbaum: 2000:5; 2003).



Secondly, weaker aim of the approach is to provide the relevant space within which to compare the quality of life of individuals, as well as to assess social progress across nations in meeting basic needs and entitlements (Nussbaum: 2000; 2003).

Nussbaum builds up her arguments in response to other main theories, dominant in the existing literature on justice. She specifically does a detailed analysis of Rawls' theory of Justice as fairness from various perspectives that highlight its discrepancies in the light of gender justice.<sup>iii</sup> Most of her arguments against Economic Growth Model, Utilitarianism and Rawlsian approach are in congruence with Sen's arguments along with her innovative dimensions to the critique.<sup>iv</sup>

Now I will discuss the issue that has aroused much debate and intellectual differences among the theorists on capabilities approach. It is the need and pertinence of formulating a definite list of capabilities that holds significance for each and all in this world as claimed by Nussbaum. Sen disagrees with this idea and so are various other thinkers on grounds of contextual sensitivity, fear of paternalism, sanctity of local culture and tradition, obsession with individualism and on. I wish to briefly discuss this debate especially between Nussbaum and Sen.

## **Section 2**

### **Sen and Nussbaum: Theoretical Differences**

This section deals with some fundamental differences between Sen and Nussbaum, and the way they perceive capabilities approach. To begin with, both have different objectives in mind for capabilities approach. For Sen, it is an evaluative space for assessment of various dimensions of social and political life. It is a normative framework of thought without claiming any deep ethical and philosophical goals of life. Nussbaum goes a step ahead suggesting this perspective as a 'philosophical underpinning for constitutional law of every state' (Nussbaum: 1999), as minimum criteria of social justice. This is a more serious claim as she necessitates the acceptance of the approach in the political realm as minimum criteria of social justice. One can also see a universal theory of good based on Aristotelian notions of human nature and society, being suggested in her theory, applicable to all societies. She has been criticized for this claim. Sen's theory is free from any presuppositions on human nature and society because he

emphasizes on its contextual feature. Its use as an evaluative space, according to Nussbaum is a weaker objective.

Secondly, as discussed above, one of the main features of Sen's work is the unspecified content of the capabilities. His theory is purely context dependent as people depending upon their specific geographical and social conditions evaluate and prioritize the capabilities. He does point out some specific capabilities relevant for gender justice like nutritional requirements, however how much of it and of what kind with its relative importance with reference to other capabilities in a particular social set are issues which Sen leaves to be arrived through 'public reasoning' (Sen: 2006). Nussbaum on other hand develops a set of ten specific capabilities, which have universal significance and applicability for social justice in all societies. However, she does argue that the list is open-ended and subject to revision in according to time and place (Nussbaum: 2000). As Sabina (2002) notes: Nussbaum's list is 'a list of normative things-to-do; according to Robeyns (2006) it has a highly prescriptive nature and strong universalistic claims regarding its scope.

Thirdly, capabilities of Sen are real opportunities as in social choice theory; Nussbaum's emphasis is on the moral traits, internal qualities and personal abilities. This makes her theory more appropriate in discussion on moral philosophical principles (Robeyns: 2006) or in understanding internal motivations and meaning of actions (Gaspar and Staveren: 2003) than Sen's. On the other hand, Sen's conceptualization is more viable in application to policy-related issues on individual development and debates in social sciences. One can see the utility of his approach in the Human Development Reports.

Fourthly, Nussbaum develops three categories of capabilities that are different from Sen's: Basic, Internal and Combined Capabilities (1998; 2000) based on a deep understanding of human nature. Though different in terminologies, both have their focus on 'combined capabilities.'

Finally, Nussbaum does not make the distinction between 'Agency-well-being', as done by Sen. Nussbaum argues, "all the important distinctions can be captured as aspects of the capability/functioning distinction" (2000). She has been criticized for this limitation as then the theory does not take into account the multiple situations and diverse

forms of existence that an individual could have (Menon: 2002; Crocker: 2004). The role of 'agency' gets constrained in her theory that could have adverse implications for the women of society. Nussbaum in response argues that 'Practical reason and Affiliation' are two capabilities that have 'architectonic' role in nurturing other capabilities. It is through these two capabilities that the 'agency' part is fulfilled, going beyond 'well-being' (Nussbaum: 2000).

These differences between Nussbaum and Sen could be attributed to their different intellectual backgrounds and expertise. Sen being grounded in 'Social choice theory' emphasizes on the importance of fair democratic process and choice to decide on a list. Nussbaum, on other hand, is immersed in an Aristotelian tradition concerned about the philosophy of good life closely associated to human dignity which she feels is a universal virtue. Hence endorsing a universal list of capabilities seems logical and obvious to her.

Both their perspectives have strengths and weaknesses depending on the position one takes. According to my view, Nussbaum's approach is more plausible than Sen's in addressing the issues of gender justice especially within the family (see chapter 4).

### **Section 3**

#### **The Debate on Capabilities List**

This debate between Nussbaum and Sen is one of the most discussed issues in the capabilities approach (see Sabina Alkaire (2002), Sabina Alkaire and Rufus Black (1997), Erikson and Aberg (1987) and Erikson (1993), Sen (2006) and Nussbaum (1995; 2000; 2003)).

The Capabilities perspective proposed by Amartya Sen is one of the main theoretical foundations of Human Development approach under the United Nations Development Programme. Nussbaum critically views Sen's approach from the perspective of social justice in general and gender justice in particular (Nussbaum: 2003). She begins with appreciation of Sen's preoccupation with issues of gender justice in all his major works but also points out that one could not infer a full-fledged theory of social justice in general and gender justice in particular from Sen's work. She discusses two

arguments in support of Capabilities approach by Sen and their pertinence for gender justice, as well as draws out its limitations as a complete theory of gender justice.

The first argument comes in 'Development as Freedom' where Sen argues that capabilities provide basis for thinking about the goals of development (Sen: 1999). She agrees with Sen on the fallibility of thinking development in terms of GNP per capita and utility. She also strongly defends Sen's claim that these infallibilities have more adverse implications on women's lives who are subjected to most inequalities due to their sex, in accessing resources for better health, education, mobility, political participation, sexual freedom and others. She sees plausible connection between Sen's argument and other feminist thinkers who stress the importance of women's agency and participation (Martha Chen: 1983, Agarwal: 1994). However her criticism of this argument is that it indicates a very general picture of what societies ought to be striving to achieve due to Sen's reluctance to decide on some minimum level of capabilities for a just society (Nussbaum: 2003:16). The purpose that Sen's approach serves here is mainly to compare development between nations and people as in Human Development reports of UNDP. But, it fails to suggest a threshold requirement of social justice that every society should endorse as minimum entitlements to every individual. Only then can we secure a just life for women who have historically been conditioned to live in an unjust manner. In other words, what is needed according to Nussbaum is a more concrete identification of capabilities to be realized by all individuals in all societies.

Secondly, she goes on to discuss the second argument of defense by Sen, which she thinks, is closer to concerns of social justice. In works from "Equality of What" to 'Inequality Reexamined,' Sen begins with the idea that equality is of central political value and capabilities provide the most fruitful and ethically satisfactory way of looking at equality as a political goal. She agrees with his criticism of evaluating equality in space of resources or utility or welfare and also with the view that how these approaches have fallen short of securing gender justice. Apart from the fact that capabilities form the most viable content of 'equality of what,' equality in itself is the central goal of social justice theorists. However, Sen again falls short of specifying the extent of this equality of capability as a social goal and its relationship with other political values that would establish gender justice. Keeping these issues in mind, she proposes a "definite list of

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: 2003:17-18).

Nussbaum discusses Sen’s human development approach as envisaging development in terms of freedom, possible through the realization of this capability perspective. She is critical of the vague sense in which Sen uses ‘perspective of freedom’ in his work, which leaves some questions unanswered about what is exactly entailed in development and social justice. First, Sen is silent on the limits of this freedom because for any endorsement of social justice, freedom of some has to be curtailed to respect freedom of each and all. To put it precisely, a woman cannot enjoy freedom as a means or as an end till some freedom enjoyed by men are put on hold to create space and opportunities for women. Secondly Nussbaum points out the vagueness of the phrase ‘*perspective of freedom*’ (in Nussbaum: 2003:16) so often used by Sen, in relation to justice or development. She explicates that whether it is for the pursuance of social justice or for political discourse, “no society can avoid curtailing freedom in very many ways, and what it ought to say is...” (Nussbaum: 2003:18). Further, it is also a pertinent thought that certain freedoms are indispensable and some are dispensable, to any conception of social justice. The example she gives is the difference between the freedom of motorcyclists to drive without helmets and the right to vote. Right to vote is an indispensable freedom as compared to the freedom to drive without helmets to idealize any idea of gender justice or social justice in general (Nussbaum: 2003:19). Thus, she is trying to arrive at the point that one needs to concretize ‘the perspective of freedom’ for endorsement of a basic idea of justice. It is not that Sen does not discuss few important freedoms like political freedom or right to education but he refuses to commit to a list like Nussbaum and rather depends on ‘democratic deliberation’ and ‘public reasoning’ (Sen: 2001). Nussbaum, on other and insists on the relevance of ‘content’ of social justice which requires it to be defined in terms of some normative account which she develops as a list of ten basic capabilities. Her list arises out of her dissatisfaction from Sen’s incomplete capabilities perspective, which makes her concretize the list in form of ten specific capabilities, open to changes and democratic process of a country.

Having discussed Nussbaum's main arguments, I will now present the arguments by Sen on his disagreement with her on this issue. He considers the 'fixing of a cemented list of capabilities which is absolute and fixed' irrespective of the context and purpose (Sen: 2006) as 'dogmatic' due to following reasons:

First capabilities as an evaluative space need to be specified in context of the purpose for which it is being framed. For Sen, these capabilities could be used for evaluating poverty, or human rights. He gives an example saying how he suggested three concrete variables **longevity, education and income** for the use of capabilities in human development approach. He perceives Nussbaum's list of capabilities as minimum rights against deprivation but not beyond that (Sen: 2004; 2006).

Secondly, social conditions define and determine the priorities of capabilities for a society, which may vary with time and location. Hence, the capabilities that need to be prioritized for gender justice in Afghanistan are different when compared with India and more drastically when we take a European country due to different sources of injustice rooted in different social conditions.

Thirdly, according to Sen, commitment to a frozen list of capabilities would trammel the progress of social understandings, limit democratic deliberations and constrain the viable role and participation of all individuals in contributing to the development of their society and nation (Sen: 2004; 2006) Ingrid Robeyns illustrates this point through an argument. She says that suppose on applying Nussbaum's capability perspective to a particular issue we arrive at a list synonymous to Nussbaum's list. Would then be this list accepted as a definite one? Robeyns says no as inspite of this similarity, the underlying assumptions of the list and its purpose depending upon the society remains different. Secondly, for Sen the procedure to arrive at a list through democratic deliberation and public reasoning is equally important as the contents of the list. The capability to be actively and equally involved in determination of comprehensive outcome in social choice theory and distributive justice is an important concern for Sen (1997). Accepting a fixed set would lack public and academic legitimacy (Robeyns: 2006).

One could also infer from Sen's arguments that an active and equal involvement of all individuals in arriving as comprehensive idea of good life and hence social policies, is

in itself a valuable capability necessary for gender justice. A ready-made list of capabilities for all times would obliterate many opportunities for women to deliberate and negotiate in the public sphere at an equal basis. A democratic process to decide on a framework based on relative evaluation and weighing is in itself a good sign for women seeking gender equality.

Thus, the problem for Sen is not with listing relatively more important capabilities, but in freezing a set of capabilities as 'minimum criteria for social justice' irrespective of all times and places. This, according to Sen is not the purpose of 'theory' indifferent to social reality and truth about different people placed in different situations (Sen: 2003). Further, public discussion and reasoning, being important in themselves, can lead to better-shared understandings of relatively more important capabilities.

