

**FAIRNESS, WELFARE AND ENTITLEMENT:  
CONTESTATIONS IN THE PHILOSOPHICAL CONCEPTS ON  
DISTRIBUTIVE JUSTICE**

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

**DOCTOR OF PHILOSOPHY**

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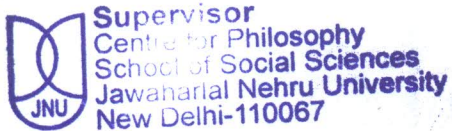
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## DECLARATION

I, Nandini Bhasin, do hereby declare that the thesis entitled “Fairness, Welfare and Entitlement: Contestations in the Philosophical Concepts on Distributive Justice” submitted in partial fulfillment of the requirements for the award of the degree of Doctor of Philosophy of Jawaharlal Nehru University is my original work. The thesis has not been submitted in part or in full to any other university or elsewhere to obtain any other degree.

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## PREFACE

In the present study, I have attempted to investigate into the concepts of fairness, welfare and entitlement in the context of distributive justice. These concepts have been developed by John Rawls (1921-2002), Amartya Sen (L. 1933-), Robert Nozick (1938-2002) and Martha Nussbaum (L. 1947-) in one way or another. The contestation among these thinkers is deeply rooted in the enlightenment rationality during 18<sup>th</sup> and early 19<sup>th</sup> centuries in Europe. While acknowledging the contending positions and the distinct nature of the philosophical visions of Kant, Rawls, Nozick, Amartya Sen and Martha Nussbaum; I have argued that justice in the perfect sense of the term is required as an ideal to be attained and minimizing injustice would be the process to achieve the same in terms of capability building, well-being, entitlement and gender equality. The philosophical concepts like dignity, autonomy, perfection, fairness and entitlement, etc. in Kant, Rawls and Nozick are the visions and welfare in Sen and women's equality and entitlement in Martha Nussbaum are the exemplifications of the vision of justice. The former is holistic, foundational, unified with principles and even deontological; whereas the latter emerge out of the struggle against deprivation, ill health, illiteracy in general and women in particular. Whereas dignity could be regarded as good and postulated; welfare schemes could be recognized as derived and derivatives.

I am thankful to the authors whose works have helped me directly or indirectly in completing my thesis. I have duly acknowledged these works and in the General Bibliography/Webliography, I have given suggestions for further readings. Apart from the books, I have also referred to various articles and online sources. I will remain grateful to those authors. In referring to the works of Plato, Aristotle and Kant, I have used the most accurate available English translations. I am thankful to those translators of the texts as well.

## INTRODUCTION

In the present study, I am going to investigate into the discrepancies in the philosophical concepts on distributive justice as fairness in the context of John Rawls'(1921-2002), Amartya Sen (L. 1933) on welfare and entitlement in Robert Nozick (1938-2002) and Martha Nussbaum (L. 1947) in one way or another. The contestation can be traced from two streams of thinkers of enlightenment rationality during 18<sup>th</sup> and early 19<sup>th</sup> centuries in Europe. First; there are philosophers like Hobbes, Locke, Rousseau and Kant who have developed justice on the basis of hypothetical social contract theory. The social contract theory was propounded by Hobbes, Locke and Rousseau in one way or another. It was repudiated by Hume on the ground that there is no historical evidence to any contract, original or otherwise. His account of justice is based on convention and customs. Kant argued that even if there is no historical evidence to social contract, it will help as regulative, not constitutive principle. The second stream of philosophers include Adam Smith, Condorcet, Mary Wollstonecraft, Bentham, Mill and Marx, who have argued towards minimizing injustices in one way or another. The concepts like 'welfare' and 'entitlement' by Amartya Sen, Nozick and Martha Nussbaum have been employed to reducing injustices.

It is Kant's philosophical insight into perfect justice that has been carried forward by John Rawls and Robert Nozick by modifying social contract theory and by reformulating the principles of justice to be applied to the institutions. In brief but seminal article in December 1783 entitled "Answer to the Question: What is the Enlightenment?" Kant's answer is: "Enlightenment is the coming out of man from his self-imposed immaturity". For Kant, once humanity reaches at the stage of enlightenment and develops reason to the extent that it becomes autonomous and dignified, it can perform juridical and ethical duties. Enlightened being acts in the conformity of categorical imperative, realizes an ideal such as universality, end-in-itself and kingdom of ends. This ideal reaches at the notion of a just society wherein every enlightened being makes a general consent in formulating the principles of justice. At this stage human being can realize his own betterment and for the sake of entire society. Thus, the principle of perfect justice transforms an individual behavior in such a way that everyone can act rationally to transform oneself and society as well.



According to Rawls, “the principles for determining the basic institutions of a society as to what is just are: First principle: each person is to have an equal right to the most extensive basic liberty compatible with similar liberty for others. Second principle: Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.”<sup>1</sup> Rawls calls principle 1 the principle of equal liberty, principle 2(a) the difference principle, and principle 2(b) the principle of fair equality of opportunity.

Justice as ‘fairness’ focuses more on ‘just institutions’ than concentrating on ‘just individuals’ which can help to create effective institutions and reduce injustices and inequality as well. This position has been criticized by Rawls in his later work *Political Liberalism* in terms of Justice as Fairness, “... is a political conception and it is justified by reference to political values and should not be presented as part of a more comprehensive moral, religious, or philosophical doctrine.”<sup>2</sup> However Rawls’ own criticism of his earlier position still amounts to the fairness of the institutions with liberal values.

Nozick has revived libertarianism with the notion of rights as being central to distributive justice. Libertarianism is a political philosophy holding that the role of the state in society ought to be severely limited, confined essentially to police protection, national defence, and the administration of courts of law, with all other tasks commonly performed by modern governments - education, social insurance, welfare, and so forth - taken over by religious bodies, charities, and other private institutions operating in a free market. Many libertarians appeal, in defending their position, to economic and sociological considerations - the benefits of market competition, the inherent mechanisms inclining state bureaucracies toward incompetence and inefficiency, the poor record of governmental attempts to deal with specific problems like poverty and pollution, and so forth.

He proposes ‘minimal state’ to substitute Rawls’ position on State which must engage in redistributive taxation in order to ensure that a fair distribution of wealth and income obtains in

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<sup>1</sup>Rawls. *A Theory of Justice*. p. 60.

<sup>2</sup> Rawls. *Political Liberalism*. p.20.

the society it governs. Nozick's answer to this objection constitutes his "entitlement theory" of justice. "Whoever makes something having bought or contracted for all other held resources used in the process (transferring some of his holdings for these cooperating factors), is entitled to it. The situation is not one of something's getting made, and there being an open question of who is to get it. Things come into the world already attached to people having entitlements over them."<sup>3</sup> He has taken the example of 'share holders'; the way such shares come into existence, or come to be "distributed," at all; in fact they come to be, and come to be held by the individuals who hold them, only through the scattered efforts and transactions of these innumerable individuals themselves, and these individuals' efforts and transactions give them a moral claim over these shares. The "distribution of wealth" covers this up, and overcomes the discrepancies in the distributive justice in a socialist or egalitarian liberal direction.

Nozick takes his position from Kant's second formulation of Categorical Imperative: "Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only." The idea here is that a human being, as a rational agent endowed with self-awareness, free will, and the possibility of formulating a plan of life, has an inherent dignity and cannot properly be treated as a mere *thing*, or *used* against his will as an instrument or resource in the way an inanimate object might be.

Nozick proposes the minimal state which constitutes a "framework for utopia" - an overarching system within the boundaries of which any number of social, moral, and religious utopian visions may be realized. "Our main conclusions about the state are that a minimal state, limited, to the narrow functions of protection against force, theft, fraud, enforcement of contracts and so on, is justified, but any more extensive state will violate persons' rights not to be forced to do certain things, and is unjustified; and that the minimal state is inspiring as well as right."<sup>4</sup> It thereby provides a way for people even of radically opposed points of view - socialists and capitalists, liberals and conservatives, atheists and religious believers, whether Jews, Christians, Muslims, Buddhists, Hindus - to make a go of implementing their conceptions of how life ought

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<sup>3</sup> Nozick. *Anarchy, State and Utopia*. p .152.

<sup>4</sup> *Ibid.*,p.ix.

to be lived, within their *own* communities, while living side by side in peace. This gives us, in Nozick's view, a further reason to endorse it.

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

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

The main objective of the thesis will be to present the concepts of fairness, welfare, and entitlement on distributive justice as contested concepts with different view points from diverse

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<sup>5</sup> Nussbaum. *Sex and Social Justice*. pp. 6-8.

perspectives. While acknowledging the contending positions and the distinct nature of the philosophical visions of Kant, Rawls, Nozick, Amartya Sen and Martha Nussbaum; I'll argue that justice in the perfect sense of the term is required as an ideal to be attained and minimizing injustice would be the process to achieve the same in terms of capability building, well-being, entitlement and gender equality. The philosophical concepts like dignity, autonomy, perfection, fairness and entitlement, etc. in Kant, Rawls and Nozick are the visions and welfare in Sen and women's equality and entitlement in Martha Nussbaum are the exemplifications of the vision of justice. The former is holistic, foundational, unified with principles and even deontological; whereas the latter emerge out of the struggle against deprivation, ill health, illiteracy in general and women in particular. Whereas dignity could be regarded as good and postulated; welfare schemes could be recognized as derived and derivatives.

In view of these areas I am adopting a method which is historical, analytical, critical, and normative. Historically, I will trace the concept of distributive justice in Aristotle in addition to social contract theorist and Kant's enlightenment rationality. It is analytical because I shall develop an understanding about various concepts in the realm of justice like autonomy, dignity, fairness, welfare, capability, entitlement, gender justice etc. It is critical and comparative because I'll be discussing the positions as distinct as Kant, John Rawls, Robert Nozick, Amartya Sen and Martha Nussbaum. I will critically evaluate the concepts fairness, welfare and entitlement in Rawls' justice as fairness, Nozick's entitlement theory and Sen and Nussbaum's capability approach. The normative aspect of my approach has a reference to the ideas of goodness, happiness, fairness, well-being, equality, entitlement, etc. I will also critically evaluate the pragmatic approaches taken by Sen and Martha Nussbaum in order to minimize injustices and determine the inclusive notion of distributive justice.

I propose to divide the study into five chapters. As a matter of fact, there are discrepancies in the notion of justice itself when we discuss the theories like distributive, rectificatory/ reformative, retributive, restorative, etc., or concepts like goodness, *eudaemonia*, dignity, fairness, harmony, etc. These theories and concepts have evolved to address particular aspects of justice concerning institutions, distribution of resources, deterrence of crime and theories of punishment, and so on. A number of important questions surrounding justice have

been fiercely debated over the course of human history: What is justice? What does it demand of individuals and societies? What is the proper distribution of wealth and resources in society: equal, meritocratic, according to status, or some other arrangement? What is the role of the State-absolute or minimal? There are number of possible answers to these questions from divergent perspectives on the philosophical, political and economic spectrum. In view of the scope and objective and the review of philosophical literature, I'll try to address the following problematic issues concerning contesting positions on distributive justice.

In the first chapter entitled, 'Prelude to Distributive Justice: An Exposition and Analysis of Social Contract Theory', I will deal with the social contract theory of Hobbes, Locke and Rousseau. The chapter is divided into three parts. In the first part, 'Social Contract Theory as Regulative and not Historical', I will discuss how Kant has attempted to re-visit social contract theory not as a historical phenomenon but as a regulative mechanism to be used as the device to explain the origins of the state and the nature of sovereignty. The second part of the chapter, 'Right superseding Goodness', I will proceed to lay down the foundation of justice from Plato to Kant, where I will show how the idea of freedom in Kant is morally prior to the idea of good in Plato. I will further move to the moral philosophy of Kant in the third part, 'Autonomy and Dignity or End-in-itself', where the idea of autonomy and Kant's categorical imperative play a deep role in showing that the Idea of Freedom is very important in Kant's philosophy.

Since the idea of perfect justice introduced by Kant and revived by Rawls is derived from hypothetical social contract theory propounded by Hobbes, Locke and Rousseau, it is therefore necessary to revisit social contract theory in the context of justice by way of a hypothetical contract for mutual advantage to have a just society as a prelude to social justice. Where as in Hobbes justice lies in the hands of the Monarch, in Locke justice is in the form of individual rights related to life, freedom and property. For Rousseau, it is the general will or moral collective will of the individuals in the society who will shape the laws of institutions which will deliver justice. The social contract theory was repudiated by Hume on the ground that there is no historical evidence to any contract, original or otherwise. His account of justice is based on convention and customs.<sup>6</sup> Kant has attempted to re-visit social contract theory not as a historical

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<sup>6</sup> Hume, David. *Political Essays*. 1953. New York: The Liberal Arts Press.

phenomenon but as a regulative mechanism to be used as the device to explain the origins of the state and the nature of sovereignty on the one hand and autonomy and dignity of the individuals on the other. To substantiate this position, I'll go into the details of the 2<sup>nd</sup> Maxim of Categorical Imperative of 'treating humanity as an end and never as a means'. There are certain questions which need to be addressed – Kant has created an unbridgeable gulf between 'ought' and 'is', what are its implications on his formulation of perfect justice? Is justice merely formal in the same way as moral laws are? In order to answer these questions, I'll go into the details of Kant's contention that moral laws are vindicated *how* an action ought to be and *what* an action ought not to be. The same applies to the concept of justice- *how* justice is to be delivered, not *what* kind of justice is to be delivered. Kant's theory of justice is an attempt in which right to freedom and human dignity supersedes the idea of goodness in Plato and eudaimonia in Aristotle. For Kant the 'right' is morally prior to the 'good'. To substantiate his position, Kant has placed freedom of will at the centre of categorical imperative of universality, end in itself and kingdom of ends. With deontological ethics, Kant tries to repudiate teleology in Plato and Aristotle on the one hand, and proposes a critic of consequentialist ethics.