#### **Section 4**

##### **In Defense of Nussbaum's Capabilities List**

I do not fully agree with Sen's arguments against Nussbaum's concretization of the capabilities list, as I do not see it being dogmatic. Rather I hold the list significant for societies plagued with dogmatic norms and traditions, depriving their marginalized groups, mostly women, of their basic freedoms. In the next section I intend to go a little deep and present briefly Nussbaum's defense of Aristotle's account of single and objective human flourishing that influenced her in arriving at a list followed by stating some unique features of her theory that could stand the criticism of Sen and others.

Nussbaum's list of capabilities and its defense as a universal list applicable to all societies is based in Aristotle's defense of ethical theory of virtues and of a single objective account of the human good or human flourishing.<sup>v</sup> This account is supposed to be objective in the sense that it is justifiable by reference to reasons that do not derive merely from local traditions and practices, but rather from features of humanness that lie beneath all local traditions. Aristotle evidently believed that there is no incompatibility between basing an ethical theory on the virtues and defending the singleness and objectivity of the human good. Rather he believed them to be mutually supportive (In Nussbaum: 1993).

In keeping with these ideas, she reflects on Aristotle's thought that different societies present different belief systems as competing answers to questions of some common human problems like courage, justice, hunger that are concerns of all societies and in response to which they all try to find what is 'good.' There are two stages of the inquiry: the initial demarcation of the sphere of choice of the grounding experience that specifies the virtue term and secondly ensuing more concrete inquiry into what the appropriate choice in that sphere. What emerges out then is an objective human morality based upon the idea of virtuous action-i.e. the appropriate functioning in each sphere of experience (in Nussbaum: 1992). These are the foundational principles underlying Aristotle's single objective account of human good or flourishing that is the main guiding force behind Nussbaum's proposition of definite capabilities as a single objective account 'to live life with human dignity.'

Broadly, Nussbaum gives three main arguments in support of Aristotle's claim of objective and universal theory of virtue:

First, the Aristotelian approach conceives of a general and an open-ended picture of human life, its needs and possibilities, but "at every stage immersing itself in the concrete circumstances of history and culture" (in Nussbaum: 1993). Thus, it combines commitment to objective human good and contextual sensitivity as well as responding to changing circumstances, the latter being the main concern of relativists.

Secondly, there is a significant overlap in the areas of core grounding experiences, which all human beings undergo beyond all cultural differences. We do feel and think on common issues, further the contemporary era of intensification of linkages through globalization has made cross cultural communication and exchange of views a ubiquitous phenomena hardly leaving any cultural group isolated and uninfluenced. Nussbaum points out some features of common humanity, closely related to Aristotle's original debate: Morality, The Body, Pleasure and Pain, Cognitive capability, practical reason, early infant development affiliation, humor.<sup>vi</sup> Her list of capabilities-is inspired from these features (Nussbaum: 1992).

Thirdly, there are certain virtues intrinsic to human identity-removal of which would make them into different beings. She points out that any idea of human good should necessarily aim at good of the human and not some other being, which requires



speculation on certain essential features like morality, hunger or sociability, as elements of any life which is considered human (Nussbaum:1993).

She applies these arguments to defend a single, objective and minimum account of social justice, which according to her is the freedom to live life with human dignity (Nussbaum: 2000; 20002; 2002; 2004; 2006).

I believe that inspite of the determination of universal list, there is enough scope for flourishing political deliberation, adequate contextual responsiveness and the application of it's particular purpose, conditions pertinent in the implementation of capabilities approach, which according to Sen (2006) could be obscured by having a single concrete list (Sen's arguments discussed before). Below I have tried to draw some unique features of her theory, drawn from her major works (Nussbaum: 1992; 1993; 2000; 2002; 2004; 2006) that could be used as counter arguments to Sen's criticism.

First, the list according to Nussbaum is open- ended and humble, open to contestation, and contextual revisionism. She considers its multiple realizability as an important feature, which means that each of the capabilities may be concretely realized in a variety of ways acclimatized in the context of local traditions, culture, socio-cultural milieu, political deliberations and individual choices. Flexibility of her approach and its nature to adapt to specific social and cultural conditions is evident in her "methodological commitment to cross cultural deliberation and criticism" as well as her efforts to "emphasize the affiliations of this approach with liberal right based theories" (Nussbaum, 2000). Nussbaum's view of a single set of capabilities coupled with her demands of institutions such as religion or the family to reform them whenever they harm the exercise of the central capabilities is an attempt to preserve some basic freedoms and some basic conditions of their existence in every society. Sen's concern of its limited contextual sensitivity is taken care of in this point.

Secondly, another important feature of consideration, which is common between Sen and Nussbaum, is the theoretical difference between 'capability' and 'functioning.' The goal of basic political principles is promotion of capabilities and not its actual functioning, in order to restore the individual or collective choice of pursuing it or not. For example, there should be equal job opportunities for women, which is a 'capability' but to avail this opportunity is a choice left to her. There is also a certain scope for notion

of 'responsibility' in her theory, as people will be held responsible for the choices that they make from the capability set, which will determine their achieved functioning (Robeyns: 2004). Thus, her proposal does not take away the freedom of an individual or a community to adhere to their own 'comprehensive notion of good,' rather these capabilities, if observed closely, enhance this freedom especially for those who had been deprived of it for long like women in the name of religion or tradition.

Thirdly, content of the list itself, gives lot of priority to traditional civil and political liberties associated to individuals and groups. The capabilities like practical reason, affiliation, control over one's environment: political and material, play, and sense/imaginings/thought show respect for individual choice in associating with others and the importance of societal institutions and group-memberships. The aim of this list is infact to create and ameliorate socio-political conditions where all individuals, without any prejudices of gender or race, could exercise basic civil and political liberties. The critics of such specificity need to acknowledge that mere legal enforcement of political/civil rights could not bridge over the societal, institutional and moral constraints that women face in order to actually exercise these rights. This list as a minimum threshold, could free the oppressed and marginalized, women in particular, from these constraints in enabling them to exercise these basic freedoms. One of the other criticisms is that the determination of a list by a community through political deliberation is itself an important capability, which is lost, if we already have a list for all times to come (Robeyns: 2006). However, the uniqueness of this list is that these capabilities are basic conditions for political deliberations to be really democratic and inclusive for all the sections of society especially those who are exempted from voicing their opinions due to gender/class/race differences. It intends to include the feminist standpoint in social /political and moral understandings, loaded with androcentric perceptions. Feminist critiques of the public-private divide (Pateman: 1987; McKinnon: 1982) have exposed the exclusionary male- dominated nature of political sphere and the missing gender perspective in political deliberations and policy-making (Okin: 1989).

These capabilities could be seen as protective safeguards for women to be part of the political process, moreover control over political environment (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 environment) is itself part of the list. The fact that the list is open to revision and contestation leaves scope for such deliberations.

Fourthly, Nussbaum postulates her theory as a variant of *political liberalism* that makes these capabilities as 'specifically political goals and presents them in a manner free of any specific metaphysical groundings.' The approach according to Nussbaum is to provide a moral/philosophical foundation to basic political principles, drawn from 'an overlapping consensus' among people who have 'otherwise different comprehensive conceptions of the good' (Nussbaum: 2000:5). Hence, it is clear that her theory is a political conception, though with more philosophical groundings than Sen's. It does not intend to teach people and communities how to live their lives but create conditions for them to live the lives they want to. This makes this list all the more important in the lives of women who generally deprived of this freedom.

Fifthly, Nussbaum reserves the actual implementation of these capabilities to "...the internal politics of the nation in question, although international agencies and other governments are justified in using persuasion- and in especially grave cases economic or political sanctions – to promote such developments" (Nussbaum: 2000:105). The purpose of this list is to set a standard of minimum threshold for a life of human dignity that should become part of the constitutional principles and be pursued by the national governments. Most of the capabilities in the list have been acknowledged before by most of the governments in their policymaking. Like in India, some are part of the Fundamental rights like political rights and some are part of the Directive Principles of State Policy like availability of minimum education and health facilities for all. The list also overlaps considerably with the Universal Declaration of Human Rights.<sup>vii</sup> Thus the content is not drastic or out of place. They have been over time emphasized in various contexts. However, they have fallen short of efficient and effective implementation especially for women. In order to bridge this gap Nussbaum draws some essential capabilities as a 'minimum' that every individual deserves to live a human life with dignity.

Lastly, Sen perceives the approach as a normative and evaluative framework and thus believes that capabilities determined would depend upon what is the purpose and

objective of evaluation. He sees Nussbaum's list as a minimum against deprivation. Nussbaum has proposed this theory as a partial theory of social justice, with special concern for gender justice based on an intuitive idea of what life of human dignity require. In other words, the list has a specific purpose of evaluating whether each citizen in every society is living a life of human dignity or minimum social justice. Thus, the list should hold credibility, if viewed in Sen's terms also, as it could be seen as an evaluative and normative framework for a specific question of social justice between individuals, groups and nations.

In my view, the list holds special significance for women, who pervasively face injustice and neglect because of the secondary status given to their sex as compared to men. They are assumed to fulfill secondary roles in public and private realms in order to support and serve men without recognition of their own 'well-being' and independent moral 'agency.'<sup>viii</sup>

This has been the basic problem that exists in our social, political, economic and moral arrangements. Often this is justified in the name of a community's culture, tradition or religion. Sen's ambiguous stand on a general perspective on freedom or capabilities makes the approach vulnerable to such unjustified claims. Nussbaum's concretization of the capabilities is an affirmation that every woman deserves to have some basic freedoms in form of these capabilities, by virtue of being an independent moral agent. It is also an assertion that all institutions and structures in a society, ought to be evaluated in terms of what it does to each member's well being so that the interests of women are not subsumed under the cover of defending the larger interests of an institution, a group or a community

These two points assume relevance and complication when placed in the context of gender justice in the institution of 'family.' This is because 'family' is considered too personal and benign to be talked about in terms of what it does for each member's well being especially the women's. So do we need to analyze gender justice in 'family'? If yes, how could it be best done so that the sanctity attached the institution, the emotions, selfless love that binds it is preserved, and yet no member (woman) is exploited in the name of same love and service? This is the topic of my discussion in the next chapter.

## Endnotes

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- <sup>i</sup> I shall be focusing on Aristotle's work in influencing Nussbaum's theory. For the influence of Marx and Kant, see Martha Nussbaum. 2000. *Women and Human Development: The Capabilities Approach*. Cambridge: Cambridge University Press.
- <sup>ii</sup> For the latest version of list along with its contents refer Bina Agarwal, Jane Humphries and Ingrid Robeyns(ed). 2006. *Capabilities, Freedom and Equality: Amartya Sen's Work from a Gender Perspective*. Oxford: Oxford University Press.
- <sup>iii</sup> A detailed critique of Rawls theory by Nussbaum along with her suggested changes in the theory in done in chapter 1.
- <sup>iv</sup> Although critiques of these theories appear in various works of Sen and Nussbaum, for a summarized version of their work see M Nussbaum and J Glover. 1995. *Women, Culture and Development*. Oxford. Clarendon Press.
- <sup>v</sup> For detailed discussion of Nussbaum's defense of Aristotle's theory see Martha Nussbaum. 2000. Aristotle Politics and Human Capabilities: A Response to Antony, Arneson, Charlesworth and Mulgan. *Ethics* 111:102-40 and 1993. Social Justice and Universalism: In Defense of an Aristotelian Account of Human Functioning. *Modern Philology*. 90: S-46-S73.
- <sup>vi</sup> For a full version of Aristotle's most important spheres of experience along with the name of their corresponding virtues refer Martha Nussbaum 'Non-Relative Virtues: An Aristotelian Approach' in Martha Nussbaum and Amartya Sen (eds.) *Quality of Life*, New York: OUP.
- <sup>vii</sup> Nussbaum considers her theory very close to the Human Rights discourse, however points some limitations in the latter that gives an edge to her own theory. For a detailed discussion see Martha Nussbaum. 2003. Capabilities As Fundamental Entitlements: Sen and Social Justice. *Feminist Economics* 9(2).
- <sup>viii</sup> Amartya Sen distinguishes between 'Well-Being' and 'Agency' of an individual in his capabilities perspective.