The second chapter titled as, 'John Rawls on Justice as Fairness: An Exposition and Examination', I will deal with Rawls' justice as fairness. The chapter is divided into three parts. In the first part, 'Re-visting Social Contract Theory', I will discuss Rawls' social contract theory not to explain the origin of the state and its sovereignty or autonomy of the individuals, but as transcendental mechanism to explain the principle of distributive justice with reference to institutions. Individuals and their actions are just insofar as they conform to the demands of just institutions. The second part, 'Veil of Ignorance and Critiquing Inequality', I will discuss the original position in Rawls with the veil of ignorance and the two principles, i.e. equality and the difference principle. Rawls has revived social contract theory not to explain the origin of the state and its sovereignty or autonomy of the individuals, but as transcendental mechanism to explain the principle of distributive justice with reference to institutions. Individuals and their actions are just insofar as they conform to the demands of just institutions. In Rawls' justice as fairness, the direct attention is on 'just institutions' rather than focusing on 'just individuals and societies' which help to create effective institutions and reduce injustices and inequality as well. Inequalities violate principle of fair equality of opportunity. The third part, 'Transcendental

Institutionalism', deals with Rawls' focus on the just institutions rather than the just societies. How (these institutions) are specified and integrated into a social system deeply affects people's characters, desires, and plans and their future prospects as well as the kind of persons they aspire to be. The question arises: is justice the realization of institutions and rules or principles or is it concerned with the society as well? I will attempt to vindicate Rawls' position on justice and bring out its shortcomings in two fold manner. First the way Rawls has criticized his own earlier position in his later work and secondly the way his successors like Sen, Martha Nussbaum and Nozick have criticized both the positions of Rawls.

The third chapter titled as, 'Robert Nozick on Justice as Entitlement: An Exposition and Examination', I will deal with Nozick's entitlement theory. The chapter is divided into three parts. The first part, 'Individual Right and Dignity', will deal with the rights of an individual and how and in what way the people are entitled to what they possess or what they can possess. I will also deal with how Nozick's has criticized the view of capitalism and egalitarian concepts. Robert Nozick, as a libertarian, has attempted to revitalize Kantian contention that right supersedes the idea of the good. The notion of right is central to distributive justice in terms of "entitlement theory" of justice. In the second part, 'Role of Minimal State in Nozick', he criticises Rawls' position on State and substitutes it with 'minimal state' which overcomes the discrepancies in the distributive justice in a socialist or egalitarian liberal direction. I will also deal with how Nozick has criticized the view of egalitarian concepts in the third part, 'Nozick's Critique of Egalitarianism'. Nozick takes his position to follow from a basic moral principle associated with Kant's 2<sup>nd</sup> Maxim, as a rational agent endowed with self-awareness, free will, and the possibility of formulating a plan of life, has an inherent dignity and cannot properly be treated as a mere *thing*, or *used* against his will as an instrument or resource in the way an inanimate object might be. Nozick proposes the minimal state which constitutes a "framework for utopia" - an overarching system within the boundaries of which any number of social, moral, and religious utopian visions may be realized. It thereby provides a way for people even of radically opposed points of view - socialists and capitalists, liberals and conservatives, atheists and religious believers, whether Jews, Christians, Muslims, Buddhists, Hindus - to make a go of implementing their conceptions of how life ought to be lived, within their *own* communities, while living side by side in peace. This gives us, in Nozick's view, a further reason to endorse it.

In the fourth chapter entitled as, ‘Amartya Sen on Justice as Welfare: An Exposition and Examination’, I will deal with Amartya Sen’s theory of freedom and well-being, which he uses for minimizing injustices in the society. The chapter is divided into three parts. The first part, ‘Freedom and Well-being’, will deal with what Sen’s means by freedom and well-being of the individual. The approach that he takes is the capability approach which will be dealt later in the chapter in the second part, ‘Capability and Re-visiting Impartiality’. I will further deal with his concept of public enlightenment: revisiting goodness, in order to deal with the concept of justice in the third part, ‘Public Enlightenment: Re-visiting Goodness. There are contending claims between Amartya Sen and Martha Nussbaum on capability theory to improve people’s well-being, development and freedom. Justice as welfare through capability approach tackles these issues by highlighting human beings having dignity and with their ability to pursue their own ends. But they have divergent views on the concept of capability to promote human welfare. For Sen, capability is a comprehensive moral doctrine whereas for Nussbaum, it is the basic entitlements, since it simply specifies some necessary conditions for a decently just society, say, gender discrimination, in the form of a set of fundamental entitlements of all citizens. In *The Idea of Justice*, Sen criticizes the original position, i.e. ‘veil of ignorance’ of Rawls’ theory of justice. Sen has also criticized the utilitarianism of Bentham and Mill on the ground that act utilitarianism and rule utilitarianism along with hedonistic calculus cannot help us much either in minimizing injustices or enhancing happiness. Instead of transcendental institutionalism, Sen proposes *realization – focused comparison* which is primarily interested in removing the manifest injustice from the world and hence he goes to ‘retreat of justice.’ Sen proposes that the place of impartiality in the evaluation of social justice and social arrangements is central to the understanding of justice. Sen argues that Kant and Rawls have developed perfect justice to concentrate primarily on getting the institutions right with transcendental institutionalism, and it is not directly focused on the actual societies that would ultimately emerge. He has distinguished between *niti* and *nyaya*<sup>7</sup>, both concepts give the vision of justice but the notion of *nyaya* underlies relative justice in terms of individual’s suffering and with this, I will formulate and understand justice in broader sense for the sake of entire humanity. I will bring out the

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<sup>7</sup>Sen, Amartya. *The Idea of Justice*. p.20.



discrepancies and the implications between well-being (collective) and happiness (individualistic) to substantiate minimizing injustice in Sen.

The fifth chapter entitled, 'Martha Nussbaum on Gender Justice: An Exposition and Examination', I will deal with the women and human rights. The chapter is divided into three parts. The first part, 'Women and Human Rights', will discuss the inequalities prevalent in the society between men and women. It will discuss the basic rights what a women entitled to and the discrimination existing in the society. I will further revisit the concepts of poverty and gender inequality in the second part, 'poverty and gender inequality', which are of major concern when we deal with gender justice. I will further develop Nussbaum's capability approach in the third part, 'capability and gender justice' not as a procedural justice but as an outcome-oriented approach that gives impartial account of justice as welfare. Nussbaum's account of justice seems to reconcile the account of both Rawls and Sen. What Sen objected in Rawls' theory gets affirmed by Nussbaum i.e. Sen criticized Rawls for focusing his attention on institutional choices, and bringing forth the theory of justice which is arrangement focused rather than realization focused. But Rawls' arrangement focused approach to justice proceeds in two-fold ways, namely; (i) public criterion, which stipulates that the conception of justice must be public and the necessary information to make a claim of injustice must be verifiable by all, and easily accessible. (ii) A public standard of interpersonal comparisons as otherwise the obtained principles of justice among the citizens with diverse conception of the good life will not prove stable. These two points of public criterion and public standard seems to be affirmed by Nussbaum in her account on capability approach to justice. Nussbaum's account is a principled account of, a set of, ten fundamental human capabilities which are held to be essential to a good human life and government in all nations should guarantee to their citizens. The main demarcation of Nussbaum's account from Sen is that it provides a principles, though partial and minimal account of social justice. I'll attempt to bring out the close relationship between the institutional and constitutional design in Martha Nussbaum with the quest for justice and equality of opportunities between genders. I'll address the questions concerning minimizing injustice in terms of discrimination, particularly gender discrimination in the cultural practices of different peoples on the one hand and legal, political, social and economic status of women on the other. The discrimination and the deprived situation of women are due to the cultural traditions and

practices that mould their lives. I'll try to interrogate the conflict between cultural practices and women's rights. The question arises – are we going to minimize women's injustice and bring gender equality under the purview of human rights or let the culture or tradition decide their lives? With feminist perspective, Martha Nussbaum attempts to establish an inclusive society which not only incorporates the basic philosophical visions of Kant, Rawls and Sen, but also transcends it.

The ambition and challenge of the present study will be to recognize fairness, welfare and entitlement, and develop an inclusive notion of distributive justice. The purpose of this study is first of all to show the deep and subtle differences between fairness, welfare and entitlement, which led them to obviously divergent views on distributive justice by Rawls, Sen, Nozick and Nussbaum; and secondly to show how we should think about the inclusive notion of distributive justice. It may pave the way for a constructive integration by clarifying those issues which remain in need of resolution.

## CHAPTER 1

### PRELUDE TO DISTRIBUTIVE JUSTICE:

#### AN EXPOSITION AND ANALYSIS OF SOCIAL CONTRACT THEORY

I, in the present chapter, will discuss the idea of perfect or ideal justice advocated by Immanuel Kant (1724-1804) as a prelude to social justice. Since the idea of perfect justice has revived the hypothetical social contract theory propounded by Thomas Hobbes (1588-1679), John Locke (1632-1704) and J.J. Rousseau (1712-1778), it is therefore necessary to revisit social contract theory in the context of justice by way of a hypothetical contract for mutual advantage to have a just society as a prelude to social justice. Whereas in Hobbes justice lies in the hands of the Monarch, in Locke justice is in the form of individual rights related to life, freedom and property. For Rousseau, it is the general will or moral collective will of the individuals in the society who will shape the laws of institutions which will deliver justice. The social contract theory was repudiated by Hume on the ground that there is no historical evidence to any contract, original or otherwise. His account of justice is based on convention and customs.<sup>8</sup> Kant has attempted to re-visit social contract theory not as a historical phenomenon but as a regulative mechanism to be used as the device to explain the origins of the state and the nature of sovereignty on the one hand and autonomy and dignity of the individuals on the other. To substantiate this position, I'll go into the details of the 2<sup>nd</sup> Maxim of Categorical Imperative of 'treating humanity as an end and never as a means'. There are certain questions which need to be addressed – Kant has created an unbridgeable gulf between 'ought' and 'is', what are its implications on his formulation of perfect justice? Is justice merely formal in the same way as moral laws are? In order to answer these questions, I'll go into the details of Kant's contention that moral laws are vindicated *how* an action ought to be and *what* an action ought not to be.

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<sup>8</sup> Hume, *Political Essays*. 1953. New York: The Liberal Arts Press.

The same applies to the concept of justice- *how* justice is to be delivered, not *what* kind of justice is to be delivered.<sup>9</sup> In order to organize the chapter I will divide it into three parts as following:

**Part 1) Social Contract Theory as Regulative and not Historical**

**Part 2) Right Superseding Goodness**

**Part 3) Autonomy and Dignity or End-in-itself**

## PART 1

### SOCIAL CONTRACT THEORY AS REGULATIVE AND NOT HISTORICAL

In the early times, there was no government and the people lived in the state of nature. As there was no government, hence there were no laws to regulate them. With the increase in population there began hardships and oppressions in the society and hence to overcome those hardships they entered into the agreements which are as follows:

- a) *Pactum Unionis*
- b) *Pactum Subjectionis*

By the first part, people sought protection of themselves and their property. As a result of this part, the society was formed where people undertook to respect each other and live in peace and harmony. By the second part, people united together and pledged to obey an authority and surrendered a part of their freedom and rights to an authority. The authority guaranteed everyone with protection of life, property and to a certain extent liberty. Thus the authority or the state came into being because of these two agreements.

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<sup>9</sup> Kant's theory of justice is an attempt in which right to freedom and human dignity supersedes the idea of goodness in Plato and eudaemonia in Aristotle. For Kant the 'right' is morally prior to the 'good'. To substantiate his position, Kant has placed freedom of will at the centre of categorical imperative of universality, end in itself and kingdom of ends. With deontological ethics, Kant tries to repudiate teleology in Plato and Aristotle on the one hand, and proposes a critic of consequentialist ethics.

Social Contract theory is the idea that an individual's moral and political obligations are depended on a contract or agreement, or they willingly submit their rights to an authority in order to make the society a better place to live. We can trace social contract theory during the times of Socrates, which has been mentioned in Crito where Socrates tries to explain why he must remain in the prison and accept the death penalty. He personifies the law of his city and mentions that he must obey the laws as they have made his entire way of life and also his existence possible. When an individual decides to stay in the city it mean that he has agreed to the conditions/ contract and must abide by them and accept the punishments they throw. Socrates asserts that since he has made an agreement and must stay in the city and accept the death penalty. For Socrates, the state is the morally and politically most fundamental entity and hence it deserves our highest allegiance and deepest respect.

This was the trace which we could see in the Greek times but social contract developed as a theory during the time of Thomas Hobbes and then later on John Locke and Jean Jacques Rousseau. I will further explore the social contract theory developed by the above mentioned thinkers.

Hobbes political theory can be best understood when taken into two accounts, the first being the theory of human motivation, Psychological Egoism and the second one being the theory of social contract. According to Hobbes, we humans are complicated organic machines which respond to the stimuli of the world mechanistically and in accordance with universal laws of human nature. Hobbes theory of human motivation is basically his subjectivism, where humans are considered to be necessarily and exclusively self- interested. All individuals quest for what is of best interest to them, everything that an individual does is to better out situation and to fulfill the desires they long for. We are infinitely appetitive and only genuinely concerned with ourselves. All that is done by an individual is out of his self-interest and has some or the other desire for it. This is the egoist behavior of an individual.

In addition to being exclusively self-interested, they are quite reasonable, the individuals are endowed with rational capacity and they pursue their desires as efficiently and maximally as possible. Looking at the human nature and how ego-centered an individual is, Hobbes goes on to

construct a contention why we ought to be willing to submit ourselves to political power. For this he imagines a state prior to the formation of a society, which is the State of Nature.

According to Hobbes, cognizing the fact that humans are self-centered and are also rational, they will willingly submit their rights to the authority in order to live in a civil society, which will be conducive to their own interest. In order to do so, Hobbes imagines the men in a natural state or the State of Nature. Hobbes hypothetical State of Nature is where men are exclusively self-centered, they are more or less equal to one another, there are limited resources available to all, and there is no power or authority which can control them. The people were living in constant fear and the condition was chaotic. Hobbes writes, “Life in a state of nature was solitary, poor, nasty, brutish and short.”<sup>10</sup> The individuals have no guarantee to ensure the long term satisfaction of their needs or desires. The most important thing for an individual is to avoid their own death and the state of nature for a man could be the worst possible situation in which he could find himself. It is a state of perpetual and unavoidable law. The situation can be hopeful as we know that men are rational agents and they can seek their way out. The aim of the individual is to escape from the state of nature and to create a civil and a peaceful society. The first and the most important law of nature commands that each man must be willing to quest for peace, with this being the aim of the individuals men can enter the social contract.

Now there will be a superior authority to take control of the chaotic situation and will create a cooperative environment and a healthy society. No matter how much we may object to how poorly the authority manages the state of affair and regulates the lives of the individual, we are never justified in resisting his power because it is the only thing which stands between us and what we most want to avoid, that is the State of Nature. It is only after the establishment of the contract that the people are able to keep each other’s promises and also cooperate among themselves. The moral values can be policed and a sense of respect and dignity grows among the individuals. The Social Contract is the most fundamental source of all that is good and that which we depend upon to live well. Our choice is either to follow the social contract or to return to the state of nature (to which no reasonable man would want to).

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<sup>10</sup> Hobbes, *Leviathan*, p. 185

Hobbes talks about a prisoner's dilemma in order to establish why people are more likely to betray each other than to cooperate. Given that people are primarily motivated by self-interest. He demonstrates that there are two prisoners and they are brought in for a crime but there is not enough evidence which will prove them guilty. Both the prisoners are offered the same deal. It goes like, if they testify against each other, that is accuse the other of the crime then he will be set free, so long as the other person remains silent.

	<b>PRISONER B REMAINS SILENT</b>	<b>PRISONER B BETRAYS PRISONER A</b>
<b>PRISONER A REMAINS SILENT</b>	PRISONER A: 1 year PRISONER B: 1 year	PRISONER A: 10 years PRISONER B: Goes free
<b>PRISONER A BETRAYS PRISONER B</b>	PRISONER A: Goes free PRISONER B: 10 years	PRISONER A: 5 years PRISONER B: 5 years

Take the scenario where prisoner A betrays the other prisoner B. If prisoner B remains silent, prisoner A will go free rather than getting 1 year of imprisonment. On the other hand, if prisoner B betrays prisoner A, prisoner A will get only 5 years rather than 10 years if he remains silent. So, either way, prisoner A is better off betraying prisoner B. And the same goes for prisoner B.

The unit of instruction is that, if we are purely looking out for our own self interest it is often better to do something which makes others worse off. Looking at the above table, we see that by adding up the totals of each box, we get a total of 10 years for all except the one where both the prisoners remain silent ( the total is only 2 years). The moral being that the total harms can be minimized if the two prisoners arrive at some sort of a contact with each other where both

of them agree to remain silent on their investigation. With this we see that by agreeing to a contract both the prisoners will be profited.

According to Hobbes, the requirement of the absolute authority or the sovereign was very crucial looking at the brutality of the state of nature. The state of nature was completely endurable and as man is a rational agent he could see the way through it and that was by submitting their rights and freedom to an authority that could control the situation and impart cooperate among each other. According to John Locke, the state of nature was totally distinct and so his argument concerning the social contract and the nature of man's relationship to authority are quite different. Locke's arguments for the social contract and for the rights of the citizens to revolt against their kings were tremendously influential on the democratic revolutions that followed.

For John Locke, the natural condition of mankind that is the State of Nature is a land of complete liberty to conduct one's life as the man finds its best, where there is no interference from the others. This entirely doesn't mean that one has the license to do anything they please to do or they find anything in their interest or anything out of their will and desire. The state of nature would be where there is no government or an authority who could keep a check on people for violating the laws, but it is state of nature with morality. "The state of nature is pre-political but not pre-moral."<sup>11</sup> The people are regarded as equal to each other and are therefore equally bounded by the law of nature. According to Locke, the law of nature is the basis of all morality which has been caved in by God, which instructs that we must not harm others with respect to their life, health, liberty and possessions. This is because we all belong to God and we cannot take away which he is entitled to by God. Thus, the state of nature is a land of liberty where all agents are considered to be equal with each other and are free to pursue their own interest without interfering in other's work and also harming others.

For Hobbes, the state of nature was a state of war but this is not the case for Locke. The state of war occurs only when two or more men declare war on the other, by stealing from him and also by trying to make him his slave. In the state of nature there is no authority to which

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<sup>11</sup> Locke, *Two Treatises of Government*, p. 48



people can appeal when undergoing some injustice or torture, and once the war begins here then it is likely to persist. This becomes one reason where man has to abandon the state of nature and enter into the contract and form a civil government who could protect them and their rights and also help them live in peace and harmony.

In Locke's argument for the civil government, property plays a crucial role. The private property is created when a man mixes his labor with the raw materials that belongs to the nature. When we till a piece of land in nature and makes in into a farmland which produces food, then one can claim that land and the food produced from that piece of land. Locke makes a point on the amount of ownership of the land, one is not allowed to make more from nature than one can use, thereby leaving others without enough for themselves. As nature is given to all of mankind by God one must not take more than his part of the share. Property is therefore the keystone of Locke's argument for the formation of civil government and the social contract because it is the protection of the property (including their own bodies) that men seek when they decide to give up the state of nature.

It is the society of mothers, fathers, children where there is a responsibility of protecting each other and having a secure future for their children, the people are moral but they are not political. The political society comes in when a member of the family comes up to abandon the state of nature and agree to submit their rights and powers upon the authority to secure their families and have a bright future for their children. After having created the political society, there are three things which the society gain from it and that is law, judges to adjudicate those laws, and the executive power necessary to enforce these laws. Each man therefore gives over the power to the authority to protect him and also punish the violators of the law.

All the men united into the common-wealth for the preservation of their wealth, and preserving their lives, liberty and well-being in general. The authority or the formation of the civil government is for the protection of the people's property and well-being and when such protection is no longer present, or when the authority is not acting in the interest of the people, the people of the state have the right to go against his authority. The government can be dissolved and then a new government can be formed.

Locke's envision of the state of nature is different from Hobbes, Locke imagines a condition where the people have to dissolve the government when they see they are not getting the result and then returning back to the state of nature with the objective in forming a better civil government.

Jean-Jacques Rousseau lived and wrote during the period of Enlightenment, he was one of the bright lights in the intellectual movement. Rousseau had two discrete social contract theories. The first is discovered in his essay, *Discourse on the Origin and Foundations of Inequality among Men*, popularly mentioned as the Second Discourse, which is an explanation of the moral and political evolution of human beings from the state of nature to the modern society. The second is basically his normative theory of social contract and it provides the means to give solutions to the problems which the modern society has contributed. In the Second Discourse, Rousseau describes the historical process, the evolution from the state of nature to the modern society. Unlike Hobbes, Rousseau considers the state of nature to be peaceful, people has solitary and uncomplicated lives. The population was small and the needs of the people were fulfilled by the nature, there was no sought of competition among people or even any danger from the other people with respect to right, life or possessions.

With time and with the increase in population people faced certain dangers from each other, the means by which people could satisfy their needs had to change. People started living in small families and in communities, science made certain inventions and discoveries giving people leisure time. This leisure time created problems among the people as people started making comparisons with each other, which resulted in envy, pride, lack of public values. This gave rise to the private property, which gave rise to the crucial movement in humanity's evolution. Earlier the state was pure and simple and with the origination of private property it had characterization of greed, competition, inequality and vice. Rousseau writes, "The invention of private property constitutes humanity's 'fall from grace' out of the State of Nature."<sup>12</sup>

The inequality and the injustice began with the ownership of property. Some individuals had enough property and the others were forced to work for them which gave rise to the social classes, the upper class and the lower class. Those who had private property wanted to form a

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<sup>12</sup> Rousseau, *The Social Contract*, p. 148

government who could take care of their property and protect their property from the people who do not have property and can be taken away by people by force. This gave rise to the government by contract, which took care of the interest of the people equally and did not do any sort of partiality among people as for the government all the people were equal.

The normative social contract which Rousseau discussed in *The Social Contract* (1762) talks about the state and gives remedies for the modern state where there were social and moral fall. Rousseau most important part is the history and the justification, the factual state of mankind and how it ought to live together. Rousseau mentions in *The Social Contract*, “Man was born free, and everywhere he is in chains.”<sup>13</sup>

Humans were free in the state of nature but with the evolution of the society, they got dependent on things and started facing economic and social inequalities, with the formation of the civil government the main aim was to restore our freedom. The main concern of Rousseau’s book, *The Social Contract* is that how we can be free and still live together. Rousseau explain this by talking about our will, according to him we can submit our individual or particular will to the collective or general will, which can be done by creating a contract among all free and equal individuals. Like Hobbes and Locke have mentioned earlier that all men are equal in the state of nature and there is no individual who has a natural right to govern the other, only the justified authority has the right to protect us and take care of our interest who we have nominated out of our agreement or contract.

It is through the agreement or the social pact that the people will come together and form collectively to meet their interests and wills. The individual rights and freedom that a person has is transferred collectively to a new person. The sovereign is hence formed when free and equal persons come together and agree to come together as a single body for the good of all. As individuals have their individual or particular wills, likewise people come together and form their collective will which is also known as the general will which is for the common good of all. Keeping in mind that the collective will which has been generated by the group together is by the will of the will and no one is forced to make such a will. The individual will of the people have to assemble regularly if the collective will of the people has to continue.

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<sup>13</sup> Rousseau, *The Social Contract*, p. 108

All humans are empowered with freedom and equality by nature, but the natural role of the human being is corrupted by greed, vice, jealousy, lack of moral values, we can overcome all this by evoking our individual to form a general will. The purpose of this general will, will be in the interest of the people and for the common good of all, this will be good for us individually and collectively.

Kant has picked up some ideal elements from Rousseau's theory and amplified in his moral and political work. Kant was an enlightenment philosopher, for him an individual is rational and should always decide for himself instead allowing the other to decide and impose things on him. He writes,

Enlightenment is man's release from his self-imposed tutelage. Tutelage is man's inability to make use of his understanding without direction from another. Self-incurred is the tutelage when its cause lies not in lack of reason but in lack of resolution and courage to use it without direction from another. Sapere aude! Have courage to use your own reason!<sup>14</sup> This is the motto of enlightenment rationality.

This is basically Rousseau's idea of self-determination; Kant culls out this and thinks about self-determination and says that if I think about it and decide my actions on my own then I must act rationally. The commands of rationality are called imperatives and hence he formulated three categorical imperatives around which his moral philosophy revolves. All the morality just boils down to the categorical imperative and when one acts on the categorical imperative then one is acting on one's own true will, and in carrying out actions according to his will one realizes his freedom.

Kant's will is similar to the general will of Rousseau, in both cases it is the true will acting on which makes an individual free. The difference is that the Kant's will is motivated by pure rationality rather than focusing on the membership as a social whole. It is basically that an individual is getting in touch with his rationality and the imperatives which are evaluated through rationality are universalized where not only the fellow citizens are looked upon but all rational agents. The categorical imperatives are not some kind of external state laws but are internal

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<sup>14</sup> Kant, "An Answer to the Question, What is Enlightenment?"

moral laws that an individual imposes on himself through his rational powers, and an action should be done keep these categorical imperatives in mind.

Kant's second categorical imperative is very fundamental and it has been stated as;

“If then there is a supreme practical principle or, in respect of the human will, a categorical imperative [...] the foundation of this principle is: rational nature exists as an end in itself. Man necessarily conceives his own existence as being so; so far then this is a subjective principle of human action. But every other rational being regards its existence similarly, just on the same rational principle that holds for me: so that it is at the same time an objective principle, from which as a supreme practical law all laws of the will must be capable of being deduced. Accordingly the practical imperative will be as follows, ‘so act as to treat humanity, whether in thine or in that of any other, in every case as an end, never as means only’.”<sup>15</sup>

Kant's second categorical imperative is very significant as it talks about respecting the autonomy and the dignity of the other individual. We should always act rationally whether it comes to taking decisions about ourselves or about others. Kant has not talked about rights of an individual in his categorical imperative but he does bring it up in ‘Theory and Practice’. Kant mentions that the rightful condition is governed by three principles:

- a) The *freedom* of every member of society as a human being.
- b) The *equality* of each with all the others as a subject.
- c) The *independence* of each member of a commonwealth as a citizen.<sup>16</sup>

Every individual has the right to be free and he cannot impinge on the freedom of the other individual, but the freedom has to be within the boundaries of the categorical imperatives. All the citizens are taken as equal before the law; each individual has the same and equal right to sue others for the injuries and must be equally liable to be sued by the others, regardless of how rich or how poor they are.

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<sup>15</sup> Kant, *Groundwork of Metaphysics of Moral*, p. 91.

<sup>16</sup> Kant, *Theory and Practice*.

Hobbes and Kant had the same view when they talked about the state of nature, as for both man was in a state of war. Kant writes in *Toward Perpetual Peace*, “The natural state of man is not peaceful co-existence but war- not always open hostilities, but at least an unceasing threat of war.”<sup>17</sup> The only hope for establishing peace was to depart from the state of nature and form a state, i.e. civil government. Kant and Hobbes had similar views when looking at the state of nature and agreed on forming a state so that the society is peaceful. The property rights emerged after the formation of state, the main duty of the state was to protect the property rights of the individual within the contract.

In ‘Of the Original Contract’, Hume places criticism against the social contract in these words,

Would these reasoners look abroad into the world, they would meet with nothing that in the least corresponds to their ideas or can warrant so refined and philosophical a system. On the contrary, we find everywhere princes who claim their subjects as their property and assert their independent right of sovereignty from conquest or succession. We find also everywhere subjects who acknowledge this right in there prince and suppose themselves born under obligations of obedience to a certain sovereign, as much as under the ties of reverence and duty to certain parents.<sup>18</sup>

According to Hume there has been found no historical evidence of any such contract. In the ancient times we have seen that the people were coerced by the princes and they considered the people as their property without considering the fact that they are autonomous individuals. The problem with the contractual account was that it sets too severe demands for legitimacy. If the mutual agreement was the source of legitimacy then Hume puts it as, “the original establishment was formed by violence, and submitted to from necessity.”<sup>19</sup>

Hume states in ‘Of the Original Contract’, that one’s duty of obeying to one’s government is false, because its consequences are absurd. If it was correct then only a few would have any such duty because it is few who give genuine consent to their government. Secondly,

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<sup>17</sup> Kant, *Towards Perpetual Peace*, p. 38

<sup>18</sup> Hume, “Of the Original Contract”, p. 46

<sup>19</sup> Ibid.

the duty to obey one's government comes from utility, not agreement or promise. The reason that why one obeys the government is that such obedience maximizes the utility of the society.

Hume claims that historically political government has been established almost everywhere by conquest, not by contract, and is maintained by force.<sup>20</sup> Hume argues that contracts cannot generate normative obligations, he is of the view that we are obliged to follow only those laws which we have placed on ourselves and have not been imposed by us from outside.

The Original Contract is only an idea of reason and not an historical event, as Kant claims. The rights and duties which have come from the social contract is existing there in. The idea behind this is to show the possibility of the fair distribution of rights and duties. He further adds that social contract theory is formed not on actual consent of the people, such as the voluntary choice of an individual to form a civil society. As I have mentioned earlier that the social contract reflects reason, and as a rational being the individual's consent to get into it would be the choice.

Kant has refuted Hume's view by saying that motive and the consequences of an action are less important than the reasons for action. This is because actions based on inclinations are purely a matter of taste and have no ethical principles.