## **CHAPTER 4**

### **MARTHA NUSSBAUM'S 'CAPABILITIES APPROACH' ' GENDER JUSTICE' AND 'FAMILY'**

- I. **'Family' as a Source and site of gender oppression**
  - Politics of Labour
  - Politics of the Public and Private
    - \* Division of Activities
    - \* Division of Location/geography
    - \* Division of Consciousness
- II. **The Politics of 'Self' and 'Responsibility' in 'family'**
  - The Moral Perspective
  - The Sociological Perspective
  - Implications
- III. **Gender Justice in 'family': Alternative Frameworks**
- IV. **'Family' in Martha Nussbaum's Capabilities Approach: A Rethinking**
  - Self in Nussbaum's theory
  - Responsibility' in Nussbaum's theory
  - 'Family' as site of Justice
  - The Role of state
- V. **Conclusions**

## CHAPTER 4

### **MARTHA NUSSBAUM'S CAPABILITIES APPROACH: GENDER JUSTICE AND FAMILY<sup>i</sup>**

There is by now a vast critical feminist literature that questions the ethical and philosophical foundations of various normative theories in different discourses of social sciences whether it is development, social justice, inequality, freedom or social policy. The ethical foundations of these theories generally constitute a reflective and normative framework on what is the ideal way to live life, the moral virtues its manifests and produces and lastly how they get reinforced and sustained, shared as moral understandings in a society that we understand as 'morality.' These shared moral understandings entail fixed conceptions of 'self', 'relationships' and 'values', expressed and organized in some form around highly differentiated social/moral positions, through which individuals understand who they are and where they are by knowing what are they responsible for in various social relationships. These understandings broadly constitute the study of 'moral philosophy' (Walker: 1998).

One of the most widely agreed critiques is that moral philosophy is androcentric, and male-centered. They are also false gender-neutral in the sense that the 'subject' is a 'male' and it is 'his' experiences, concerns, needs, desires, aspirations, interests around which the whole theory is developed thereby ignoring aspects exclusive and pertinent to lives of women. Often these theories implicitly rely upon sexist or patriarchal assumptions, or incorporate empirical claims about gender issues that are highly contested or have a poor underlying theory of gender (Okin: 1989; Anderson: 1999; Fraser: 1998; Young: 1990; Friedman: 2000).

The first human interaction, relationship and association of an individual take place in his/her 'family.' This association continues for the rest of her life, manifested and transformed through various relationships. In almost all forms of societies and cultures, an individual relates to family as a space of emotional security, love and care, without any threat and competition in contrast to relationships and associations outside 'family' (Friendship is an exception). Though a lot has been written and critiqued about this over-benign and benevolent image of 'family' to the extent of some arguing for its 'breakdown' while still some hoping for its reform, at the end of day family is a big support for all of us.

What makes this social institution so significant to our lives is not a problematic issue. We all know that. What is problematic are the implications of this uniqueness on its members that has made the political and social theorists to rethink on this institution. Its benign image is being questioned by looking at the dynamics of power relationship between its members, nature of distribution of resources and the intricate web of emotions and feelings that overwhelm it. Due to the image of its embeddings in mutual altruism and all pervasive public-private divide, family as an analytical site of gender justice came as a later development in social sciences. Some earlier thinkers like M Wallstonecraft (in Engster: 2001) and Engels (1972) touched upon it, but their perception was limited. It took some time for political philosophers and social theorists to realize that gender oppression emanates and get reinforced in this very benign institution, because it is here that the formative moral and psychological development of an individual takes place (Okin: 1989). It is in and through 'family' that an individual gets his/her first impression of oneself and others, of the norms of behavior and values and what is expected of them in different relationships, as men and women.

The main objective of this chapter is to explore the scope of Nussbaum's capabilities approach in revealing the gendered moral understandings of 'self' and 'responsibility' in 'Family' by her concept of 'human nature' and 'adaptive preferences' and the way they get redefined in her theory as a necessary condition for true realization of gender justice.<sup>ii</sup> With reference to the above discussion, it seeks to address the issue of 'gender justice in family' and also touch upon the feminist critique of moral philosophy in her proposed theory. Justice, for Nussbaum is the ability to 'live life in truly human way' rooted in Aristotelian tradition, that she develops in the form of ten capabilities to be made possible for all human beings in all societies as a minimum criterion of social justice. Secondly, the realization of these capabilities is argued for each and every human being as 'end' in all spheres of human life. The concept of 'human being' and the list of ten capabilities within a liberal framework suggested by her, holds relevance for the kind of injustice faced by women in 'family' (Nussbaum: 2000; 2002; 2004; 2006). Though her universalist position<sup>iii</sup> is problematic due to different kinds of family structures and interpersonal relationships in different social contexts, however her strong arguments in favour of an uncompromising stand for gender justice, makes her theory interesting and worth consideration.



I examine the following aspects of this debate in this chapter. The chapter is divided into three sections: First I discuss 'Family' as a Source of Oppression,' in the second section I do an analysis of the Politics of 'self' and 'Responsibility' in 'family' and in the third I take up how Nussbaum delves on these issues in her theory.

I begin with a critique of the socially constructed patriarchal roots of authoritarian shared distribution of 'responsibility' in family which emanates from patriarchal moral understandings that require women to perceive themselves as bearers of a particular 'self' ordained to fulfill certain 'responsibilities,' in various interpersonal relationships that exist in 'family' (Mead: 2005; Friedman: 2002; Meyers: 2004). It is through 'internalization' of the 'given self' and fulfillment of these 'responsibilities' that they express themselves and in turn retain their identity and recognition in interpersonal and social relationships. For example, a woman gets recognition from society and recognizes her own identity of a woman only when she becomes a caregiver as a mother or wife. This socially constructed and psychologically sustained 'self' and 'responsibility' is the main source of gender oppression in 'family.' I intend to bring out this complexity and its implication on women, in this chapter. This would be followed by Nussbaum's critical analysis of the issue and her arguments for a capabilities approach as a normative proposition for gender justice in 'family.'

## **Section 1**

### **'Family' as a source of gender oppression**

Sources of gender injustice get produced and reinforced in the institution of 'family' is gradually being recognized and argued in the social and academic world. One of the earliest instances of gender neglect or abuse or oppression takes place in the family she is born (if not victimized to female feticide and infanticide) and continues for the rest of her life in changing roles of daughters, wives or mother is also an accepted idea. The form of gender injustice in family is also most fundamental, as it is during the formative years in 'family' that men and women develop a sense of wrong and right, taking deep roots in their character.

However, what goes into this oppression or what actually is the root cause of this oppression is a contested issue between the feminist and non-feminist thinkers. Some blame it to the biological differences, some to the economic dependency of women and some to the psychology of domination. In this section, within limits I am exploring different perspectives

that have been argued to explain gender injustice in family. For conceptual clarity, I have taken three themes:

- The Politics of Labour
- The Politics of Public and Private
- The Politics of 'Self' and 'Responsibility'

### **1. The Politics of labor:**

This perspective analyses gender injustice in family as a structural phenomenon and has mostly been dealt within the Marxist framework. It sees family as a product of private property and gender injustice because of capitalist exploitative relations of production that also gets reflected in the relationship between husband and wife. The end of capitalism will end the exploitative relationship in family as well. Within this perspective, five approaches are discussed:

First approach takes the emergence of exploitative family as a clear product of the capitalist development, which stripped it of its productive functions, transferring it to the public sphere (Zeretsky: 1976). This excluded the role of women in the productive functions, relegating her to the private realm, concerned mainly with the reproductive functions (Smith: 1975). Men, on the other hand took over the public realm, based on which also exercised domination in the private realm of 'family.' The creation of two spheres public and private, according to this perspective, is a creation of capitalism and gender injustice could be specifically understood in terms of her exemption from waged labor and held responsible for non-waged labor.

The second approach focuses on the impact of patriarchy in various layers and institutions (Family being one of them) on the female consciousness which gets conditioned to succumb to male power. It takes a more psychoanalytical approach to understand female psychological reconciliation to male domination which gets psychically represented in her thoughts and feelings about her relationships with her husband. Two important works could be mentioned here that of Juliet Mitchell and Annette Kuhn who see its source in construction of gendered sexual identity of a female to control her mentally and physically.

A third possible perspective could be grouping those theories that focus on one particular aspect of women's life in family like motherhood, care-giving, home-making, non-

waged work. Issues like motherhood and care-taking involve questions of her sexual identity and personhood dealt radically by Shulamith Firestone who considers the reproductive role and child-bearing as the main source of her oppression (Firestone: 1972). She applies the antagonism between classes in Marxism to argue for the antagonism between men and women as antagonistic sex classes in family and procreation as the root cause of this conflict, socially arranged in a manner to sustain the subordination of women. She suggests complete control of a woman over her sexual life with the help of techniques like artificial reproduction and abortion (Firestone: 1972). On the other hand, the mainstream Marxists attack the unwaged domestic labour and homemaking by women, a condition created by capitalism, which is responsible for her exploitation. It is the housework, constituted under the socio-economic relations of capitalism, which is the main source (Malos: 1980). It is analogous to theory of surplus value, exploited by the capitalists in the sense of women receiving nothing in return of the huge labor they do at home.

The fourth approach, though focuses on housework, has a different take on it, suggested by Christine Delphy (in Britton and Maynard: 1984). She argues that there are two modes of production, the industrial and the domestic, leading to capitalist and patriarchal exploitation respectively. The emphasis is again on the housework with the difference that unlike the previous perspective, Delphy does not relate this to capitalism. She considers this as a material foundation of the patriarchal relations between husband and wife in family.

A fifth perspective takes a different stand of arguing for contradictory relationship between capitalism and patriarchy. Heidi Hartmann takes this stand arguing that female oppression originates in men's control over her labor power through her inaccessibility to productive resources like waged job or controlling her sexuality (Hartmann: 1979). However, she further states that the role of men as husbands and as capitalists together could contradict, as the husband would want his wife to be at home and the capitalist would want his wife to earn money.

## **2. The Politics of Public and Private**

One of the oldest and most widely agreed critique by the feminists has been of the public-private dichotomy or spatial politics (Pateman: 1987), as a culturally constructed continuum, which gives rise to and perpetuates different patterns of male power and control.

Many feminists have used this distinction as a metaphor to express the limitation placed on women by having to operate within the restrictions of private realm. The adverse implications have not only been in terms of division of sphere of physical activity but also in creation of psychological boundaries between men and women on ideas of what is expected of them, who they are and what are they responsible for i.e moral understandings (discussed above with reference to Walker). The persistent dichotomies like justice and care; mind and body, culture and nature, reason and emotion, production and reproduction, family and public places are all manifestations of this dichotomy.<sup>iv</sup> Women's confinement to the private realm, unequal wages at work, poor literacy rate, domestic violence, placement in low status jobs and very close to our discussion, neglect of family as an analytical site of justice in social sciences, could all be traced to the public-private distinction. The idea gets best reflected in the words of Ruskin Bond's during a lecture in Manchester town Hall, 1864 'of Queen's,' "...the home was where women should stay, for only man could be the doer, the creator, the discoverer; in contrast women are passive, self-effacing, pious and graceful" (In Millett: 1969). He uses the metaphor of 'flowers' for women and their garden bound by walls for 'home'-as their natural space. As Millett remarked, "...his metaphor of the 'garden' indicates both supposed naturalness of women's natural beauty and the boundaries of their existence (Millett: 1969). The politics of public and private is discussed in three ways:

### ***Division of Activities***

This pertains to the traditional division of labor in terms of activities specific to the family and political/economic arrangements, divided between men and women (Zeretsky: 1976; Smith: 1975-76). This division gets exemplified as reproduction-production; non-production-production; non-work (home)-work, essentially associated to women and men respectively. This traditional division of physical labour has had three main consequences, adversely affecting women's lives.

First women in family came to be perceived only as consumers as their reproductive role and non-waged work were not considered productive. This relegated her status as 'care-receivers' in the family against men as 'breadwinners' (Britton and Maynard: 1984). Secondly, there has been a complete neglect of evaluation of the cost-value analysis of work done by women at home by standards of justice, as it is not considered economically

productive. It is ironical that kind of work done by a house- wife or a mother is considered as a labour of love and affection, whereas a domestic servant is paid for the same work. A Third implication has been the absence/low women's participation in activities of the public arena like employment, voting, decision-making, policy -making of a country, participation in public-forums and education, factors which actually left behind women in every aspect of well-being and development. Citizenship rights came as late as nineteenth century for women in many countries. With few women being able to get employment, they face injustice in form of unequal wages, low positions a compared to men and even sexual exploitation at workplace, indicating that they are not taken seriously as an employee (HDR: 1995)

Fourth implication has been the non-recognition of the informal labor done by women in family, and its justification by projecting this work as a natural obligation/responsibility to be fulfilled by women. Her 'household' work for long, was not acknowledged as a contribution to nation's economy considered 'invisible' (Joseph: 1997, Datta: 2002). Thus, the question of exploitation never arose with reference to household work, naturally associated with women.

### ***Division of Location/geography***

Another apparent conception of the public-private divide is the division in terms of access to physical spaces' in society-streets, schools, parliament, parks, courtyard etc-between men and women. Hence, conventionally as we may see, women are expected to stay at 'home' and feel uncomfortable, conscious and out of place in public sphere. Dominique Poggi and Monique Coormaert made an interesting analysis of the city being off limits to women (Poggi and Coormaert: 1974). They point out how public spaces like parks, streets, riversides of cities-are available to women only exercise discretion because in public sphere women run the risk of being molested, hustled or raped. The underlying assumption is that these 'spaces' in public domain do not belong naturally to women hence it involves risk. Further, it also necessitated the idea that women need company of men to feel secure and protected in the public domain. Thus, a single woman walking on the road is more vulnerable to eve teasing and molestation as she is expected to be in company of some male and the fact she is not, reflects her abnormal life and even her immoral character. With some contextual differences according to societies, this is generally an all-pervasive notion. These limitations

in terms of 'space' have constrained her options to participate in economic and political activities of her society. With naturalism attached to this division of spaces, the division clutches the flourishing of aspirations in women who want to move beyond 'home,' constraints her association with other people and groups and deprives her of opportunities to know her potentiality in public roles.

### ***Division of Consciousness***

The structural perpetuation of the public-private divide has led to identification of the public and the private with male and female consciousness respectively. This entails division of emotions, responsibilities, values, obligations and perspectives and identities, which eventually define and gets defined through the dynamics of relationship between men and women in family. A prevalent perception is of associating the private realm of family with personal and intimate relationships based on love, care, security, emotional well being, to be carried out by their natural dwellers that is 'women.' On other hand, the public is associated with impersonal and detached relationships based on rationality, competition, justice and power politics, involving its natural dwellers that are 'men.' It is through the endorsement of these relationships and responsibilities attached to the two realms: public and private that men and women acquire perceptions of their 'selves' and 'others' (Mead: in Jackson, 2005; Goffman: 1980, 1987; Chodrow: 1995; Cahill: 1987). The division has been severely attacked from various angles by the feminists, to expose its implicit and explicit patriarchal indoctrination. The critique that emerged is that the divide is a creation of deeply rooted patriarchy. The 'personal' in family is 'political,' as the state laws and political institutions in public sphere defined/recognized it. Therefore, it makes obligatory for the state to interfere in family and redefine relationships based on justice (Nussbaum: 2000). Men and women through different relationships in family are engaged in sexual politics (Millett: 1969) where one exercises power, authority and domination over the other. Foreman sees femininity, with its emphasis on living through personal relations, as a product of the public-private split (Foreman: 1977), created to relegate women to the sphere of emotionality where they 'cannot escape the intimate oppression of being foils for men' (Barrett: 1980).

In spite of diversity of perspectives, at times contradicting each other on the public-private dichotomy, Susan Moller Okin draws three common lines of critique which give them a common base (Okin: 1997).

First, all perspectives defend the fallacy of this divide and claim that 'personal is the political' (Pateman: 1982). This is in recognition of the presence of more subtle form of power politics that colour the relationship between men and women in family, in all forms. It is through this complex game of power that men dominate women in a manner not so explicit.

Secondly, Family considered, as a 'personal or private realm' is a constitution/construction of the state in public realm. The institution has its legitimate basis in state, which gives recognition to the relationship of wife with her husband, mother with her children and the conditions of the legitimation. It is the state-based laws which empower or disempower women in family on issues of property acquisition, domestic violence, divorce laws, post-divorce status, health, education etc (Nussbaum: 2000a) However the persistent backwardness of women in society and abuse in family, led to a consensus that state is also a patriarchal structure, equally responsible and party to gender injustice. State institutionalizes and legitimizes sexual politics (Mc Kinnon: 1982) to sustain the male gender hierarchy in and outside family.

Thirdly, the division of activities, location and consciousness between men and women in family is a product of gendered parenting (Cahill: 1987) influencing relationships, identities and values. It is a product of unjust social and political arrangements in society and has no groundings in biological differences between men and women. The patriarchal construction of gendered consciousness emanates from the traditional division of labour, which gets transcended in 'space' and 'psychology.'

I elaborate on the third theme in following section.

## **Section 2**

### **The Politics of 'Self' and 'Responsibility' in 'Family'**

As briefly touched upon earlier, one of the implications of traditional division of labour in family, is the division of consciousness, in which women, primarily concerned with the care-taking activities at home conceive their own 'selves' in terms of agents existing to

serve men through different roles and eternally subordinate to them. The idea of 'who they are' (Self) and 'for what they are' (Responsibility) according to their own perception, are issues that constitute the base of injustice against women in family. I am discussing two perspectives here to analyze this statement

- 1) The Moral perspective by M. Walker
- 2) The Sociological Perspective by A Brittan and Mary Maynard

Before I begin to elaborate on these, I wish to state that there are two similarities in these perspectives. First both conceive the 'Self' as a product of a process-moral or social. It is not an abstract entity lying outside the paraphernalia of human processes but a 'situated' entity which get its 'forms' and 'feature' as a result of engagement with different forces/processes of human life. It is also not absolute in the sense that it undergoes transformation incessantly, gets define and redefined through its diverse conciliatory and antagonistic interactions with its 'own self' and other 'selves' (Mead: in Jackson: 2005; Goffman: 1987; Cahill: 1987).

Secondly, both the perspectives do not claim a monolithic universal theorizing. They do acknowledge the relevance of inter-societal differences and inter-subjectivity in the conception of identity, responsibilities and forms of family. They agree on the point that there could be several other variables for the determination of 'self' and our shared moral understandings like class, race, religion, personal circumstances, gender being just on of them.

Thirdly, these perspectives converge on the consequences of power relationship between the 'self,' 'responsibilities' and 'gender' in 'family' elaborated later.

**The Moral Philosophical Perspective:** Margaret Urban Walker's perspective is based on the premise that notions of 'self' and 'responsibility' constitute intrinsic elements of moral life, which in turn, is situated and produced in our social knowledge and experience. She perceives the concept of morality as 'a shared understanding on issues of who we are, what we are and it is through these shared understandings that the human agency or 'the male self' and the 'female self' are defined. In other words, it constitutes a family of practices based on our shared perceptions on what is to be valued by making people accountable to each other for it (Walker, 1998). What is expected of the 'self,' reflects a set of responsibilities expressed in the interpersonal relationships that the 'self' engages in, which when



consistently practiced, reproduces, reinforces and sustains the 'embodied self' as a man or woman. As Walker puts it, morality exist in practices of 'responsibility'<sup>v</sup> that implement commonly shared understandings about who gets to do what, to whom and who is supposed to do what and for whom. Through these practices, individuals learn themselves as bearers of particular identities/actors in various relationships that are embedded in certain moral values. Exploring further, she invokes the work of **Robert Goodin** 'Protecting the vulnerable' (1985) who argues for a responsibility ethic based on the principle that "we are responsible for protecting those vulnerable to our actions and choices." According to him, unjust social arrangements create and exacerbate vulnerabilities, which necessitate responsibilities. Guided by this thought, he argues that thus it is the primary responsibility of women to care of 'children' in 'family' as children are most vulnerable to the actions and choices made by their mothers. Walker intervenes at this point, criticizing the distribution of 'responsibilities' as authoritarian in three ways:

First, the idea that these moral understandings are 'shared' does not mean that it is based on the consent of all moral agents, reflecting the aspirations of all. This is one the strongest critiques by feminist Ethics that the normative account of 'who we are and what we are' have been determined by men for themselves and women as well. Hence, these normative accounts of how to conceive selfhood, relationships, identities and values failed to reflect the aspirations of women. This also shows the fallacy in the distribution of responsibilities and of the conceived 'self.' The 'self' then acquired by women is not her true 'self' but a gendered, authoritarian social construction. Same is true of the responsibilities which are more like 'forced upon obligations' on women, that they have come to accept as 'given' It is the 'self' defined by men for them, through which they identify themselves as 'women.' They retain this identity expressed in the authoritarian distribution of responsibilities in 'family', which they are supposed to perform to confirm their identity of a woman in their own eyes and in eyes of others (Walker: 1998). For example, motherhood and child rearing since ages have been considered intrinsic to womanhood. Thus, a woman naturally feels that it is her utmost responsibility to become a mother and take care of her children, compromising on her own dignity as an individual. In trying to put forth this point, I am not negating the pleasure and dignity of motherhood but I am asserting that it is important to assess critically, who is held 'responsible' for what and at what 'cost.'

Secondly, it is also important to reflecting the nature of consequences that a woman bears if she fails to live up to the responsibility expected of her. For example, a wife is held responsible for a failed marriage no matter how unbearable were the circumstances for her. This is one of the reasons why women suffer for so long in an abusive marriage before they break because it is socially projected as their own failure as a 'wife' with little onus on the husband. She is blamed and ridiculed not only by society but also by her own family. Inadequate laws on divorce and unequal equal 'exit' options (Okin, 1987) for women from abusive marriage reflect this assumption underlying the political institutions of our society as well.

Thirdly, she points out that the distribution not only aims to produce outcomes but reproduce the specific shared understandings and locked identities through unjust social arrangements like 'family' so that the male dominance is sustained and unchallenged. They are 'chartered' in a way to "...to keep afloat a system of mutual expectations and self." (Walker: 1998).

The notion of 'responsibility' in 'family' is based on authoritative allocation of values (phrase used by Easton for 'power'), according to Walker (1998) because it is a) *manipulative* as the internalization of the 'self' and 'responsibility' by women does not involve direct coercion, b) *regulatory* as it reproduces and reinforces the sustenance of gendered 'identities', 'relationships' and 'values' in 'family' and c) *definitive* in articulating and defining the human agency, relationships and values.

She also points out two limitations in Goodin's 'Responsibility Ethic' for women. First, he does not take into account the vulnerability of women vis-à-vis men in the institution of 'family' in different roles as a wife, as a mother and as a daughter. Feminist theory has explored various kinds of deeply institutionalized vulnerabilities that women face in marriage related to their care-giving role, motherhood, economic dependency, sexuality and 'exit' options (Okin, 1987; Held, 1997; Ruddick, 1989; Gilligan, 1987; Chodrow, 1981; Baier, 1985). Secondly about the obligation of 'responsibility towards the vulnerable' she points out that distribution of responsibilities is in itself a part of social arrangement, which as discussed before, could be 'authoritative' and 'unjust,' creating more vulnerability (Walker: 1998).<sup>vi</sup> The point could be very well connected to the responsibility of women as

caregivers in 'family' which leave them vulnerable in terms of economic dependence on their husbands for their own survival hence limited options to break away from a bad marriage.

Walker's analysis is an articulate exposition of the power dynamics between 'self,' 'responsibility' and 'gender' mediating through our 'shared moral understandings' in the institution of 'family.' Her insistence on the need to critically examine the 'geography of responsibilities' in 'family' to comprehend who is held responsible for what and to whom, on what conditions, which authority distributes it and at what criteria (Walker: 1998) are issues that are pertinent for a serious thinking on gender justice in 'family.'