## **PART 2**

### **RIGHT SUPERSEDING GOODNESS**

In this part, I will bring out the comparison between Plato's idea of Good and Kant's idea of Right and will further show that how the idea of Right in Kant's philosophy is morally prior to Plato's idea of Good. For that I will first bring out the idea of Good in Plato which has been

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<sup>20</sup> Ibid., p. 47

discussed in *The Republic* and further show what Kant meant by the idea of Right. This will be in relation to the concept of justice as whole.

Plato makes an analogy of the form of good with the sun as it is what allows us to see things. It is described well in *The Republic* that how the sun allows us for sight, but very well mentioned that sun is not the sight but the cause of the sight. As the sun is in the visible realm, the light of which allows us to see things, the form of Good is in the intelligible realm, what gives truth to the things and the power to the knower to know the truth. This is how the form of the good allows us to understand the concept of justice.

For Plato, the forms were arranged in a hierarchy, where the highest form was the form of the good being the highest principle. Justice being an aspect of goodness, so Plato in his *The Republic* focuses on explaining what justice is and how we can deliver justice in the individual and the state. Plato does not define goodness in a straight manner but tries to show it while he talks about justice. Since this dissertation is a theory of justice I will briefly discuss what Plato states about justice.

The volume of the book has been engaged in answering Thrasymachus who claims that the life of the unjust is better than the life of the just. Justice is considered to be the right thing to do as it will benefit others and not oneself. Plato takes this as a challenge and attempts to show that the view is wrong. Plato in *The Republic* has distinguished justice from other virtues. Right has been a key concept in any theory of justice but it is not the case with Plato as he has not talked about right. He has distinguished justice as a particular virtue, where he has no space for the notion of equality or right. This is one of another thing where Plato and Kant would go on different roads.

Injustice occurs in a society when a person's specific rights are violated or some recognized laws are broken. But in Plato's Republic a society is unjust when it does not follow moral requirements. So there have to be some moral reforms that have to take place in a society for a just society. We can see that we can relate justice to morality here. A society can be made just when we make some moral reforms, and when they go hand in hand then the society can be perfectly called a just society.



Justice is considered to be one of those virtues which maintain our relations with the other persons of the society. A theory which focuses on the autonomy of one's decisions with respect to reason will deliver justice in the individual and the community and injustice can only be removed by ordering the society in a moral way. In order to explain what justice is Plato abruptly moves to explain justice at the community level and says that it is better to talk about it a larger scale and then we would move to explaining what justice is in the individual level.

In order to show justice in the state, Plato talks about the three classes in a society holding specific qualities and they can be differentiated according to the virtues possess. The groups of members who possess the quality to reason are the rulers of the society and at the apex. The other groups who have the quality of courage in them are the people who are fit to protect the society from others. The third class of society is the people who have the quality of appetite, and the people who are the producers.

The state which is founded must possess the four cardinal virtues as wisdom, courage, discipline and justice. It has wisdom because of the knowledge possessed by the rulers; it has courage because of the courage present in the auxiliaries, and self-discipline because of the harmony between all three classes and their agreement about 'who ought to rule'. Justice is one of the quality which has been followed throughout, the principle saying one man, one job, that is of minding one's own business, that is doing that job for which one is fitted, where his aptitude lies and not interfering with the work of the others and performing that act in which they are good at.

The members of the society have been subdivided into three classes Guardians proper, or Rulers, and Auxiliaries. The rulers are the one who exercise their supreme authority in the state and are selected by exacting tests. The auxiliaries are the one who discharge the duties of the Military, Police, and Executive part under the order of the rulers. All that is done by the ruler is done for the good of the community. Plato says that the children are to be moved from class to class according to merit and capability. It will not be according to taking the position as it has been carried out in the family but it will be totally based on the capability of the person. All people have different aptitudes and they are to be given the responsibilities and the duties according.

When god fashioned you, he added gold in the composition of those of you who are qualified to be Rulers (which is why their prestige is greatest); he put silver in the Auxiliaries, and iron and bronze in the farmers and other workers. Now since you are all of the same stock, though your children will commonly resemble their parents, occasionally a silver child will be born of golden parents, or a golden child out of silver parents, and so on. Therefore the first and most important of god's commandments to the Rulers is that in the exercise of their function as Guardians their principal care must be to watch the mixture of metals in the characters of their children.<sup>21</sup>

Plato's main point on maintaining justice in the soul is that the three qualities of the soul should not interfere with each other and should mind their own business and this is how justice can be maintained in the soul. If there is interference then there can be a state of difficulty which might arise and so none will be able to perform its functions well. So in order for the members of the society and the soul to perform its functions one should mind one's own business and not interfere in the job of the other.

It must be some kind of civil war between these same three elements, when they interfere with each other and trespass on each other's functions, or when one of them rebels against the whole to get control when it has no business to do so, because its natural role is to be a slave to the rightfully controlling element. This sort of situation, when the elements of the mind are confused and displaced, is what constitutes injustice, indiscipline, cowardice, ignorance and, in short, wickedness of all kinds.<sup>22</sup>

Everything has a function and hence it works according to its excellence or virtue. Similarly the soul also has a function which guides and directs the body and hence the body works accordingly. The excellence of the soul is agreed to be justice. Therefore the good soul will live well and living well is living a happy life. Justice presents the soul will help o lead to good and happy life. The unjust soul cannot achieve anything because he will always be in an internal conflict with himself and they are in a conflict no virtue will be able to excel and hence there will be a rebel within himself and the soul will become hateful towards himself causing injustice.

Having explained the three classes of the society and how they are parallel to the three qualities possessed by the soul. Plato explains that the groups of member who possess the quality

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<sup>21</sup> Plato, *The Republic*, p.117.

<sup>22</sup> *Ibid.*, p.153.

of reason are best to rule the state. Plato takes those rulers to be philosophers as they have the quality of reasoning and wisdom. The quality of the philosopher would be that he would be totally dedicated to his work, he would love his work and would not keep it at stake for anything which comes in between. This would be his priority and he would love to learn and gain from it. He loves truth and would not bear untruth or would not accept it as he loves his knowledge for truth. It would not be possible to combine in the same character a love of wisdom and a love of falsehood. When the desire of the man flows towards the acquisition of knowledge, he would just attain pleasure in things which are purely of the mind and the physical pleasures will just pass by him having no value of them, this would only be the case if he is a genuine philosopher and not a sham.

The qualities of the philosopher must be based on knowledge, ultimately on knowledge of the good that is the form of the good. The pleasure is good or knowledge is dismissed and Plato describes it in a simile. So, the discussion goes on between what is good or not or whether pleasure is good or not, Plato says that when it's a matter of justice or value there are people who would prefer the appearance of reality that only appears to be good, but would want something that really is.

The good then is the end of all endeavor, the object on which every heart is set, whose existence it divines, though it finds it difficult to grasp just what it is; and because it can't handle it with the same assurance as other things it misses any value those other things have. At any rate a man will not be a very useful Guardian of what is right and valuable if he does not know what their goodness consists, and I suspect that until he does no one can know them adequately. So our society will be properly regulated only if it is in the charge of a Guardian who has this knowledge.<sup>23</sup>

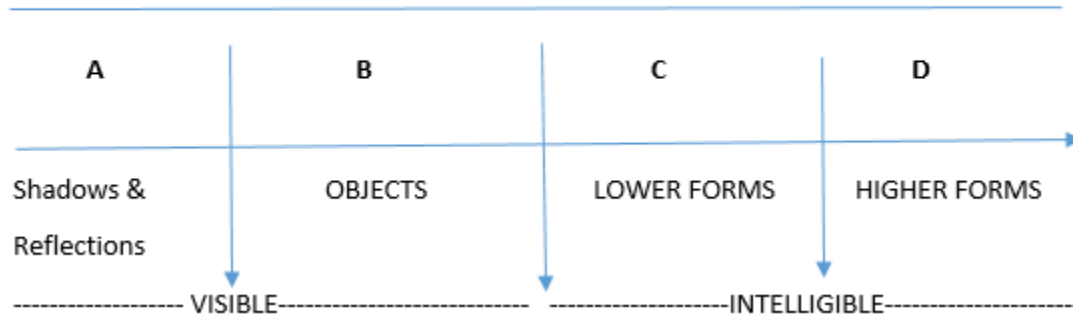
Socrates further gives three analogies of the sun, line and the cave which develops the place of the good in the just person and the form that the person takes. The sun which is supreme in the visible realm, which allows us to see things, represents the good, which is supreme in the realm of thought. It helps us to know the objects to the mind, just as the sun helps us to know the objects in the objective world. The sun not only allows us to see things, but also helps them to grow and come into being so the good gives the objects their reality.

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<sup>23</sup> Ibid., p. 210.

Goodness becomes fundamental in understanding the nature of things, it is the basis for our understanding, and hence it becomes supreme in the club of things. The sun simile is an analogy and just as the sun is in the visible realm the same way goodness is in the intelligible realm. The distinction between this will be further explained in the divided line simile.

### DIVIDED LINE



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The lowest form, A and B have no significance in our lives, as our everyday false beliefs fall under this. They are illusions and beliefs and not important. The intelligible realm is divided into two, one is reasoning and the other understands. By this, Plato tries to show the divisions that we have in our mind and how can we reach to the realm of understanding which is the highest realm. Further, the cave simile is also important as it represents a philosopher and how they have the power to enlighten.

Imagine that there are prisoners in an underground cave, and a fire behind them. They are tied up in such a manner that they can only see the wall of the cave which only shows them the shadows and they believe that this is all they can see. The prisoners in the cave are people like us, and the cave is representing a degraded society. A person escapes from the cave and comes out and notices things in the sun and realizes that all he had been seeing all this years was shadows and he goes on to explain the rest of the people in the cave. The people in the cave are so satisfied with what they are seeing that they do not believe the person who is ready to tell them the truth.

<sup>24</sup> [www.google.co.in/search?q=divided+line&rlz=](http://www.google.co.in/search?q=divided+line&rlz=)

The person who starts to think is going from darkness to light. They are the active minds and those who start to think are doing something for themselves. The person is representing a philosopher who has knowledge. The three similes are trying to represent the knowledge of the good in different manner. They show the difference between our ordinary thinking and our thinking once we have knowledge. The good is the supreme object of knowledge and has nothing to do with one's own good.

Plato has not defined the concept of good clearly but by giving the three similes he shows what he means by the idea of good. It is very necessary to have a correct knowledge of things in order to make decisions and hence Plato says that the ruler should be a philosopher. In the simile of the cave, the philosopher is the person who escapes from the cave and in the light of the sun knows the actual reality and has enlightened himself by knowing the reality.

With this, Plato defines how justice can be delivered in state and the individual. We have noticed that Plato does not talk about a person's autonomy, right, equality or dignity while talking about justice but we will see how Kant maintains all that while giving his account of justice.

Right is the limitation of the freedom of each to the condition of its harmony with the freedom of everyone insofar as this is possible in accordance with a universal law; and public right is the sum of external laws which make such a thoroughgoing harmony possible. Now since any limitation of freedom through another's choice is called coercion, it follows that a civil constitution is a relation of free human beings who (without prejudice to their freedom within the whole of their union with one another) are nevertheless subject to coercive laws for reason itself wills it so, and indeed pure reason giving laws a priori, which has no regard for any empirical ends. Since people differ in their thinking about happiness and how each would have it constituted, their wills with respect to it cannot be brought under any common principle and so under any external law harmonizing with everyone's freedom.<sup>25</sup>

The term 'right' is related to the concept of freedom; they go side by side in order to maintain harmony. Everyone is equal to one another and no one can be coerced or deprived of anything which they are suitable for. The right and the freedom can coexist with each other in accordance

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<sup>25</sup> Kant, *Theory and Practice*, p. 290.

to the moral laws. An action would be right if it can coexist with the freedom of the other in accordance with the universal laws. Our choices should not hinder the freedom of the other.

In “Theory and Practice”, Kant has stated freedom as the first principle among his three principles equality and independence being the other two. By freedom he means that the agent is autonomous in conceiving happiness their own way. Each may conceive the happiness as they think is suitable for them without hindering someone else’s freedom. Kant is basically concerned with the individual freedom of a person in determining his choice for an action.

Freedom of choice is a universal human attribute and this freedom of choice has to be promoted and respected from man to man. One has to be independent from being constrained by other’s person’s choice. Each member of the community is equal to the other member in front of the law. The freedom of the human being can be expressed in the formula that no one can coerce me to be happy for the welfare of others and seek his happiness in whatever form he may find fit, as long as he does not hinder the freedom of the other.

The concept of an external right as such proceeds entirely from the concept of freedom in the external relation of people to one another and has nothing at all to do with the end that all of them naturally have (their aim of happiness) and with the prescribing of means for attaining it; hence too the latter absolutely must not intrude in the laws of the former as their determining ground.<sup>26</sup>

One must accord the same right to the other as he enjoys himself. A government should be founded on the principle of benevolence towards the people, like a relation which is similar to that of a father and son. Under such a government, one is not able to take a decision properly and should rely on the judgment of the head of the state as he is capable enough to take the judgment. This would suspend the freedom of the other and hence the other form of government which is recommended is the patriotic government, where they consider himself to protect the rights. The right to freedom belongs to each member of the community, as each is capable of possessing rights.

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<sup>26</sup> Ibid.

## PART 3

### AUTONOMY AND DIGNITY OR END-IN-ITSELF

Kant denies the most stated fact of justice that justice is concerned with the fair distribution of benefits and burdens. Instead of following the acquainted path, Kant seeks to explain justice and law in terms of a distinct concept of freedom as independence. A person is independent if he is capable of setting his or her purposes, while a thing is something that can be used in pursuit of purposes. One person is independent if one is able to decide the purposes the means will be used to pursue. One is dependent on someone else's choice if that person gets to decide what purposes your means will be used to pursue.<sup>27</sup>

The interference with another person's freedom creates a form of dependence, independence requires the fact that one person should not be subject to another person's choice. The Kantian independence is not the feature of individual person in isolation, but his independence is concerned with the relations between persons. Independence, on the other hand contrasts with dependence on another person, being subject to the choice of the person.

He provides us with the most profound analysis of enlightenment rationality. On Kant's view, "Enlightenment is man's emergence from his self-imposed immaturity. Immaturity is the inability to use one's own understanding without the guidance of other. This immaturity is self-incurred if its cause is not lack of understanding, but lack of resolution and courage to use your own understanding!"<sup>28</sup> In other words, enlightenment means that human being should have the courage, to think boldly, to overthrow immaturity. Individual's dignity, freedom, and rights are affirmed in enlightenment reason. The attempt to get rid of self-imposed immaturity is both self-critique and self reflection with the aim to attain emancipation. Emancipator self reflection depended on giving rational reconstruction of the universal condition of reason. This has given vision to an ideal justice who would be universal and absolute.