**The Sociological Perspective:** This perspective suggested by A Brittan and M. Maynard, delves on the interconnections between gender oppression and socialization in 'family' that involves a close analysis of the 'self' and 'responsibility.' According to them, it is through the process of 'socialization' (a universal force which remorselessly shapes human personality and conduct) that the bisexual human beings acquire their identity of masculinity and femininity. The acquisition of gender is a process of 'internalization' of the 'expectations and role scripts' associated with masculinity and femininity, as human beings grow and develop in their environment (Britton and Maynard: 1984; Goffman: 1987; Cahill: 1987). To be a man or a woman thus implies a long process of indoctrination that transforms them into socially constructed gendered beings. They explain this through a prevalent identification of motherhood and womanhood. For a woman the whole process of socialization is seen as a preparation of marriage and motherhood, which begins from a different treatment of a girl child from her brother at home, witnessing her mother's subordination to her father in family to the extent of physical abuse in some instances, followed by her association with other social institutions and norms.

Socialization takes place through an entire gamut of social-political institutions/structures and conventions (agents of socialization), which confront the individual with an element of force to comply to the gender stereotypes. This requires passivity of the subject in an oppressive relationship between the 'socialized and socializers.' Their main argument is that it is not the gender, which is coercive in it, but it is oppression that mediates through gender, what is mediated is an ideology of masculinity produced and reinforced as a common sense, as naturalized, as a lived experience, as a conscious and as a

collective force. It is this deeply *structured masculinity* that gets mediated and internalized through socialization that make women believe and conciliate to the injustice they face in 'family'. They probe into the works of Freud and Lacan to explain the relationship between 'self' and 'responsibility' in family. The psychoanalytical account of socialization by Freud assumes a sequence of developmental stages till the age of five, by which all pre-requisites of male and female gender are internalized as a 'self' through Oedipus situation. The 'self' of a 'man' emerges as a strong masculine superego and of a woman as a repressed passive 'self' reflecting the demotion of clitoral sensitivity (Freud: 1977). For a woman to reach sexual maturity, she must abandon her bisexuality and develop a truncated form of sexual identity suitable for motherhood and marriage. Hence, for a woman her 'self' gets epitomized in her role of child rearing and care as her 'natural' responsibilities. Brittan and Maynard refute this assumption, by arguing that there are no intrinsic responsibilities of men and women by definition but, historically specific, relative, acquired, learnt and undergo transformations. Jacques Lacan's theory conceives gender as a historically specific form of internalized ideological discourse that is as an autonomous symbolic representation of the sexual division of labor. The discourse is adulterated Family, being one of the first and most crucial sites of socialization in Freud and Lacan's analysis, a woman's 'self' is produced and reproduced captivated in gender-specific responsibilities, primarily causing and sustaining her oppression.

#### **Implications:**

Based on above discussions I argue now that it has three implications on the status of women in society.

First gender injustice in 'family' leads to injustice in the political and economic realms in public sphere and vice-versa. This forms a vicious cycle in which women are victimized with limited options to escape the process. It is in this cycle itself that the patriarchy is mediated. Some could argue that the image of women as care-givers in family, gets reflected in the public sphere as there are less job opportunities for women, they are paid low wages as compared to men for same hours of work, they are exempted from holding higher posts and have limited options of political participation (HDR: 1995; Joseph: 1997). On the other hand, her inaccessibility to education and political participation limits her own understandings of the rights she could exercise, confidence to dissent or resist and understand her own

exploitation. Hence, deprivation in one exacerbates deprivation in other or deprivation in one could be seen as the factor for deprivation in the other.

Secondly, we began with a question that what took so long for women themselves to realize that they to have a claim to justice like men, not only in the public realm but also in the personal realm of family. One of the adverse implications of the politics of 'self,' 'responsibility' and 'gender' in family that kept women's subjugation unchallenged is 'Adaptive Preferences' (Nussbaum: 2000) or 'false consciousness' (Crocker: 1992). She evaluates herself through a sexist, andocentric and masculinist 'lens' which she internalizes as she is subject to gendered parenting (Brittan and Maynard: 1984) or 'authoritarian sharing of responsibilities' (Walker: 1998). This results in Adaptive preferences (Nussbaum: 2000; 2003), preferences that not in sync with the true nature of an individual but have been maneuvered and manipulated to suit the interests of those who maneuver it. In the context of women, many women in India never question their own preference of leaving their jobs after marriage to take care of the house even if they were doing really well in academics. Many women especially from poor families put up to physical abuse by their husbands without resistance. In most parts of the world, their husbands, who get away with it, have raped women at some point of their lives.<sup>vii</sup>

Thirdly, the politics of private-divide has resulted in a rigid care-justice dichotomy, replicating the traditional sexual division of labour. The relegation of 'care' as an exclusive feature of the personal sphere of family and as an exclusive moral obligation of women, not only made women to suffer but also demeaned the value of 'care' in society. Many traditional and modern theories of justice have failed to address the importance of care, as they are based on equal, moral and rational nature of man with little acknowledgement of the physically and mentally disabled who need 'care' more than 'justice' (Okin: 1987). Going by Goodin's 'Responsibility Ethic' of 'responsibility towards the vulnerable,' it is important to realize that this responsibility should not be limited to women towards her children but should be expanded to make all citizens in public sphere responsible to the vulnerable groups in society: the poor, the old, the physically challenged, destitute women, homeless children and so on. This is an important condition for any decent society. Many feminist thinkers like Kittay (1997), Ruddick (1989), Tronto (1993), Okin (1997), Ruiz (2005), Noddings (1984) Nussbaum (2005) has extensively attacked devaluation of 'care' in public realm and women

as care-takers. Carol Gilligan's breakthrough hypothesis of 'Ethics of care vs. Ethics of Justice' made a significant contribution in making women's equally viable and relevant 'Care' perspective based on obligations and affection (Gilligan: 1982; 1987), visible as against the ethics of justice of men. Since then, feminist thinkers are grappling with the idea of how to combine the two perspectives theoretically and practically in private and public spheres. Nussbaum's capabilities approach is a plausible attempt in this direction (arguments in the next section).

#### **Section 4**

##### **Gender Justice in 'Family': Alternative Frameworks**

Contemporary feminism in all its variations, has invoked the issue of gender justice in 'family,' extensively and intensively. They have focused on the sources of gender injustice, factors behind its perpetuation and approaches to eliminate these sources. All three interventions have aroused plausible and almost non-conciliatory debates, facilitating the discussion in research and its significance in public policy.

This section is divided in two parts: In the first part, I will briefly take up some of the recently suggested frameworks to reconstruct gendered perceptions of self and responsibility in family, in context of the kind of injustice women face, that deprives them of a dignified life. This would be followed by an elaborate analysis of Nussbaum's capabilities approach and its credibility as compared to some contemporary works.

To put most simply, mainly two strands of thought have emerged on this issue. One emphasizes on the need to move beyond 'gender' dissolving all boundaries between the 'public' and 'private' in political, social, economic and psychological relationships. This would mean reconciliation of the care-justice dichotomy, production-reproduction /non-production dichotomy, waged work-non-waged work difference, rationality-emotion dichotomy, the naturalized 'male self' and 'female self' and the gender-locked authoritarian distribution of responsibilities. It entails 'equality' of opportunities for both sexes in all aspects of life and equal sharing of the productive and reproductive roles like women's participation on government decision-making and men's enhanced participation in child-rearing. It adheres to justice in terms of respecting each individual freedom and choice. Liberal thinkers like Mary Wallstonecraft (Engster: 2001) and Susan Moller Okin's

'Humanist concept of justice' for 'family' have made a valuable contribution in this approach (Okin: 1989).

A different view defends the valorizing of differences and orientations between men and women, by providing them with adequate resources and opportunities to preserve and enjoy these differences without getting exploited and disadvantaged. They strongly criticize the idea of gender-neutral or genderless institutions and structures that undermine the specific needs of both sexes. Since, patriarchy is deeply rooted in our society; terms like genderless or gender-neutrality actually imply sexist, androcentric and masculinist notions. This perspective holds relevance in bringing forth the connection between inequality in the public sphere and private sphere. Implicitly patriarchal nature of explicitly projected gender-neutral opportunities, rights, laws and political institutions could not respond to the injustice and subjugation of women in public sphere, legitimizing the traditional division of labour. Many feminist thinkers have contributed in this approach, with varying focus on specificity of the issue. Some have dealt with motherhood (Friedman: 1997; Held: 1997), some with reproductive role (Firestone: 1972), some with her emotional orientation (Gilligan: 1982; 1987) and still some on her non-waged work as care giving (Fraser: 1997; Tronto: 1993). A recent preoccupation of the literature is with the objective to dignify the value of 'care' and women primarily as 'care-givers.' Their main concern is that women as caretakers should not be left vulnerable and subjugated to men in family but should be supported and valued. This is not only important for gender justice but also for moral development of children, the old in family and the mentally and physically disabled of society (Kittay: 1995, Nussbaum: 2005, Ruiz: 2006). There is a wide agreement among the thinkers for a need to restructure the political and social institutions, structures and relationships based on 'care' (Tronto: 1993). However the problem with this approach is that reinforces the sexed -differences and associated roles and responsibilities. When Gilligan talks about a different, though equally viable orientation of women towards 'mutual obligation and care' than man's towards 'justice,' she actually 'naturalizes' and 'essentialists' the 'acquired' gendered orientations which are produced through socialization (gendered parenting). In family thus, the association of men with justice and women with care, inculcates natural obligation and responsibility of 'care-giving' in a girl child and natural abhorrence to express 'care and

affection' in a male child. This locks them in their gendered 'selves' and 'responsibility,' limiting their own natural individual preferences and growth.

The psychoanalytical approach to analyze gender oppression in family, has made a commendable contribution by finding roots of oppression in the construction and reproduction of 'false self,' a consequence and a cause behind gender-locked identities, responsibilities, relationships and values, which makes an individual a 'man' or a 'woman.' Hence there is a need to rethink on the constitution of 'self' of both men and women, formed in family. Baier, Virginia Held, Noddick, Ruddick, Milton Friedman, Chodrow, Frye and Gilian Rose have responded to this need in their own ways. D.T Meyers<sup>viii</sup> suggests four reclamation strategies of 'Self' for women in family;

1. Understanding Motherhood
2. Dissolution of care-justice dichotomy
3. Recognition of cultural differences and separatist tendencies.
4. Reconceptualization of Autonomy

In the next section, I analyze Nussbaum's theory in the light of these pertinent issues. I argue there that her theory is a commendable attempt that responds well to the mentioned issues in a formidable and workable way. It holds good relevance in not only understanding gender injustice in family but also suggests a plausible claim to reproach the issue.

## **Section 5**

### **'Family in Martha Nussbaum's 'Capabilities Approach': A Rethinking**

Nussbaum's theorizing on matters of gender justice emanates from a deeper concern for human dignity and bodily integrity of a woman, abused in 'family' that are 'typically ignored urgent issues of justice' (Nussbaum: 2000). Hence, apart from dealing with the traditional issues of distribution of resources and opportunities in justice, she reflects deeply on the nature of human being, the way it has been conceived and the fallacy of the conception. She also gives lot of emphasis on the scrutiny of 'family' based on principles of justice (another neglected issue), as it is in 'family' that the most subtle and grave violations of gender justice takes place. In light of the main theme of this paper, her theory envisages a life of human dignity for women as human beings before they become daughters or wives or mothers.



The Capabilities perspective, suggested by her aims to ensure that each and every individual has the capability to function 'in a truly human way' as measured by an Aristotelian inspired substantive account of human flourishing. In her own words her idea is to arrive at "...basic social minimum ...that focuses on human capabilities, that is, what people are actually able to do and to be-in a way informed by an intuitive idea of a life that is worthy of a dignity of a human being" (Nussbaum: 2000). Secondly, she endorses a concrete list of capabilities, which she argues should be made intrinsic part of 'each and every person' in this world by virtue of being a human being. This point is a pertinent claim for women who have been always considered as 'means' in different roles, to serve patriarchal ends, especially in family. Thirdly, she considers the list as a minimum threshold for social justice in all societies, below which the injustice inflicted, needs recognition and intervention.

Thus, her approach is a theory within the liberal philosophy, arguably of a critical strand emphasizing 'choice as good' but it is not neo liberal as it necessitates material and institutional conditions for the 'choice' to be actually exercised and it is duty of political action to provide these to all citizens (Nussbaum: 2000).

I argue in defense of Capabilities Approach as a plausible normative framework, concretized in form of ten capabilities, which if pursued could ensure an equally dignified life for women in 'family,' without dispensing with her emotions of care and sacrifice for her loved ones. This is because Nussbaum's achievement lies in not just glorifying emotions, but dignifying them also through their recognition in the public realm. Her second important achievement lies in the proposition to ensure full moral development of children especially the female girl child through proper educational and health opportunities without burdening her with a preconceived masculinist notion of responsibility. There is a strong emphasis on 'moral autonomy' in terms of realizing one's real 'self' and 'worth' as an independent 'subject.' In practical sense, it means the capability and freedom to make choices in life and determine one's own destiny.

In my view, following aspects of Nussbaum's Capabilities Approach makes her theory unique in its treatment of the issue of gender justice in family:

*The 'Self' in Nussbaum's theory:*

In previous sections I discussed how male and female identities are products of gendered social construction embedded with sexist perceptions of responsibilities,

relationships and values, mediated through moral philosophy or socialization. 'Family' is one of the first and most influential sites where this construction takes place. Nussbaum perceives this problem as that of 'adaptive preferences' (Nussbaum: 2000). The 'self' gets redefined in her theory in following ways:

First, Nussbaum is very critical of the Kantian notion of person as 'equal, moral, rational, objective, unemotional, free beings' most commonly a 'male,' underlying the traditional theories of justice. It is exclusionary and discriminatory. She draws attention to the fact that life is full of contingencies and not all individuals fall into this category especially women and physically/mentally challenged.

She proposes to change the political conception of person in Kant as 'equal and independent' to Aristotelian conception of person<sup>ix</sup> as both 'capable and needy' (Nussbaum: 2000; 2002; 2004; 2006) and as Marx puts it "in need of a rich plurality of life activities" (Marx: in Nussbaum: 2000). This conception touches human life the way it is for those in 'need' and some who are 'capable:' the powerful and the powerless. Inspired by Aristotelian thought– it sees human beings from the first as animal beings whose lives are characterized by profound neediness as well as by dignity. It is a powerful point to include women in the discourse as 'subjects' and acknowledge their subdued status in society and family, a neglected issue in justice discourse.

Secondly, her argument to treat each individual as 'end,' worthy of a life that entails human dignity, is a very relevant issue for women. Women in 'family' are recognized in different roles like 'mother' or 'homemaker' or 'a wife,' which they perceive as their real identities. Her 'self' has an instrumental value to serve men. Nussbaum argues that all these roles come into picture only after her she is recognized as an independent entity' and given equal opportunity to acquire the capabilities given by her. That is a minimum threshold for all individuals in order to live a just life, irrespective of the roles and responsibilities.

Thirdly, she believes that each individual has some 'innate capabilities' like capability to eat or drink and some basic capabilities like capability to love or care or study. It is only through suitable external conditions and opportunities that the innate and basic capabilities flourish as 'combined' capabilities. This point is an important check on 'gendered parenting' that is responsible for creating conservative gender identities. Nussbaum is persuasive that the girl child should be given adequate opportunities to for the

development of the innate and basic capabilities in her, which means no discrimination in access to education, good health and other basic resources (Nussbaum: 2002; 2004). This is an important condition for a girl child to realize her individual integrity and 'real' self. If 'true self' is not attainable, at least the search for it should not be trammled.

Fourthly, her conception of 'self' deals well with the problem of 'adaptive preferences' of 'false consciousness,' which women come to form as a consequence of poorly-cultivated desires or ill-informed desires. The fact that she endorses these capabilities for each and every person as a minimum threshold, entails a gradual transformation in the psychology of men through these capabilities and therefore in the asymmetrical relationships between man and women in family.

Lastly, all capabilities in the list especially value of 'bodily integrity' and 'emotions,' could play a very positive role in a woman's life to protect her from sexual abuse and violation of bodily integrity.

Hence, Capabilities approach, according to her, endorses the value of 'care' provided in such a way that the capability for self-respect of the receiver is not injured and also in such a way that the caregiver (women in most cases) is not exploited and discriminated against on account of performing that role (Nussbaum: 2000).

#### *'Responsibility' in Nussbaum's Theory: Resolving the care-justice Dichotomy*

A general consensus among feminist thinkers is that 'care and justice' are complementary and thus have suggested that ethics of care be supplemented by ethics of justice in private realm and ethics of justice in public to be supplemented with ethics of care in public realm Tronto (1993), Gilligan (1982), Fraser (1998), Ruiz (2006). One of the other achievements of Nussbaum's theory is her proposal of a concrete list of capabilities that incorporates both justice and care as essential to social justice. This becomes evident in following points:

First she advances the emotions of love, imagination and care as central political and social goals to elevate the status of 'care' in society considering that all human beings at some point of time are in need of care as children and in old age and some are in perpetual need like the physically and mentally disabled. Thus, 'care' is not a value of contingency but a need at all stages of human life (Nussbaum: 2000, 2004 and 2005). It needs to be valued

and recognized not only in the private realm of family but should become the basis of political and social institutions to support the depended. In envisaging love/care as primary political and social goals, Nussbaum not only protects the self-respect of women in 'family' but also elevates the status of 'care' in society by making it everyone's responsibility.

Secondly, she dissolves the dichotomy by opening 'family' to public scrutiny based on acquisition of the capabilities, by each member in family.

Thirdly, keeping in view the acceptance of 'love' and 'imagination' as moral abilities and social goals, Nussbaum suggests reform in the existing structure of 'family' based on asymmetrical public-private divide in political, social and psychological terms. There is a need to redefine masculinist identities, relationship and values in family in terms of these capabilities, to be actively pursued. Nussbaum's theory dissolves all the boundaries between public-private, to ensure equal participation of women in public sphere.

Lastly, according to her, two capabilities play 'an architectic' role in human life 'Practical Reason and Affiliation' since the two purportedly "organize and suffuse all the other capabilities, making their pursuit truly human" (Nussbaum, 2000). These two capabilities could be interpreted in terms of 'justice based on reason' and 'care based on affiliation' respectively, both playing an important role in making other capabilities a possibility. This reflects her deep belief in the importance of both 'justice and care' in 'family' for gender justice.

#### *'Family as a site of Justice'*

Nussbaum discusses the institution of 'family' as a contradictory site of love, bonding and intimate relationships along with sexual abuse, domestic violence and discrimination at the same time. She begins with a criticism of the political approaches to family that project it as 'natural,' oblivious to the cultural influences, as a 'private structure' without acknowledging the role of laws and institutions that actually shape it and 'as a space for women's natural responsibilities of love and care' without recognizing of the forces of socialization (Nussbaum, 2000). Her perspective is based on the critique of 'family' understood in Rawls theory of justice. She raises three questions from his theory, indicating its fallacy of overlooking the implications of gender oppression in 'family' and the urgent need of intervention (Nussbaum, 2000-article). First, though Rawls agrees that 'family' is

part of the basic structure, he denies any intervention in its 'internal functioning' (Rawls: 1971; 1977) as if a voluntary like church or a university. She contends that family is not a voluntary institution directly for children born in it who are subjected to gendered parenting without their realization (Nussbaum; 2000). It is not voluntary for women as well because she hardly has a choice of not entering this institution due to social pressures and very limited exit options from marriage. Looking at its pervasive influence in determining identities, relationships and values of men and women, it cannot be left to function on its own. Secondly, she criticizes Rawls for not acknowledging the 'parochial character of the western nuclear family' (Nussbaum: 2000a) and thus ignoring other forms of human affiliation like village families, women's collectives, joint families etc. She intends to reduce the dependence of women on the typical 'family' for emotional and financial support. Through the capability of 'affiliation,' she valorizes the associational liberties of women so that they can draw support from other human associations and feel bonded. She cites the example of SEWA, an NGO in India supporting women from broken marriage, in which women feel the same bonding based on care and love among themselves, as they would in a family.

She also wants to break the myth that intimate relationships could only be formed in a typical heterosexual 'family' and gives importance to other forms of human associations. This would develop women's basic capability to 'associate with others' and form relationships, rather than being identified through only family relationships.

Thirdly, she criticizes Rawls' view of 'family' as given and its pre-political rights as an association to protect it from state action. She contests that that 'family' is a political institution, created by the state itself, which gives legitimacy to relationships, define rights and privileges of its members, terms of divorce, marriage and parental responsibility in a family. Therefore, it is also the responsibility of the state to put constraints on the associational liberties in family in order to protect the integrity and well-being of women and children. Family as a 'group association' has value in terms of what it does in promoting the capabilities of each of its members (Nussbaum: 2000a). This means that deprivation of individual basic rights of women in the name of sustaining the familial bonding does not hold ground. Family as an independent group cannot have an independent standing and thus its public scrutiny is not a violation of its privacy. In the end the important question that needs to be asked is how is each individual faring in terms of capabilities, rather than arriving at any

aggregative conceptions. Through this point, Nussbaum makes a convincing claim of valuing human dignity of each member of family, above any other concern.

### *The Role of state*

One of the features of Nussbaum's capability ethic, which makes it unique and convincing, is the emphasis on its implementation by making it the philosophical basis of constitutional principles of state as a minimum threshold of social justice (Nussbaum: 2000; 2003; 2005). An idea is real only when it is real in its consequence. All societies claim to believe in gender equality but experience teaches us otherwise. Hence, Nussbaum's proposition of the capability development ethic in form of ten capabilities is a plausible attempt to make justice accessible to all individuals by virtue of being human beings as end. (Nussbaum: 2000a). The fact that she argues in favor of 'capability to do' than on the actual functioning, reflects her concern for freedom of choice. For this, she envisages an active role of the state<sup>x</sup> in keeping a check on the internal dynamics of asymmetrical relationship between man and woman in family and providing adequate opportunities. Nussbaum considers 'family' as a political institution constituted by the state and thus sees potential in the state to restructure the 'family.' This restructuring would give women basic opportunities and freedom to develop a morally autonomous 'self,' engaged in mutually interdependent relationships in family and other associations, determining her responsibilities as a free individual and forming her own conceptions of what to value in life. In terms of specific functions, the state could amend laws, make policies and create opportunities for promotion of the capabilities for each member of a family (Nussbaum: 2000: 2002). With reference to women, anti-dowry laws, laws against sexual exploitation at work, against sex-determination of fetus, against child marriage in India has definitely helped in protecting women from violation of her personal dignity. On the other hand, government programmes like adult education for women, women empowerment projects, national literacy mission, mid-day meal schemes, inheritance rights, adoption rights have generated awareness and consciousness among women. The fact that we still don't have laws against marital rape in India does make many of them vulnerable in abusive marriage to sexual abuse and rape, which is a gross violation of her integrity. Relationship between parents has a deep influence

on the moral development of children; therefore, it needs to be based on mutual respect and needs state intervention in case of violation.

Second role of the state, according to Nussbaum, could be to support and protect other forms of associations and groupings that could also help in the fostering of individual capabilities.

A third role suggested by her is to give women access to credit and economic self-sufficiency, along with education and leadership. This would give a woman equally viable exit options from a coercive marriage to sustain herself.

The role of state in family assumes its maximum viability with reference to the theme of this paper that is conception of 'self' and 'responsibility.' The 'girl child' in family needs equal attention, protection, basic resources like education and nutrition, and freedom from pre-conceived notions of gendered identities and responsibilities. It also entails encouraging the public perception that women are not secondary to men, deserve equal respect and have an identity beyond being mothers and wives. It would help in changing the course of gendered 'socialization' gradually, consequently changing male and female mindsets.