According to Kant, there is one innate right and that is freedom, which means independent from being constrained by another person's choice.

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<sup>27</sup> Kant, *Groundwork on the Metaphysics of Morals*, p. 42

<sup>28</sup>Kant, "An Answer to the Question: What is Enlightenment?" p. 55.

Kant argues that freedom, which is necessary to autonomy, and hence to morality is a necessary supposition that cannot be proven. The problem is that we understand causality to be applicable to world of appearance, and trying to apply free will to the world of appearance leads to contradictions. So, we are left with a personal or subjective notion of free will, as a necessary condition of morality.<sup>29</sup>

With this, it comes into notice that freedom is a necessary condition for morality. The concept of freedom is bounded by the moral laws which are stated by Kant as his categorical imperatives. Everyone is supposed to make their own choices, they can have their own desires but they have to be within the boundaries of the moral laws.

The central idea of Kant's philosophy is human autonomy. Autonomy literally means giving the law to oneself. Kant's moral philosophy is also based on the idea of human autonomy. There are principles of morality on which certain moral laws are based. The moral laws of Kant are his three categorical imperatives. These moral laws are his product of reason and his entire moral philosophy is surrounded by them. For Kant, our reflection on our moral duties and our need for happy life leads to a thought of how an ideal world, which he calls the highest good. In theoretical philosophy we talk about how the world is and in practical philosophy we talk about how it ought to be.

Kant states that we as rational agents are autonomous and all our actions should be ruled by our own individual will. We hence need no external source of action which governs our actions, since as being rational agents we are capable enough to make our own decisions and further act on it. As autonomous moral agents and rational beings, we have two basic characteristics, we have a capacity to know that how are we supposed to act morally and the will power to act according to our own laws. Although this might differ, but we have the capacity and it's on us how well we know about it.

Kant seems to be claiming that we as rational beings are autonomous agents and all our actions should be governed by our individual will. We need no external source of actions. As rational beings we know what the situation demands in a particular case and also our will power to act accordingly. But one should know that not every law is self-given and can become a moral

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<sup>29</sup> Kant, *Fundamentals of the Metaphysics of Morals*, p.4.



law. Kant claims that, “man was seen to be bound to laws by his duty, but it was not seen that he is subject only to his own, yet universal, legislation, and that he is only bound to act in accordance with his own will”.<sup>30</sup>

Autonomy lies in reasoning and through the process of reasoning moral laws come into expression and practice. The moral laws are the outcome of the human reasoning. The idea behind this is that action based on desires, feelings, inclinations need reasoning. The human reasoning is the one which can direct a person in order to act morally.

Personal autonomy has been reflected as a view that the agent acts and wills to act under to rule of oneself. It may be formed under a desire, reasonable act, or formed by a will. There is a psychological connection between one’s thinking and acting accordingly. There will arise a question that why is the reasoning so important in decision making? The answer to this will be that because reason does not evaluate human actions in terms of desires, inclinations, but rather they evaluate a human action in terms of the moral laws which can be universally applicable to all. Kant holds a very clear position that the actions which are based on desires, inclinations overlooks the capacity of reasoning and performs those acts which cannot be accepted universally and does not fit in the moral laws. For Kant, it is the moral laws are the criterion for determining moral actions.

Duty is the necessity of an action done from respect for the law. I can certainly have an inclination to the object as an effect of the proposed action, but I can never have respect for it precisely because it is a mere effect and not an activity of a will. Similarly, I can have no respect for any inclination whatsoever, whether my own or that of another; in the former case I can at most approve of it and in the later I can even love it, i.e., see it as favorable to my own advantage. But that which is connected with my will merely as ground and not as consequence, that which does not serve my inclinations but overpowers it or at least excludes it from being considered in making a choice.<sup>31</sup>

Kant says that freedom as a concept of reason is *a priori* and a condition of moral law. Kant believes that freedom cannot be explained, but then comes the problem of morality. If we cannot

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<sup>30</sup> Kant, *Groundwork for the Metaphysics of Morals*, p. 44.

<sup>31</sup> Ibid., p.36.

explain what freedom is then how can we understand morality. The possible explanation of freedom has been given. In Kant's words;

It makes the concept of their existence in the intelligible world, i.e., freedom, its foundation. For this concept has no other meaning, and these laws are possible only in relation to the freedom of the will; but , if the will is presupposed as free, then they are necessary being practical postulates. How this consciousness of the moral laws or- what amounts to the same thing- how this consciousness of freedom is possible cannot be further explained. <sup>32</sup>

According to Kant, freedom plays a very important role in reason based moral decision. The human will is influenced by moral law because it has freedom as an inherent virtue. The moral law expresses the autonomy of the pure reason which is the freedom. This autonomy or freedom is the conditions of all the maxims which are universally accepted and are the moral laws, the categorical imperatives. Now I will focus on how human reason has an influence on human will, which forms the moral laws, the categorical imperative.

It is the reason which links between our autonomy and how we respond. With this we will see that how human reason, autonomy and freedom are inseparable parts of Kant's philosophy, and the categorical imperatives being the absolute moral laws which emerge from human reasoning are the basis for determining an action and giving moral worth to it.

The main aim of Kant in *Groundwork for the Metaphysics of Morals* is to establish the supreme principle of morality. "It is impossible to conceive anything at all in the world, or even out of it, which can be taken as good without qualification, except a good will".<sup>33</sup> It is asserted here that the good will is good above all, even if it does not produce any good result it is considered to be good. It is just good in itself. "A good will is not good because of what it affects or accomplishes- because of its fitness for attaining some purposed end: it is good through its willing alone- that is good in itself". <sup>34</sup>

Kant further states that, "...need not on this account be the sole and complete good, but it must be the highest good and the condition of all the rest, even of all our demands for

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<sup>32</sup> Kant, *The Bounds of Freedom*, p. 12

<sup>33</sup> Ibid., p.59.

<sup>34</sup> Ibid., p.60.

happiness”.<sup>35</sup> The good will in Kant is present as a motive of duty. It will always be the motive of duty which will be the basis for giving moral worth to an action, an action will not be considered to be of moral worth if the reason behind this would be some inclinations or desires. The act which is performed out of duty and for duty sake will be considered to be an act of moral worth.

The moral worth of an action will not depend upon the consequences it produces. It will be considered only when the moral law is obeyed, and it is the duty for duty sake. Kant writes, “The maxim which gives moral worth to actions is the maxim or principle of doing one’s duty whatever one’s duty may be”.<sup>36</sup> These moral laws are universally applicable to all human beings. They have to be obeyed for their own sake. The practical reason concerns a command or principle, which are to be followed by every human being. The principle of this command is known as an imperative. “The imperative is either a command or a prohibition. Every imperative is a direction of my will by reason, as I picture how a reason, which had free control over my will, would act. Imperatives are drawn from the idea of perfect will, and hold good as rules for my imperfect will; duty is the idea of a perfect will, as the norm for an imperfect one”.<sup>37</sup>

The imperatives are considered to be of two kinds: hypothetical and categorical. “All imperatives command either hypothetically or categorically”.<sup>38</sup> A hypothetical imperative is one which considers an action necessary for attaining some end. For e.g. ‘If I want to score well in the exam, then I will have to study hard’. This sort of imperatives will depend on certain conditions. On the other hand, categorical imperative is one which considers an action necessary in itself without attaining any end. The categorical imperative is unconditioned. A categorical imperative, “...declares an action to be objectively necessary in itself without reference to some purpose, that is, even without any further end”.<sup>39</sup> For Kant, an ethical imperative should be unconditional.

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<sup>35</sup> Ibid., p.62.

<sup>36</sup> Ibid., p.21.

<sup>36</sup> Ibid.

<sup>37</sup> Kant, *Lectures on Ethics*, p.230.

<sup>38</sup> Kant, *Groundwork on the Metaphysics of Morals*, p.78.

<sup>39</sup> Ibid.

For Kant, the moral laws are the three categorical imperatives which are basis of morality. It is a law because it is given by will and further approved by reason. Since it has mastered over reason, it becomes an obligation for every action. Kant says;

The moral law for them, therefore, is an imperative, commanding categorically because it is unconditioned. The relation of such a will to this law is one of dependence under the name of obligation. This term implies a constraint to an action, though this constraint is only that of reason and its objective laws. Such an action is called duty.<sup>40</sup>

According to Kant, it is the human will on which the moral law is dependent. It is the will which autonomously determines a course of action, the action is known as autonomously free if it is free not only from external causes but also from internal causes. In order to explain autonomy of will, Kant also prefers to explain what not autonomy to which he calls heteronomy of choice. The heteronomy of choice is the opposite of the autonomy of will. It always goes against the 'principle of duty' and 'morality of the will'. It is the heteronomy of will which is the source of all inauthentic principles of morality.

If the will seeks the law which is to determine it anywhere else than in the fitness of its maxims to its own universal legislation, and if it thus goes outside itself and sees this law in the property of any of its objects, heteronomy always results. For then the will does not give itself the law, but the object through its relation to the will gives the law to it. This relation, whether it rests on inclination or on conceptions of reason, only admits of hypothetical imperatives: I should do something for the reason that I will something else.

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The spurious moral principles are related to heteronomy of will and subjectivity, whereas the real moral principles are often related to the autonomy of will which is dominated by reason hence giving moral worth to making it an universal action. There are three things according to Kant, which are considered to be the determining basis of morality and they are; autonomy of the will, objective validity and universal application. These determining basis are itself a law- a maxim

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<sup>40</sup> Kant, *The Bounds of Freedom*. p. 12.

<sup>41</sup> Kant, *Groundwork of Metaphysics for Morals*.

which have been universalized by the moral agents. “Moral law is thought of as objectively necessary only because it holds good for everyone having reason and will.”<sup>42</sup>

The three categorical imperatives which Kant has stated are:

Formula of Universal law: “Act only on that maxim through which you can at the same time will that it should become a universal law.”<sup>43</sup>

Formula of the End in itself: “Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.”<sup>44</sup>

Formula of Autonomy: “So act that your will can regard itself at the same time as making universal law through its maxims.”<sup>45</sup>

Formula of the Kingdoms of Ends: “So act as if you were always through your maxims a law making member in a universal kingdom of ends.”<sup>46</sup>

So it is in ethics as it is in law. The categorical imperatives have been formed so that we can apply our human reason to determine the right thing to do, the rational thing so that our actions bring moral worth and it is universally accepted in the society. There is a unique element about a good action as well as a universal element; it must suit the particular circumstances in which it occurs, as well as obeying the universal law.

The rightness of an act in the first formula is seen by whether everyone will be able to accept the rule which we formulate for us, will it be applicable to all. We cannot adopt a moral principle for ourselves and reject it for the others. The principle should be such which can be universalized

The second formula states that it is morally wrong when we use other people as means in a bad way, Kant emphasized that we should not use people merely as means, but always should remember them as they are ends, things in value in themselves apart from the services they

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<sup>42</sup> Ibid.

<sup>43</sup> Ibid., p.84.

<sup>44</sup> Ibid., 91.

<sup>45</sup> Ibid., p.93.

<sup>46</sup> Ibid., p.95.

render. This came out more clearly when Kant gave the Formulation of Kingdom of Ends. In speaking about it, he regarded those actions as good which in some way or the other lead to the welfare of the human beings. We should never act in such a way where we take humanity in ourselves or in others never as a means but always as an end. This formulation of Kant has introduced the idea of respect for the humanity. Every person has a value in himself; we should never devalue them and also disrespect them. It is not the human beings per se but the humanity in human beings that we must treat as an end in itself. The humanity is that feature in us which make us distinctively human. There should be proper regard to something with absolute value or worth requires respect for it.

The Autonomy formula says that we should act so that our maxims could be the legislator of the universal laws. This sounds very similar to the first principle of Kant, but in this we focus on our status as universal law givers rather than universal law followers. This is the source of the dignity of humanity. Here we should be confirmed with our behavior to the principles that expresses his autonomy of the rational will. The Autonomy formula displays our dignity and worth, our status as free rational agents who are the source of authority behind the morals laws that are binding us.

According to Kant, all the principles of Categorical imperatives are equivalent. He writes that each formulation is such that it is uniting the other two in it and that the differences in them are more subjectively than objectively. Each one of them is bringing an idea of reason closer to intuition and further nearer to feeling. He also writes that one formula follows from the other. Kant's statement that each formula unites the other two within it initially suggests that the formulas in meaning, or at least one could analytically derive one formula from another.

The categorical imperatives become the guiding principles of morality, it becomes the basis for determining whether an act is moral or not. They are concerned with only general and abstract moral actions. If we do the opposite of them then we invite contradiction and it may further bring those outcomes which are not morally acceptable in the society. Kant uses an example which poses the ethical antimony. He assumes a man to be in extreme despair, and is in dilemma whether to take his life or not. If he chooses to take his life, then he is universalizing the maxim, "In order to love myself, I should shorten my life". This maxim is a contradiction that is killing oneself will not improve his life. So, categorical imperative is used as a test for general

moral principles in order to determine a particular action. So, the nature of action is determined in this process.

When we look at the world we believe *a priori* we believe that morality is universal and necessary. In order to determine whether an act is good or bad, we should apply the categorical imperative. In order to know whether an act is morally right or wrong, we will have to see whether they come in the boundary of categorical imperatives, if they do fit in then they are right and are giving moral worth, and hence will be right to perform them.

Everything in nature works according to the law of nature. For Kant, the categorical imperatives become the moral test for all humans. If the maxim passes the test of categorical imperative, then the action is morally permissible, and in case it does pass through it then the action is not morally permissible.

The second formulation of categorical imperative is derived from Kant's conception that all beings are to be taken as ends in themselves and not as mere means. One should not treat the other as means to attain something, because in everything there contains an end in themselves. As a human being is an end in themselves, the same should be taken by others, it will constitute a principle of will, and it can serve as a universal law. The foundation of this law is man's conception of end in themselves.

It is against man's nature to be used as mere means to an end no matter how good the end is. Whatever it may be, the person should not be taken as a mere mean but only an end. All human actions must not violate the humanity, and according to the humanity the person should not be taken as mere means to attain something. This entails that one must not only uphold the humanity in others, one must act in such a way that it should heighten the humanity of other human beings. We must and should contribute to the dignity of the other persons. It is the self governing reason which is present in each rational agent who provides a decisive ground for considering each person of equal worth and deserving equal respect amongst all.

Kant writes, "Now I say that man, and in general every rational being, exists as an end in himself, not merely as a means for arbitrary use by this or that will: he must in all his actions, whether they are directed to himself or to other rational beings, always be viewed at the same

time as an end”.<sup>47</sup> The rational beings are called persons and not things, the reason that they are called persons is due to their capability to reason and hence they are not meant to be used but should be always taken as an end.

The third formulation states that, a rational being must always involve himself in giving laws either as member in a kingdom of ends which rendered possible by the freedom of will. This entails that as human persons, we must know the interpersonal relations as members of the same human community. Therefore, at any point one has to take a decision and it should be the one that recognizes humanity in others. All beings are united in this kingdom of ends and are bound by common laws. The outcome of this is that we as members of kingdom of ends must give universal laws to which we are subjected to. The obligation of the human being is to act according to his duty in order to enhance their own individual and collective well being.

This making of laws must be found in every rational being himself and must be able to spring from his will. The principle of his will is therefore never to perform an action except on a maxim such as can also be a universal law, and consequently such that the will can regard itself as at the same time making universal law by means of its maxim.<sup>48</sup>

The Formula of Autonomy follows from the formula of the End in Itself, because all rational beings as an end in itself and are also the maker of the universal law. “Every rational being, as an end in itself, must be able to regard himself as also the maker of universal law in respect of any law whatever to which he may be subjected; for it is precisely the fitness of his maxims to make universal law that marks him out as an end in himself”.<sup>49</sup>

Morality refers to the general moral order, a community of rational beings who all come under the same law which is universally accepted. A rational being is a member of the Kingdom of Ends; he is the maker of the universal laws as he is a rational being which is possible through the free will he possesses. “A rational being must regard himself as making laws in a kingdom of ends which is possible through the freedom of will, whether it be as member or as head”.<sup>50</sup> The principle of the kingdom of ends rests on the dignity of the human being and their autonomy. It

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<sup>47</sup> Ibid., p90.

<sup>48</sup> Ibid., 96.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid., p95.



is clear from the fact that treating an agent with an end would be giving acknowledgement to his rationality and also affirming his equality and autonomy as a rational agent.

This making of laws must be found in every rational being himself and must be able to spring from his will. The principle of his will is therefore never to perform an action except on a maxim such as can also be a universal law, and consequently such that the will can regard itself as at the same time making universal law by means of its maxim.<sup>51</sup>

A right action should be held universally right; it should not depend on any conditions like emotions, inclinations or any circumstances. It should be same for all agents irrespective of any circumstances. The moral laws if in conformity with the will of the rational being can promote the highest good in the self. The highest good here is the *summum bonum*<sup>52</sup>. Happiness is a subjective condition, and this can be achieved when man sets himself under the moral laws. Moral law is supposed to, "...promote the highest good; and it is not our privilege but a necessary connected with duty as a requisite to presuppose the possibility of this highest good. This presupposition is made only under the condition of the existence of God, and this condition inseparably connects this supposition with duty. Therefore, it is morally necessary to assume the existence of God".

The Kant's view of the highest good can be compared with Aristotle's concept of *eudemonia*, i.e., happiness. For Aristotle, good life is happiness, and it is a complete good and final aim of a happy life. We always pursue happiness for its own sake and not for the sake of the other. This can be achieved by performing activities which are virtuous and also following the golden mean path which have been stated by Aristotle.

Kant states the concept of duty in the following words;

The concept of duty thus requires of action that it objectively agree with the law, while of the maxim of the action it demands subjective respect for the law as the sole made of determining the will through itself. And thereon rests between consciousness of having acted according to duty and from duty, i.e., from respect for the law. The former is possible even if inclinations alone are the determining grounds of the will, but the latter, morality or moral worth can be conceded only where the action occurs from duty, merely

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<sup>51</sup> Ibid., p.96.

<sup>52</sup> Kant, *Critique of Practical Reason*, p.130.

for the sake of the law. It is of the utmost importance in all moral judging to pay strictest attention on the subjective principle of every maxim, so that the morality of actions may be placed in their necessity from duty and from respect of the law.<sup>53</sup>

There lies no doubt that Kant takes duty to be the central concept in trying to understand a right action. He proposes a deontological moral theory, which does not judge an action based on the consequences. An action is considered to be of any moral worth if it is done for the duty sake and does not look at the consequences. Kant talks about two kinds of actions done with respect to others. One is in accordance with duty and the other is for the sake of duty. An action which is done in accordance with duty may always not be a right action and be of any moral worth. The actions done in accordance with duty are goal-oriented and purposive. They are performed to reach certain a certain end. For instance, I may donate a lot of money to those people who need it. This being a moral worth and a duty which I perform as being a member of the society, but the motive behind this act is to gain fame. Hence, this will not be considered to be a moral act.

This aspect of Kant's theory shows its emphasis on the importance of reason and also the motive behind an act. On the other hand, the action which is performed for the duty sake has to be unconditional and rationally comprehended. It must be performed according to the universal moral laws; they should overcome all our inclinations, passions and desires. There is no place for emotion, inclination in Kant's philosophy. The action has to be fully guided by reason and hence it will be considered to be an apt act.

Kant's enlightenment rationality gives rise to human rights, toleration and public reason to enter into contract to secure one another's autonomy and dignity. Kantian morality gives the vision of justice that how justice ought to be under all circumstances through categorical imperatively which are universality, end in itself and kingdom of ends. The enlightenment rationality has played an important role because it is the stage at which human beings recognize their freedom, rationality, right, dignity and autonomy. It encourages adopting the social contract to repudiate feudal monarchy and aristocracy by using their rights to enter into contract within civil society to protect their basic rights like freedom, autonomy, dignity.

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<sup>53</sup> Kant, *Groundwork of the Metaphysics of Morals*, p. 20.

John Rawls has revived the hypothetical social contract theory as parallel with Kant, as transcendental mechanism to explain the principles of distributive justice with reference to institutions. I will discuss Rawls' hypothetical social contract theory in the next chapter looking at veil of ignorance and the two principles of justice.

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## **CHAPTER 2**

### **JOHN RAWLS ON JUSTICE AS FAIRNESS: AN EXPOSITION AND ANALYSIS**

John Rawls has revived social contract theory not to explain the origin of the state and its sovereignty or autonomy of the individuals, but as transcendental mechanism to explain the principle of distributive justice with reference to institutions. Individuals and their actions are just insofar as they conform to the demands of just institutions. In Rawls' justice as fairness, the direct attention is on 'just institutions' rather than focusing on 'just individuals and societies' which help to create effective institutions and reduce injustices and inequality as well. Inequalities violate principle of fair equality of opportunity. How (these institutions) are specified and integrated into a social system deeply affects people's characters, desires, and plans and their future prospects as well as the kind of persons they aspire to be. The question arises: is justice the realization of institutions and rules or principles or is it concerned with the society as well? I will attempt to vindicate Rawls' position on justice and bring out its shortcomings in two fold manner. First the way Rawls has criticized his own earlier position in his later work and secondly the way his successors like Sen, Martha Nussbaum and Nozick have criticized both the positions of Rawls. In order to organize chapter I will divide it into three parts as following:

#### **Part 1) Re-visiting Social Contract Theory**

#### **Part 2) Veil of Ignorance and Critiquing Inequality**

#### **Part 3) Transcendental Institutionalism**

### **PART 1**

#### **RE-VISITING SOCIAL CONTRACT THEORY**

The social contract theory has aimed to give justification for the democratic and the republican revolutions during the 17<sup>th</sup> century. The idea behind the social contract theory is that the

legitimate constitution is one which is agreed by the equal and free persons of the society. There are certain assumptions behind this social contract theory on the grounds of morality about individuals, like the rational persons are considered to be free and have certain rights politically and personal. “Locke assumes that an equal right to natural freedom is a law of nature, while Kant says that the innate right of freedom is the sole original right that belongs to all persons by virtue of their humanity, and that this right contains within itself the innate equality of mankind.”<sup>54</sup>

Rawls says, “In order to do this we are not to think of the original contract as one to enter a particular society or to set up a particular form of government. Rather, the guiding idea is that the principles of justice for the basic structure of society are the object of the original agreement.”<sup>55</sup> For him, social contract serves as a thought experiment to construct a just society where free individuals come together to have cooperation to choose institutional principle in a well ordered society. In a well ordered society each and every individual would be free and equal so that social benefits and burdens should be fairly distributed. Moreover, Rawls has revived social contract in the form of original position of equality which corresponds to the state of nature in Hobbes, Locke, and Rousseau.

The social contract theory of Rawls questions utilitarianism by pointing out the impractical position of the theory. According to the utilitarian theory, the rights of a particular individual would be disregarded if injustice to one individual would benefit the rest of the members of the society. For Rawls, a social contract theory which has been propounded by Hobbes, Locke, Rousseau and Kant would be a more coherent structure to question the fairness and justice of the regulation of the government. The social contract theory in general and according to Rawls state that a society which has free, equal and rational individuals, the rules or the principles of justice would laid down in such a manner where they are agreed and accepted by all the citizens in that state.

The setting of the laws and accepted and agreed by all the members of the society is termed by Rawls as “The Original Position and its Justification.” The condition that Rawls keep for this system to work is that the citizens must see themselves behind the veil of ignorance; this

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<sup>54</sup> Freeman, *Rawls*, p. 38.

<sup>55</sup> Rawls, *A Theory of Justice*, p. 11.

would prevent prejudice and will maintain fair situations. The deciding parties would consider everyone equal and not pay their mind considering the economic and religious situation while making any decisions. For Rawls the guidelines in the original position must be composed of two parts. The first principle would consider equal rights and duties for all the members of the society and the second principle would regulate the power and wealth of the citizens.

Rawls's original position has been derived from the natural right theory and the Hobbes view on social contract, but still Rawls position on social contract differs from that of Hobbes. The nature of Rawls agreement in the original contract resembles to that of Kant's social contract which he claims to be hypothetical. All the proponents of the social contract from Hobbes, Locke, Rousseau to Kant consider the social contract to be hypothetical that was thought to be the most sensible way where the rational people could agree to it, considering the fact that they are equal and have equal and basic rights.

Rawls's original position can be understood as a hypothetical contract not as a historical contract so that social and political institutions ought to be just under all circumstances and "laws and institutions no matter how efficient and well arranged must be reformed if they are unjust."<sup>56</sup> In formulating an intuitive idea of distributive justice as fairness is to think of an institutional arrangement which is an object of fair agreement. On Rawls view, hypothetical social contract asserts the rational person makes an agreement about the fair institutional arrangements protects individual rights and liberties irrespective of caste, religion, creed, sex, etc.

Hume has later on criticized the social contract theory on the note that the consent of the people cannot justify that we have the duty to respect and follow such laws which have been mentioned in the social contract theory. He also says that the past records does not claim of any such contract and also if there was anything like that in the past then we are not bond to follow the consent which has been given by our forebears. Hume asserts that the only justification that we should follow such laws is that it should promote public utility. Hume considered the social contract theory to be unnecessary, it is not reasonable to follow the political laws and duties.

Rawls responds to Hume's criticism by saying that Hume has misinterpreted Locke, he says that Locke's social contract does not demand actual consent and also if the forebears had

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<sup>56</sup> Ibid., p.212.



entered into such a contract that would not make our constitution legit now. The government could be legitimate only if the rational individuals would agree to political jurisdiction without any violations of any sort. The social contract is basically the hypothetical test for determining the legitimacy of the political jurisdiction and the duty of the government.

Rawls writes, "... an injustice is tolerable only when it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice are uncompromising."<sup>57</sup> Rawls asks us to assume that a society is an association of people who have certain rules of conduct for each other and who act according to those rules, and they promote the good of those taking part in it. Then the individuals in the society will take interest and are cooperative towards each other and make a better life. But then there will arise certain conflicts among the individuals for the benefits, hence there should be a set of principles which will determine the division of the shares. These principles will be the principles of social justice, with the help of these principles the rights and duties will be assigned and also there will be proper distribution of resources, goods and benefits and burdens of the society.

When the society is regulated by the public conception of justice, that is, a society in which a person accepts certain principles of justice and is also aware that the other is following it too and secondly, the basic social institutions are also following those principles of justice. Now they are at the same level and do not have to put forth excessive demands from one another.

Among individuals with disparate aims and purposes a shared conception of justice establishes the bonds of civic friendship; the general desire for justice limits the pursuit of other ends. One may think of a public conception of justice as constituting the fundamental charter of a well-ordered human association.<sup>58</sup>

An institution is just when there are no arbitrary distinctions made between individuals in the assignment of basic rights and duties and when a proper balance is created. By the help of these principles it becomes easy to single out the similarities and distinctions among the persons in order to determine the rights and duties and also helps in determining which advantages are appropriate. Rawls writes,

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<sup>57</sup> Ibid., p.04.

<sup>58</sup> Ibid., p. 05.

We cannot, in general, assess a conception of justice by its distributive role alone, however useful this role may be in identifying the concept of justice. We must take into account its wider connections; for even though justice has a certain priority, being the most important virtue of institutions, it is still true that, other things equal, one conception of justice is preferable to another when its broader consequences are more desirable.<sup>59</sup>

An institutions consists of various positions and each individuals has different sorts of expectations from it in the sense of political, economic and social. Justice at the level would depend on how the fundamental rights and duties are attributed and how can they avail the economic opportunities and also the social conditions at different levels.

According to Rawls the original contract is not the one to enter the society or to formulate a government. Instead it is the principles of justice which are the object of the original agreement. The principles of justice are those principles which determine the other agreements; they look into the matter of the formation of government and also the kind of social cooperation that can be thought of. The principles are those which will look into the assignment of the rights and duties and also determine the division of the resources, wealth and primary goods. The individuals of the society will decide before regarding the demands against each other and also regarding the agreement of the society on the basis of which they can take any further action.

The society can well in advance formulate a charter and enter into an agreement where they can decide for all what is just and unjust.

In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract. This original position is not, of course, thought of as an actual historical state of affairs, much less as a primitive condition of culture. It is understood as a purely hypothetical situation characterized so as to lead to a certain conception of justice.<sup>60</sup>

The principles of justice are considered behind the veil of ignorance.<sup>61</sup> All the individuals of the society are placed at the same level and no one will be favored and hence there will be a fair

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<sup>59</sup> Ibid.,p.06.

<sup>60</sup> Kant, *Metaphysics of Morals*, p. 47

<sup>61</sup> Rawls veil of ignorance is the concept that a person's identity in terms of his gender, race, caste, status, class is not disclosed in order to render the benefits of the social cooperation. The idea behind this was to avoid injustice on the basis of the status of the individual and everyone should be treated equally.

treatment for all. Justice as fairness is an example of what Rawls calls a contract theory. There are certain objections which are to it that is because of the misleading connotations which are causing confusion in the contract theory. The attempt towards this formation is purely hypothetical according to Rawls; it holds that the principles which are taken in are accepted from an initial situation. The attribute behind this contract term is that these principles of justice are chosen and accepted by the rational people of the society and hence the concept behind justice is well explained and justified.