Broadly, Nussbaum envisages a developmental welfare state in protecting the dignity, integrity and well being of each individual located anywhere, by promoting the capabilities suggested by her, within limits set by the associational and personal liberties of individuals (Nussbaum: 2000).

## CONCLUSIONS:

This whole discussion on 'Gender,' 'Simon de Beauvoir (1982) could sum up Justice and 'family' in these famous lines:

*"One is not born, rather becomes a woman....it is the civilization a whole that elaborates this creature, intermediary between male and eunuch , which is classified as feminine .Only the intervention of others can establish an individual as an other."*

However, Beauvoir's claim is stretched a bit far, it nonetheless brings forth explicitly, the overwhelming power of *patriarchy* rooted in social structures and institutions (family being one of them), in defining womanhood and her agency. The credibility of Nussbaum lies in the fact that she, unlike Beauvoir's solution of dissociation from anything that defines womanhood like mothering, care, affection proposes to dignify these emotions along with

other traits associate to men (Nussbaum: 2000). This is because she considers these as intrinsic to human life, both for men and women.

Finally, the point she is trying to make is that there is nothing wrong in becoming a 'woman' also, as long she has acquired all the basic capabilities and hence, is capable of defining her 'womanhood' from her own perspective as a morally autonomous 'self.'

Nussbaum's theory has received criticism for her uncompromising liberal stand, her universalistic claim, reliance on the state and limited applicability of her capabilities. I shall return to these issues in the conclusion.



## Endnotes

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- <sup>i</sup> This title is drawn from Susan Okin's book *'Justice, Gender and family'*, New York:basic books.
- <sup>ii</sup> I have deliberately narrowed the discussion of this theory to 'family' in this chapter. Her theory is not just about family. It is linked to larger issues like liberalism and democracy.
- <sup>iii</sup> For a full discussion of her defense of universalism, refer Martha Nussbaum. 2000. *'In Defense of Universal Values'* in 'Women and Human Development' Cambridge: Cambridge University Press. And Martha Nussbaum. 1993. 'Social Justice and Universalism: In Defense of an Aristotelian Account of Human Functioning' *Signs*. 90:s46-s73.
- <sup>iv</sup> For a detailed discussion of these dichotomies, refer Genevieve Lloyd .1984. *The Man of Reason: 'Male' and 'Female' in Western Philosophy*. Minneapolis: University of Minnesota Press. And S. Ortner. 1974. 'Is Female to male as Nature is to Culture?' in Rosaldo (ed) 'Women Culture and Society'. Stanford: Stanford University Press.
- <sup>v</sup> I do realize the limitation of this paper in not discussing other discourses on 'responsibility' especially from a male perspective.
- <sup>vi</sup> For an excellent discussion on 'vulnerabilities for women in marriage refer chapter 7 in Okin, Susan. 1989. *'Justice, Gender and the Family.'* New York: Basic Books.
- <sup>vii</sup> For an excellent study and interpretation of physical violence against women refer Martha Nussbaum. 2005. 'Women's Bodies: Violence, Security, Capabilities' *Journal of Human Development: Alternatives Economics in Action*. 6(2). 167-184.
- <sup>viii</sup> For a full discussion of these points, refer D.T Meyers. 2004. *'Feminist Perspectives on the Self'* Source: Internet.
- <sup>ix</sup> For a detailed discussion of her Aristotelian stand refer Nussbaum, Martha. 1993. 'Non-Relative Virtues: An Aristotelian Approach' in Martha Nussbaum and Amartya Sen (eds.) *Quality of Life*, New York: OUP.
- <sup>x</sup> For a detailed discussion on the scope of state's action (U.S and India) in the realization of the Capability Ethic, refer Martha Nussbaum. 2002. *'Sex Equality, Liberty and Privacy: A Comparative Approach to the Feminist Critique'* in Zoya Hasan, E.Sridharan and R.Sudarshan (eds) 'India's Living Constitutions: Ideas, Practices and Controversies' Delhi: Permanent Black.

## CONCLUSIONS

The main objective of this research is to examine critically Nussbaum's 'capabilities approach' in order to understand issues in the discourse on gender justice. It is also an attempt to enquire as to where her theory stands in redressing its (gender justice) main concerns and proposing an alternative to realize gender justice in a true sense? Based on the discussions and debates in the previous chapters, I have three concluding points to make for her theory:

First, Nussbaum's capabilities approach comes across to me as one of the best applicable theories in contemporary political philosophy today. She has questioned some fundamental assumptions and has tried to redefine some foundational concepts like 'human being', 'care,' 'culture,' 'body,' 'gender' and 'dignity' that could give a new direction to the subject. Secondly, her approach is a plausible attempt to resolve the famous redistribution-recognition dilemma (Equality-Difference) (Fraser: 1997) and other issues in the justice discourse as it seeks to transform the structural/psychological sources of gender oppression in public and private places, and is not limited to superficial retribution, compensation and redistribution of resources. Thirdly, her theory is inclusive to the maximum possible extent and therefore so significant for gender justice because it is for every woman in this world. Her stand is clearly liberal/individualistic and universalistic in feminist philosophy, in the right sense because every woman deserves a life of human dignity and equal respect as men, irrespective of the community/nation she belongs to. Every woman in this world should be given the opportunity to realize her full potential as a human being and live a life she truly values.

In light of the discussions in previous chapters, I briefly take up these three claims: In his most recent theoretical breakthrough, Will Kymlicka identifies three common themes, which the various theories in contemporary political philosophy are trying to address (Kymlicka: 2002). First is the recognition and wide acceptance of the fundamental value of equality in terms of equal respect and concern for every individual, at the heart of all plausible political theories. However, debate is on what it means for the governments to manifest this concern in social and political policy.

Second is the centrality of liberal democracy to contemporary political philosophy, entailing two contradictory perspectives of its defense and critique/alternatives. He also points out that there is a common line of thought across the critical perspectives (Marxism, Communitarianism, Feminism, civic Republicanism and Multiculturalism) that there is no intrinsic fallacy in the liberal-democratic principles but it is imperfect implementation or lack of suitable social-political milieu that has led to its debacle.

Third is the notion of responsibility, idea more central to feminism and civic republicanism. Issues like what are we responsible for, are we responsible to the disadvantaged and oppressed, who is responsible to, for what and at what cost are the issues with which political philosophers are grappling with. This issue is being especially problematized in feminist philosophy questioning the traditional sharing of responsibilities between men and women.

In response to these problems, Nussbaum's interventions are timely and relevant, that raises and answers some basic questions on gender justice. One of the central features of Nussbaum's capabilities approach is that these basic capabilities are relevant and to be endorsed "for each and every person, treating each as an end and none as a mere tool of the ends of the others.....principle of each person's capability, based on the principle of each person as an end " (2000:5). This feature holds unique significance for women as they have been traditionally treated as supporters of men in different roles like caretakers, wives and sexual partners, without recognizing their independent identities. Nussbaum wants to preserve the self-respect and dignity of women in these different roles by emphasizing on the primacy of their recognition as independent beings and thus deserving to possess some basic capabilities necessary to pursue 'a life of human dignity.' To treat each citizen with equal respect and dignity, according to Nussbaum, is accessibility and pursuance of the ten capabilities proposed by her, in the life of every citizen and in each and every nation, by their respective governments. I have discussed the relevance of this point in different contexts in all chapters.

The issue of liberal democracy is also central to her project. The main objective of capabilities approach is to provide a philosophical foundation of basic constitutional principles that should be implemented by all governments as a social minimum of what a life of human dignity requires (Nussbaum: 2000:5). The capabilities like control over one's

environment political and material, affiliation and practical reason cannot be realized in an authoritarian or a totalitarian state regime. She is also more critical of the misinterpretation and ineffective implementation of the core principles of liberal-democracy like respect for individual freedom, consent of all and non-discriminatory policies than the concept itself. There is also lot of ambiguity on the concept and hence its practice in today's time. For conceptual and policy precision, unlike Amartya Sen, Nussbaum comes up with concrete basic capabilities that endorse and are more or less in consonance with the basic tenets of liberal-democratic principles. She envisages a liberal-democratic welfare state whose primary task is to uplift every citizen above this minimum 'capability threshold'.

Thus, her approach is a reaffirmation of the liberal-democratic principles, however severely critical of its fallible and poor implementation by the governments. These capabilities stand as a minimum benchmark, which every state ought to assure for its people to establish a just society. It also manifests a kind of 'political liberalism', based on 'an overlapping consensus' among people with different 'comprehensive notions of the good' (Nussbaum: 2000:5). This would need intervention and reform of all institutions and group associations in both public and private domains based on what it does to an individual's well-being. I have elaborated this argument in chapter 4, focusing on the need to reform 'family,' essential for gender justice, traditionally a private and an untouched institution, through state intervention.

The third important concern of contemporary political philosophy, according to Kymlicka is the notion of responsibility to self and other, its distribution, the basis of distribution and its implications on individuals, is also a crucial issue in gender justice. I have dealt with this extensively in chapter four where I criticize the authoritarian-male driven sharing of responsibility between men and women in 'family,' leading to the rigid public-private divide, manifested in social norms, social/institutional arrangements and male-female psyches. I elaborate further how 'Family' is one of the earliest, hence most deeply impacting site of gender oppression where individuals born become 'men' and 'women' ordained with certain responsibilities through which they acquire and retain their identities. There is an urgent need to question this social arrangement, as it is responsible for 'false consciousnesses' and 'adaptive preferences' imbibed by a woman from her childhood, as argued by many feminists. Nussbaum explicitly deals with this issue and redefines the

concept of 'responsibility' that respects and preserves freedom/ autonomy of and equality/ reciprocity between all members in 'family' irrespective of different roles. Thus, a woman should not be deprived of basic freedom and autonomy even as she fulfils demanding roles of a mother or a wife. Rather there is a need to respect and recognize the role of women as caretakers in the public domain as well. Nussbaum argues and pushes forward this point well as capabilities like emotions, imagination, capability to love, to feel, to care are intrinsic to her list of capabilities and she recommends these to be central political and social goals of every society. Thus, the traditional responsibility of women as caretakers need to be respected and recognized in the public sphere to raise its subordinated status and should first necessarily account for how it affects her well-being.

Coming to my second conclusion, Nussbaum's approach holds ground for its commendable treatment of some crucial debates in the justice discourse, mainly the Redistribution-Recognition dilemma (Fraser: 1997), Aggregative-Distributive difference (Miller: 1975) and plethora of issues that have surfaced with Rawls theory of 'Justice as Fairness' (Rawls: 1971). I have done a detailed discussion of Rawls in chapter one along with Nussbaum's critique and an analysis of her proposed alternative in the light of his theory, Amartya Sen's critique of Rawls and three other feminist critiques: Susan Okin, Eva Kittay and Carol Gilligan. I have tried to defend her proposition as compared to Okin, Kittay and Gilligan in chapter one and have focused on her differences/debate with Sen in chapter three. Without repeating my arguments, I state my conclusion that Nussbaum overcomes the limitations of exclusionary nature, an ambitiously false concept of human beings as 'equal and moral' and neglect of the 'family' as an analytical category of justice in Rawls theory in a more plausible manner as compared to Sen, Kittay, Okin and Gilligan. Her concretization of basic freedoms in form of capabilities as a minimum threshold makes her approach more meaningful in the lives of women as compared to more or less ambiguous nature of 'freedom' entailed in Sen's approach who refuse to agree on a specific list and limits its relevance for normative and evaluative purpose. The credibility of Nussbaum lies in her insistence on making it possible in every woman's life through active state intervention and constitutional endorsement. It is necessary for gender justice in traditional and conservative societies where women suffer much in the name of culture and religion.