The word 'contract' suggests this plurality as well as the condition that the appropriate division of advantages must be in accordance with principles acceptable to all parties. Thus, if these principles are the outcome of an agreement, citizens have knowledge of the principles that others follow. It is characteristic of contract theories to stress the public nature of political principles. Justice as fairness is not a complete contract theory. For it is clear that the contractarian idea can be extended to the choice of more or less an entire ethical system, that is, to a system including principles of all virtues and not only for justice.<sup>62</sup>

The original position is the central feature of John Rawls's social contract account of justice also termed as justice as fairness. The principles of justice are to be accepted by the rational individuals in order to maintain impartiality and fairness among the citizens. This hypothetical theory demands us to think that we are all free and equal individuals who agree upon the accepted and justified principles of justice in order to maintain social and political justice in the society. The discerning feature of this theory is the 'veil of ignorance' which is there to ensure impartiality, where the judging party is deprived of all the personal information of the person across the table so that the decision is not made keeping his social status, gender, race, caste and creed.

The original position with regard to justice is also considered to be his moral point of view.

For Rousseau and perhaps Kant too, the idea of a social contract played a different role: as part of their accounts of the General Will, the social contract is a point of view that lawmakers and citizens should adopt for assessing existing laws deciding on measures

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<sup>62</sup> Rawls, *A Theory of Justice*, p. 15.

that achieve justice and citizens common well. Rawls generalizes on Locke's, Rousseau's, and Kant's natural right theories of the social contract: the purpose of his original position is to yield principles to determine and assess the justice of political constitutions and of economic and social arrangements. To do so, he seeks in the original position to combine into one conception the totality of conditions which we are ready upon due reflection to recognize as reasonable in our conduct towards one another.<sup>63</sup>

Rawls state of nature is pre-social but fully rational people (Hobbes view) or pre-political people with antecedent natural rights who agree on the same grounds to form a political constitution (Locke's view). The original position is an alternative to the state of nature and is the initial situation for the social contract. Rawls has in focus on the basis structure of the society and he stresses on the institutions, which include the political institution, the economic system and the social institutions. The principles measure the rules and laws of these institutions and also determine the just distribution of duties, rights, opportunities, positions, resources and powers.

These institutions are necessary to social cooperation and have a sound influence on people's situations, characters and future prospects. Every society depends upon some principles, rules, laws, contract due to which the society can run when it comes to political, economic, and social plane. Rawls assumes the citizens as moral persons who consider themselves as free and equal citizens of the society, who has a sense of justice.

Moral persons are not necessarily morally good persons, but instead are capable of being rational in that they have the capacities to form, revise and pursue the conception of good; and also they are capable of being reasonable since they have a moral capacity for the sense of justice- to cooperate with others on terms that are fair and to understand, apply and act upon principles of justice and their requirements.<sup>64</sup>

Rawls purpose of the original position is to describe a situation which is fair to all the parties of the social contract. The principles of justice are agreed and accepted by all the rational individual of the society where they follow the laws and the rules and hence it will be a fair situation for all the citizens. I will further examine the two principles of justice which Rawls talk about.

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<sup>63</sup> Freeman, *Rawls*, p. 143.

<sup>64</sup> <https://plato.stanford.edu/entries/original-position/>

The first statement of the two principles reads as follows.

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

Second: Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to the positions and offices open to all.<sup>65</sup>

According to Rawls all the citizens would agree on these principles. The first principle says that everyone should have the same basic rights and duties. The basic rights which are: the freedom of expression, movement property, etc. The rights and liberties are granted to all citizens equally. The first principle has a feature of fair value of the political liberties; the political liberties are the subset of the basic liberties, which are worried about the right to vote, right to hold a public office. The citizens should have similar opportunities to hold the office, to vote in the elections, regardless of how rich or poor they are.

The second principle states that the inequality should be justified only when related to jobs and positions. The institution should take care in reducing the maximum possible natural differences. These principles are hierarchical in nature, the principle of equal liberty has priority above the other two and the principle of equal opportunity has priority above the difference principle. The first part of the second principle, fair equality of opportunity, states that the individuals with the similar talents who are also inclined with their talents should have the same educational and economic opportunities regardless of how poor or rich they are. "In all parts of the society there are to be roughly the same prospects of culture and achievement for those similarly motivated and endowed."<sup>66</sup>

The second part of the second principle is the difference principle, which determines the distribution of resources and wealth. The difference principle allows the inequality of wealth and income, so long as these will be to everyone's advantage and also to the advantage of those who are worst-off. The difference principle expects that the economic inequalities be to the greatest advantage of those who are advantaged least.

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<sup>65</sup> Rawls, *A Theory of Justice*, p. 53.

<sup>66</sup> *Ibid.*, 44.

The difference principle is a principle for the institutions and not the individuals. But this definitely does not mean that the difference principle does not imply duties to the individuals. At the first level the difference principle is applied to the institution to maintain economic conventions and legal institutions and so on. It is at the later stage applied to the individuals as they are the one who make the decisions and formulate the rules in the institutions. The individual's code of conduct is regulated by these laws and rules, in this way we see that the difference principle is applied indirectly to the individuals.

The base of the society comprises of the arrangement of the social, political, economic institutions due to which the social cooperation and production is possible. These institutions have a sound influence upon the individual's lives, ambitions, desire and their future aspects. The basic social institutions that constitute the structure is that they are necessary for social cooperation. The Rawlsian account of the basic structure of the society resembles very much to that of Hume. For Hume also the norms, governing property, contracts and such modes of consent have been necessary for the production, distribution and consumption that sustain a social life.

To exemplify, consider four hypothetical economic structures A-D, and the average levels of income and the different economic structures would result in the members of the respective three groups:

The difference principle selects Economy C, because it comprises the distribution where the least-advantaged group does best. The Inequalities which are seen in C are to everyone's advantage in comparison to others.

ECONOMY	LEAST ADVANTAGED GROUP	MIDDLE GROUP	MOST ADVANTAGED GROUP
A	10,000	10,000	10,000
B	12,000	30,000	80,000
C	30,000	90,000	150,000
D	20,000	100,000	500,000

Rawls is trying to convey that the citizen should not be advantaged more just because he is born in a privileged family, where the citizen has the potential to develop the skills which are more in demand these days. But this does not mean that everyone should get the same shares. The individuals are born with different talents and capabilities or they attain them during the life time, but these talents and capabilities should be for everyone's advantage and should be used to make everyone better off. The focus of the individual should always be in contributing for the well off of the other members of the society. The idea behind the difference principle is the unity of all.

The original position as we have understood is a completely hypothetical situation, nothing as such has ever happened. The construct of the original position was not to explicate the human conduct but tries to describe our moral judgments and helps to realize the sense of justice.

Justice as fairness is a theory of our moral sentiments as manifested by our considered judgments in reflective equilibrium. These sentiments presumably affect our thought and action to some degree. So while the conception of the original position is part of the theory of conduct, it does not follow at all that there are actual situations that resemble it. What is necessary is that the principles that would be accepted play the requisite part in our moral reasoning and conduct.<sup>67</sup>

We should keep in mind that the acceptance of the principles should not be speculated as a psychological law. The person in the original position tends to have a specific psychology, there will be certain presumptions about the interests and beliefs one has, but they strictly will be deductive conclusions.

Rawls conception of justice is governed with an institutional mechanism where public rules and regulations specify certain form of action as permissible and forbidden. Hence he has chosen principle of justice in social arrangement which could determine the division of advantages. In this way problem for choosing between various social arrangements could be solved by defining a set of principle which determines the division of advantage. To overcome the problem of conflicting principles, Rawls breaks down his conception of justice into two components and then arranges them according to the lexical principle.

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<sup>67</sup> Ibid., p.104.

According to Utilitarianism, the aggregate utility must be maximized, not just among the present group of people but must take the future generations also into consideration. This would mean that it would not be wrong if the interest of a small group of people is sacrificed to produce utility for the larger group of people. Rawls think that it is unfair for the least advantaged to sacrifice their well-being for the sake of the majority, so it is unfair for the present generations to sacrifice for the future generations.

While examining the original position of Rawls, we can discover the situation which closely resembles to that of the United States which has proved to be strong and successful for a long period of time. As we read the theories of Rawls we see that it resembles the Marxist philosophy. The difference principle of Rawls which is concerned with the distribution of resources and goods resembles with the redistribution of wealth that took place long ago in China. At that particular time China thought that it would be a good decision that would put everyone on the equal scale. Sadly this system became very erratic and eventually failed.

Looking at the other side, in the United States where a person was allowed to keep the wealth which is self-made and some of which is inherited proved to be very successful. On the other hand we see that the person who has gained wealth through his hard work is entitled to his wealth. The wealth passes down to the person who has been mentioned in the will by the owner. In this then the small portion is redistributed through taxes and public services. This philosophy of Robert Nozick would appeal to Rawls. The hybrid of both the philosophies would be the most practical outcome.

By the veil of ignorance, Rawls is trying to argue that the moral judgment about the distribution of the positions and the powers in the society is to imagine that none of us knows the current position of ours in the society. The judging party is unaware of the social status of the individual. The individual's current position does not influence the person on the other side of the table and he then naturally takes the neutral position.

## **PART 2**

### **VEIL OF IGNORANCE AND CRITIQUING INEQUALITY**



Rawls's *A Theory of Justice*, revolves around the conception named as 'justice as fairness'. The main aim of the hypothetical original position is to describe a situation that is for all the parties. He considers a position where the parties in the social contract are situated in a just manner and take all the pertinent data into account, then the principles to which they agree to are also just. The fair or the just agreement can be looked at differently with respect to the agreement and the description of the parties. There are certain facts which are important to know in order to enter into any institution or agreement, such as the talents, experience, skills and also the motivation that an individual has before he is selected into any system. It is only then that we call it a fair or a just system. This kind of a feature can be compared to that of Locke's social contract. Locke's social contract put forth that in a state of nature among the free and equal individuals know everything about each other, just as a person knows about himself in the same manner the other knows about the other individual.

In case of Locke's theory the judging party would know about their characteristics such as their inherent talents and also certain general information required in order to enter into any system and also would know the personal information of the individual such as the caste, race, family background, social class, religion and income. Rawls proposes the reason why Locke's social contract is unacceptable because the parties have all the knowledge of their personal characteristics like gender, income, social class, religion and caste. Having their personal information can lead to bias decisions by the judging parties and this would lead to an unfair state where a person can be chosen because of his gender, social class and also based on his religion. Due to which there will be people who are more talented, skillful and have more motivation than the others may be left object causing injustice to them and also to the institution where they have to enter.

Rawls takes this matter into concern and determines a remedy to this situation where the judgments are not bias judgments. To this Rawls situates the parties to be social contract instead of the state of nature so that the parties do not have knowledge about their personal life and hence the judgments will not be biased leading to unfair situation. Rawls original position is a state where the parties have no information about their personal details that makes them favorable to one rather than the deserving one.

Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength and the like. We shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance.<sup>68</sup>

The purpose of veil of ignorance is that it deprives the judging parties of all the personal information of the individual. The parties though are not completely ignorant of the facts. The parties would be aware of the general information of the individual; they would have knowledge of the generalizations which can be derived from psychology, political science, economics, and biology. This way the party would know the general tendency of the individual, the human behavior, the psychological development of the individual. The parties would only lack information about their personal life, like the social class, wealth, religion and gender. According to Rawls knowledge about one's personal life is not relevant and will only lead to forming a decision based on them which will be bias and hence unjust.

Another reason which Rawls considers is very important for veil of ignorance is that here all the people will be considered equal to one another. The parties would not have any personal information about the candidate which will make them take any bias action; they will only have the general information about the candidate.

The only particular fact which the parties know is that their society is subject to the circumstances of justice and whatever it implies. It is taken for granted, however, that they know the general facts about human society. They understand political affairs and the principles of economic theory; they know the basis of social organization and the laws of human psychology. Indeed, the parties are presumed to know whatever general facts affect the choice of the principles of justice. There is no limitation on general information, that is on general laws and theories, since conception of justice must be adjusted to the characteristics of the system of social cooperation which they are to regulate, and there is no reason to rule out these facts.<sup>69</sup>

The construct of justice should be such that it should bring forth its own support. The principles which have been incorporated in the conception of justice should be such that the individuals of

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<sup>68</sup> Ibid., p.118.

<sup>69</sup> Ibid., p. 119

the society should acquire the sense of justice and must develop the desire to act in accordance with its principles. The individuals should not be under the pressure to act in those principles; they should have an inbuilt desire to act in those principles with the aim of developing a just society. If this is the situation then the conception of justice is firm.

The idea of the veil of ignorance has certain difficulties in it. There are certain objections which are made that the exclusion of particular information about the candidate will make it difficult to attain what they actually mean by the original position. The most frequent of the objection is that the choice in the original position is indeterminate. The other one says that the deciding parties are so much deprived of the information which is necessary in order to make a decision. The deciding parties are hence not capable enough to make a rational choice. How can an individual make a rational choice by being unaware of the fundamental values and commitments?

To this Rawls says that the deciding parties are aware of the basic social needs of the candidates which are enough to make a rational choice regarding their values and commitments.

The restrictions on particular information in the original position are, then, of fundamental importance. Without them we will not be able to work out any definite theory of justice at all. We would have to be content with a vague formula stating that justice is what would be agreed to without being able to say much, if anything, about the substance of the agreement itself. The formal constraints of the concept of right, those applying to the principles directly, are not sufficient for our purpose. The veil of ignorance makes possible a unanimous choice of a particular conception of justice. Without these limitations on knowledge the bargaining problem of the original position would be hopelessly complicated. Even if theoretically a solution were to exist, we would not, at present anyway, be able to determine it.<sup>70</sup>

Rawls veil of ignorance is 'thick' rather than 'thin'. We can suppose that the deciding parties know all the information of the candidates (their gender, income, race and religion) but did not know their identities- they would not know which person he or she is. This would be a 'thin' veil of ignorance. The 'thin' veil would permit for the degree of impartiality.

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<sup>70</sup> Ibid., p.121.

A thin veil of ignorance, though it provides for a 'thin' degree of impartiality, still is not sufficient, Rawls believes, to rule out unfair discrimination against minorities of people on the basis of religion, race and other characteristics that should be irrelevant to their political and civil rights.<sup>71</sup>

There is a differentiation between the 'thick' and 'thin' veil of ignorance which is also the distinction between Rawls's original position and the point of impartial spectator which is found in Hume, Smith, Sen and other Utilitarian's. Hume's judicious spectator is the moral point of view from which the moral judgments originate in terms of justice. According to the judicious spectator the complete knowledge about the personal and the general facts are important for the moral judgments. This is because it will be convenient for an impartial judge to figure out about the interests and the circumstances of the individual.