Nussbaum's theory is a theory of distributive justice, based on the critique of aggregative theories like standard GNP or utilitarianism. There are three evaluative issues in any theory of distributive justice; the scope of distributive principle, basis of distribution and what is to be distributed. I have broadly tried to defend Nussbaum's approach in comparison to other theories, with reference to these issues. Nussbaum's capabilities perspective with its reliance on the concept of human beings as 'needy and capable' widens its scope to include the physically/mentally disabled, women in distress, old and children within the paradigm of justice, worthy of equally respectful and dignified life. She extends the scope of distribution to sections of society, which actually need empowerment and support, women being a prominent group. Secondly, the basis of distribution is not social utility, rights, individual happiness or preference, availability of resources, merit or even basic needs, each of which obscures the real purpose and meaning of distributive justice. Nussbaum starts from the basic premise of understanding human nature and human dignity. She takes an Aristotelian stand and identifies broadly certain conditions and qualities intrinsic to preserve human dignity irrespective of subjective perceptions. It is these basic conditions and qualities that she wishes to endorse and implement through the list of her capabilities. The fact that her emphasis, all the while is on capability' and not actual 'functioning' leaves enough scope for the freedom of choice to individuals and communities. Coming to the third issue on what is to be distributed, as been dealt meticulously by Sen in his famous essay 'Equality of What,' Nussbaum moves beyond distribution of political rights, property, equal wages, resources and economic power to distribution of capabilities: internal and external capacity of individuals to do and be. It is the presence of these capabilities, which can actually empower women to make use of the resources in society or enjoy rights in a meaningful manner or become economically independent and lead equally dignified lives as men. Nussbaum's credibility lies in her maximum effort to bridge all gaps between theory and practice of distributive justice, a positive intervention in gender justice.

Without elaborating on the redistribution-recognition (Equality-Difference) dilemma identified by Nancy Fraser, a closer look at the list of capabilities reveal that it provides an inter-locking set, supporting and complementing each other, inter-linked and mutually dependent for mutual flourishing. Nussbaum does not see any dilemma and refutes the "either or they" approach (Nussbaum: 2000:296). Instead, she integrates the two in her list of

capabilities making one as the condition of enhancement of the other without any conflict, as both are equally pertinent to realize gender justice, depending upon the specific condition. Moving on to the third claim, an underlying but controversial idea in Nussbaum's approach is that it is liberal/individualistic and universalistic to the extent of making it pursuable by "...each and every person, by each and every nation" in this world (Nussbaum: 2000:5). This claim of hers has invoked some difficult debates and criticisms from communitarians, cultural theorists, Post-modernists, social choice theorists like Sen and Ingrid Robeyns, individualists like C. Bobonich, liberal humanists like Carol Quillen, liberal feminists like Susan Okin. Discussion of these is beyond the scope of this chapter, however the arguments in defense of her universalistic stand have been discussed in all chapters (chapter two and chapter three mainly), in different contexts. Some have criticized the essential human nature perceived by Nussbaum; some have targeted it as extreme individualism at the cost of neglecting group rights; some consider it as continuation of the hegemonic euro-centric discourse embedded in traditional western political philosophy, over non-western discourses. Another view consider this list relevant for western women and irrelevant for women in third world and poor countries due to totally different nature of gender oppression and social-political milieu in both the set-ups.

There are two separate though linked issues here: liberal individualism and ethical universalism.

The attack on Capabilities Approach as being too individualistic needs a closer reading of the 'individualism' Nussbaum is endorsing. Nussbaum's capabilities approach is an ethically or normatively individualist approach, but it is not ontologically or methodologically individualistic (Robeyns: 2004). For conceptual clarity, the distinction between the two could be of help. Ethical Individualism makes a claim about who or what should *ultimately* count in our evaluative exercises and decisions. It postulates that individuals and only individuals are the ultimate unite of moral concern. Hence all social structures and institutions need to be evaluated in terms of how it fares for an individual well being ultimately, rather than any aggregative or collective evaluation (Bhargava: 1992). Nussbaum has persistently made this point in her discussion of 'family' where she argues that evaluation of 'family' cannot be limited to the overall welfare of its members, which implicitly mean the 'men' of the family, but it means what this institution does to each and

every member's well-being. Deprivation of basic freedoms to one member (Mostly women and girl child) in the name of service to the whole institution is completely unjustified, according to Nussbaum (elaborated in chapter 4). This kind of ethical individualism is different from ontological or methodological individualism, which negate the impact of societal groups and institutions in one way or other. In spite of all ambiguity, their main claim is "all social phenomena are to be explained wholly and exclusively in terms of individuals and their properties" (Bhargava: 1992:19). The point I am trying to make is, that individuals as ultimate unit of moral concern should be an extremely valuable principle in feminist philosophy, as well recognized by Nussbaum. This is because it is necessary for the well-being and empowerment of women and children, that they should be treated as an 'end,' located in whichever association and not subsumed under the cover of the well-being of household or even a wider entity as community. However, it is also important for the critiques to understand that her theory does not rely on ontological or methodological individualism, which are insufficient tools for analysis of societal structures and institutions.

Secondly, the commitment to ethical individualism is not incompatible with the personhood as 'an end' and recognition of its being part of various associations, its social embedment and social relationships (Robeyns: 2004). In the same manner, various groups and associations in a society can flourish and social policies can be directly framed for societal institutions, along with commitment to ethical individualism. As mentioned before, this should be the primary moral concern of all governments in order to ensure equal just lives for all its citizens including the traditionally discarded ones like women and children. Nussbaum's approach successfully fulfills this requirement. Therefore, I conclude Nussbaum's approach is liberal/individualistic in the right sense.

The second stand of ethical universalism, taken by Nussbaum has invoked the age-old debate in political philosophy: Universalism-Relativism Debate (dealt long back by Miller: 1975). Nussbaum has dealt with this issue specifically in her various works (1993; 1998; 2000; 2002). I have summarized her arguments with reference to her debate with Sen in chapter three on the need of a specific list, universally applicable for all societies as a minimum criterion of social justice. I don't intend to repeat them but I wish to make a separate point here.



Will Kymlicka in his thought-provoking work 'Contemporary political Philosophy' reflects that "...the multiplication of theories and vocabularies can obscure the fact that political philosophers must all grapple with some problems, and must do so in light of same realities of modern life with its characteristic needs, aspirations and complexities. Theorists disagree about how to interpret these problems and realities, but we miss the point and purpose of these different theories if we do not keep sight of the common issues they are dealing with. And once we see these common objectives, we can also start to form judgments about whether we are making progress towards achieving them" (Kymlicka: 2002: x). Hence, one does see an acceptance and commitment to identify some universal problems/issues, deriving from which, a broad framework of universally agreed objectives in Kymlicka's argument.

In light of these statements if we see Nussbaum's approach, we can say that on the basis of some problems experienced and faced by human beings across all cultures, she frames a broad normative paradigm of basic capabilities inferred directly from realities of human life, as a minimum condition of existence with human dignity. These capabilities are a threshold below which life would be seen as miserable as not worthy of human life. Hence, it is the responsibility of every state to make sure that all her citizens are above this minimum threshold for a dignified existence. The fact that Nussbaum's claim over these capabilities for every person in this world is based on the virtue of his/her being a human being, justifies her universalistic stand. Secondly, it also gives the opportunity to preserve one's culture/tradition, flourish political deliberation and exercise one's individual choice by making the list "...Open-ended and humble...to be contested and remade...its members can be more concretely specified in accordance with local beliefs and customs"(Nussbaum: 2000:5). Each society could follow its specific norms or cultural values for those above this threshold or have different set of institutions to assure its sustenance but these capabilities are basic to a dignified life and not mere human survival. And only a dignified living of all individuals as individuals and members of different associations and community on the whole could be truly called a just society. Looking at the pervasive gender oppression in all societies, she envisages a society where women don't just survive as human beings serving different ends of the superior sex but 'live life with human dignity' which could be possible through the realization of these capabilities outlined by her.

Further her theory captures the three issues identified by Kymlicka himself that are treating people with equal concern and respect; defense and critiques of liberal democracy; responsibility for self and other, in the possible manner (discussed before).

Coming to the final point of its relevance of her theory in the Indian context, she emphasizes in 'Women and Human Development' (2000), "Feminist Philosophy ...should increasingly focus on the urgent needs and interests of women in the developing world, whose concrete material and social contexts must be well understood, in dialogue with them, before adequate recommendations for the improvement can be made" (2000: 7). Most of her arguments have been made keeping India in mind. Rather she opens her book with a narrative on the lives of two oppressed women (Vasanthi and Jayamma) in India under section 'Two Women Trying to Flourish' (2000: 15), and continues to use them as reference cases throughout the book. Apart from arguments made by her, I believe there are three more factors that make her theory relevant and applicable in the Indian context.

India has a strong notion of culture and tradition, which has an indispensable influence on the socio-cultural and moral lives of its people. Religion also plays an equally important role in determining the nature of social identities and relationships in 'family' and society. However, misinterpretations of tradition have led to rigid social hierarchies, legitimizing injustice in the name of caste, gender and class. 'Patriarchy' is deeply structured in Indian society, legitimized in the name of culture and tradition. Generally women have been traditionally portrayed as embodiment of 'sacrifice,' 'tolerance,' 'care' and 'service,' expected to live with the purpose of serving their husbands and children. A woman who even tries to think of herself individually and fails to live up to this social image loses the glory of being recognized as an ideal woman by family and society. Injustice faced by women in the name of 'care' and 'love' is a major concern of Nussbaum. The principle of each person's capability, based on a principle of each person as an end and her emphasis on the analysis of any institution including family, in terms of what it does for the well being of its every member, hold credibility in protecting women from unjust treatment.

Secondly, India herself carries a rich philosophical legacy that functions at a higher level than many other traditions. An important underlying idea that runs through different strands within the Indian philosophical tradition is that every human being, every group and every nation has individuality worthy of reverence. Such a view requires

that every individual should be endowed with the freedom to cultivate what is more distinctive and characteristic of her/him. This perception emanates from the idea of *omnipresent-shared divinity* in all the creation. All nomenclatures, in general, and in particular, are the direct results of establishing a dualism in spite of the single oneness of existence, which pervades all creation, all forms and all images. Hence, proper human conduct and behavior is to trace the existence of the oneness in the self as well as in non-self and to behave mutually in accordance with the mutual but apparent qualities, abilities, relationships and circumstances (Mohatta: 1966; Radhakrishnan: 1927).

Entailing same reforms in social-cultural arrangements, Nussbaum's theory emanates from the concept of shared humanity. It is here that Nussbaum's positive intervention could be very well used to revive Indian tradition by providing a critical insight in revising and reforming the role and status of women in society.

Lastly, Indian political milieu provides best institutional conditions for the implementation of the capabilities approach. Nussbaum recommends revision of the list through active political deliberation; effective state intervention in reframing laws and policies from a feminist perspective; state reform of social structures and institution, equal opportunities for all women in society to be part of the political and development process through representation of their genuine interests, free of social prejudices and active participation; equal access to basic resources like health and education to make these capabilities a reality in the lives of women. These conditions need democratic values and institutions; India stands the test here as well. India is today's largest democracy, successful and unsuccessful in various ways. One of its failures is the persistent unequal status of women in all-political, social, economic and cultural spheres of human life. Nussbaum's approach as a philosophical basis of constitutional principles needs conditions of an inclusive democratic deliberation for its best implementation (Sen: 2006). On the other hand, actualization of these capabilities carries the potential of strengthening democratic tradition in a nation as well. Both are mutually conducive and India provides best conditions for this mutual association.

While I have presented my arguments in different ways to defend Nussbaum's theory, I am also aware of its limitations and the challenges it faces today for effective

implementation. I have tried to throw light on some of them in my discussions. However it needs a more in-depth study that I intend to take in my future research work.

I would like to end this dissertation with a quote by Mahatma Gandhi, “ Woman is the companion of man, gifted with equal mental capacities. She has the right to participate in the minutest details, in the activities of man, and she has an equal right of freedom and liberty with him”.<sup>1</sup>

This idea ought to be accepted, recognized and implemented in all realms of human life to establish a just and a peaceful world. Martha Nussbaum’s capabilities approach according to me is a very commendable endeavour, to realize this dream.

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<sup>1</sup> Gandhi, M.K 1993. *An Autobiography: The Story of My Experiments With Truth*. Reprint: Beacon Press

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