Rawls has a 'thick' veil of ignorance and the complete information of the person is not possible. According to Rawls the complete information about the individual will tend to distort the judgment which has to be taken in the original position which will further lead to a partial judgment and hence being an unjust act.

Recall that the parties are to choose principles of justice for the basic structure of the society, which are to be applied to assess the justice of existing societies and their basic institutions. To allow the parties knowledge of particular desires and interests, distribution of rights, and other historical facts would improperly skew their judgments. For whatever principles of justice were chosen would then properly reflect the status quo, including the very desires, interests, and facts regarding distribution that these principles themselves are to be used to assess. Any existing injustices would then bias choice of the very principles that are to be used to assess these and other injustices. Rawls regard a 'thick' veil of ignorance as necessary in order to abstract from the biasing conditions of the status quo.<sup>72</sup>

The reason why Rawls has a 'thick' veil of ignorance is because it places the parties equally in a very strong way. This idea here resembles to that of the Kantian interpretation and the moral constructivism. Rawls has presented the original position in such a way that it stages the person as free, equal and rational. The individuals in the society are placed as equal and free moral

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<sup>71</sup> Freeman, *Rawls*, p.180.

<sup>72</sup> *Ibid.*, p. 182.

persons. These persons would only know the characteristics and interests of themselves as the moral persons- the moral powers and so on. “The moral powers are the basis of equality, the features of human beings in virtue of which they are to be treated in accordance with the principles of justice”.<sup>73</sup> A thick veil of ignorance regards the equality of persons as the moral persons which further provides the same notion as that of Kant where Kant has been emphasizing on the autonomy and the dignity of the individual.

The procedure of veil of ignorance underlines the concept of fairness in Rawls’s distributive justice. It is one of the essential devices through which Rawls’ places on the knowledge of persons in the original position. “In original position, the participants are all faced with veil of ignorance about particular facts on the one hand and person conceived with regard to moral capacity for the conception of good and the sense of justice on the other.”<sup>74</sup> In other way, Rawls’s specification of justice emerges out of his constructive idea of the original position or hypothetical situation under veil of ignorance.<sup>75</sup>

The knowledge about a person’s social status, wealth, talents and moral character are not known because of the veil of ignorance. It is one of the fundamental conditions which do not mislead the contracting parties to favor a principle which is considered as unjust and unfair. The question which comes up is as such, why Rawls used the veil of ignorance to construct the fair principle of justice? The reason is that he wants participants in the original position to be unaware of the individual interest, skills, wants and abilities which mislead them to construct a principle of distribution which is partial for the betterment of some people and not for all. Moreover the impartial institutional principle fills the gap between privileged and underprivileged and reduces inequality, discrimination and conflict in the society.

It is also very necessary to discuss the idea of fairness which is the idea of justice in Rawls when we discuss the veil of ignorance. When we think about justice, one of the basic questions that come to our mind is: what does fairness implies and what makes a fair or just society? What rules should a society follow to have fair distribution of goods and resources? These are of course, one of the crucial concerns for the distribution of goods and resources when

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<sup>73</sup> Rawls, *A Theory of Justice*.

<sup>74</sup> *Ibid.*, p. 142.

<sup>75</sup> *Ibid.*, p. 136.

we talk about fair and unfair justice in terms of distribution of goods and resources. Moreover, if there would be sufficient resources for the betterment of everyone then there would no question of distributive justice. Hence, distributive justice of Rawls explicitly asserts on the “equal distribution of social goods so that each citizen adequately develops and fully exercise their moral powers.”<sup>76</sup>

Social goods, according to Rawls, consist of the following:

- a) Basic rights and liberties.
- b) Freedom of movement and free choice of occupation against a background of diverse opportunities.
- c) Powers and prerogatives of offices and positions of responsibility in the political and economic institutions of the basic structure.
- d) Income and wealth.
- e) The social bases for self respect.<sup>77</sup>

The above mentioned social goods in Rawls’s distributive justice do not rest solely on psychological, social and historical facts. “The list of goods rests in part on the general facts and requirements of social life, it does so only together a political conception of the persons as free and equal, endowed with the moral powers, and capable of being fully cooperating member of society”.<sup>78</sup> In justice as fairness, one objective view that is relevant in the notion of distributive justice is the primary goods. These are essential institutional requirement for the development of each individual as human being. Rawls says,

Primary goods are conceived as a scheme of equal basic liberties and fair opportunities , which, when guaranteed by the basic structured, ensures for all citizens the adequate development of and full exercise of their two moral powers and a fair share of all purpose means essentials for the advancement of their conception of the good.<sup>79</sup>

According to Rawls, primary social goods are distributed fairly so that each one will get fair share to lead a good life. There are two divisions of primary goods, namely, natural and social

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<sup>76</sup> Rawls, *Justice as Fairness: A Restatement*, p.57.

<sup>77</sup> Rawls, *A Theory of Justice*, p. 92.

<sup>78</sup> Rawls, *Justice as Fairness: A Restatement*, p. 58.

<sup>79</sup> *Ibid.*, p. 258.

primary goods. The former consists in person's natural endowments of characteristics that are essential for achieving some specific ends such as health, intelligence and physical strength. The social primary goods are opportunity, liberty, wealth, income and human respect not at the disposal of the person's natural endowment but at the disposal of the society. Primary goods are one of the basic rights that every individual desires because they apply it to receive the rational plan of their life.

In fact it is one of the means by which each individual can achieve their ends whatever those ends may be. Social primary goods are measurements of people's access to basic institutions because of the impossibility of redistribution of natural primary goods so that their ideas of good life irrespective of their interests would be fulfilled. Rawls distributive justice can be seen always in terms of justice as fairness as that is the basic idea of Rawls when he talks about justice. The state has always and is still suffering with the disturbed distribution of the goods and resources which creates a huge gap between the upper section and the lower section of the society that is the rich and the poor.

Looking at that condition we want to construct a society where all the individuals are considered to be equal and there are distributions of goods and resources in the fair manner. Justice as fairness can be taken care of by equality, equity, merit, need and veil of ignorance according to Rawls. "The idea of justice is often, though not always, roughly equivalent to the idea of fairness or equity. Equity is frequently contrasted with equality."<sup>80</sup>

Rawls justice is based on the equity principle rather than the equality principle which encourages that social goods should be distributed equally as the egalitarians believes. The equity principle of fairness is a concern of harmonious distribution and that it does not include any principle of strict equality. For instance, the fair shares are not same as equal shares. The difference between the two is that the fair shares depend on the merit and need. For instance, it is not fair that workers should not receive as much as an engineer and that those with greater need should not receive as much as an engineer and that those with greater need should give no more

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<sup>80</sup> Raphael, *Problem of Political Philosophy*, p. 119.

than those with less need, the opportunities should go to those who cannot benefit from them rather than to those who can.<sup>81</sup>

We must consider the same situations differently like every child has the right to education but the disabled child cannot be educated in the same manner which is meant for the other children, that disabled child deserves some extra attention and facilities. The needs of the special children are far greater than the physically fit children. Therefore justice has to be with equity and not equality. The discrimination here is morally relevant because there is a difference between a special child and a physically fit child. In case, such difference is not present then the discrimination would not be considered as morally relevant hence, making it an unfair act leading to injustice. It is fair to discriminate in favor of the needy, or the meritorious or able and it is unfair to discriminate between people who are equally needy. The rule is to treat cases alike unlike cases differently within a society.

Rawls conception of justice, particularly the distributive justice is based on equality which presupposes each and every individual are treated equally under the law. However, the principle of equality in the notion of distributive justice in itself is unjust in particular situation. In the scenario of distributive justice, the equality principle can lead to inequality because the requirement of a person can vary from one to another. "The idea of original position is to set up a fair procedure so that any principles agreed to will be just....now in order to do this I assume that the parties in are situated behind the veil of ignorance."<sup>82</sup>

If the concept of veil of ignorance was not introduced then justice as fairness will be difficult to achieve because person's intelligence, skills, gender, race, wealth, religion do not serve as a good reason to justify the principle distributive justice. One has to be impartial, unbiased and consistent while distributing goods and resources in the relevant manner. This criterion will rule out favoritism. It is very much evident that the impartial condition emphasizes on fairness, for instance, in a public exam, the answer of all the students should be marked in accordance with the impartial criterion while hiding the personal information about the person as that is not necessary.

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<sup>81</sup> Ibid., p 113.

<sup>82</sup> Rawls, *A Theory of Justice*, p.136.



Justice as fairness can be attained when we follow the original position which emphasizes on the notion of equality and the concern of which is that every individual should be better off so that the inequality between the rich and the poor can be removed. As an egalitarian, Rawls believes in equality among the individuals and the idea of equity in the distribution of social benefits and burdens. His contention is to distribute all social and economic goods and services equally except in those cases where an unequal distribution for the benefit of the worst off in society. Rawls fair justice acknowledges all personal attributes as being morally arbitrary, and thus justice requires the sense of equality and fairness. In short, D.D. Raphael has pointed out in his article entitled “Justice” that,

Rawls adapts the idea to an agreement about justice. He suggests that we can best understand the notion of justice by thinking of it as a set of principles that would be agreed upon by everyone if they had to decide in a hypothetical position, what should be the rules for distributing benefits and burdens in society.<sup>83</sup>

For Rawls, the veil of ignorance model in the hypothetical situation where,

Participants are all faced with a device i.e. veil of ignorance about particular facts. They are supposed to have general knowledge of psychology and the social sciences, but they do not know historical date or geographical location of their society, nor do they know anything about the individual capacities or social position of themselves or others. Rawls asks us to assume that they will form their judgment with an eye to self-interest. Since nobody knows whether he will be lucky or unlucky, rich or poor, clever or stupid, everyone will think it prudent to provide adequately for the worst possible case, since it might turn out to be their lot. And that, Rawls concludes, is justice, a set of rules which everyone would accept a fair. The rules would be accepted by everyone, thinking only of their own self-interest, because the veil of ignorance puts everyone in the same boat when planning for the future. And the same time the planning would have regard to all possible positions in society because the veil of ignorance makes any such position equally possible for any individual.<sup>84</sup>

In distributive justice, the veil of ignorance model plays a significant role to pattern the basic structure of the society where inequalities in the distribution of social goods should be

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<sup>83</sup> Raphael, “Justice”. *Problems of Political Philosophy*, p. 146.

<sup>84</sup> *Ibid.*, p. 147.

disappeared. Rawls identifies basic structure of the society with “the arrangement of major social institutions into one scheme of cooperation”.<sup>85</sup> For Rawls principles of determining the basic institutions of a society as to what is just are:

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

Second: Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to the positions and offices open to all.”<sup>86</sup>

These two principles of justice are chosen under an innovative device i.e. veil of ignorance which ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chances and social circumstances. Rawls has called, first principle as the principle of equal liberty, first part of the second principle as the principle of fair equality of opportunity, second part of the second principle is the difference principle. Moreover, the first principle embodies the notion of liberty on the one hand, and the other the first part of the second principles along with first principle embodies the idea of equality and the second part of the second principle guarantees fraternity.

These principles underlie social justice that how social goods are distributed on the one hand and the other some social good are more important than others which cannot be sacrificed for the sake of other goods. It emphasized that equal liberties take precedence over equal opportunity which takes precedence over equal resources. Rawls’s two principles arranged in lexical order where second principle cannot require even the slightest violation of the first principle.

Now equating with the two principles of justice, the representative in the original position under veil of ignorance would organize a well ordered society around the liberty principle and the difference principle. “These principles primarily apply to the basic structure of the society and they distinguish between those aspect of the social system that define and secure the equal

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<sup>85</sup> Rawls, *Justice as Fairness: A Restatement*, p. 43.

<sup>86</sup> Rawls, *A Theory of Justice*, p. 53.

liberties of citizenship and those that specify social and economic inequalities.”<sup>87</sup> The former implies principle of ‘equal personal liberty which is given priority over the demands of the second principle which relates to the equality of opportunities and to equity in the distribution of resources. Because liberty that human being enjoy cannot be violated on the grounds of wealth or distribution of economic resources among the people.’

The liberty principle states that each members of a society as a human being has an equal basic liberties compatible with the similar liberty for all. It reminds us of the Kantian notion of universal autonomy. Moreover, in Rawls view,

The basic liberties of citizens are roughly speaking political liberty (the right to vote and to be eligible for the public office) together with freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law. These liberties are all required to be equal by the first principle, since citizens of a just society are to have the same basic rights.<sup>88</sup>

The second principle applies to the distribution of income and wealth, the design of organizations that makes use of differences in authority, responsibility and chains of command. In other words, its first condition implies social and economic inequalities are to be arranged so that people with the same talents and willingness to use them should have the same educational and economic liberties.

### **PART 3**

#### **TRANSCENDENTAL INSTITUTIONALISM**

Rawls discusses the principles of justice with respect to the structure of the society. He says, “Primary subject of the principles of social justice is the basic structure of the society which

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<sup>87</sup> Ibid., p. 61.

<sup>88</sup> Ibid., p. 61.

means that the arrangement of the major social institutions into one scheme of cooperation.”<sup>89</sup> The basic structure of the society consists of the major social institutions, so here Rawls discusses about the term ‘institution’. The rights and the duties which we have discussed earlier are taken to determine the distribution of benefits and burdens in this institution. The principles which apply to these institutions are very much different from that of individuals.

The intricacy of the account of institutions goes in two different ways. The first of them deals with the distinction between institutions considered abstractly and institutions concerned concretely. The abstract concept of the institutions concerns with the possible form of conduct and the concrete one is concerned with the realization of the institution. It is very much possible to define the abstract and the concrete forms of institutions as just or unjust. The ways Rawls has explained the concrete form of institution is exemplified by Rawls’s example of the Parliaments which are regulated by rules and it is necessary to cohere with them.

Justice is but one of many virtues of political and social institutions, for an institution may be antiquated, inefficient, degrading, or any number of other things without being unjust. The notion of justice is not to be confused with an all- inclusive vision of a good society; it is only one part of any such conception. When applied to an institution (or a system of institutions), justice requires the elimination of arbitrary distinctions and the establishment within its structure of a proper balance or equilibrium between the competing claims.<sup>90</sup>

A person involved in an institution must abide by the rules and regulations of the institution. The principles of justice must be applied to these social institutions, where the rules of the institution are known to them who are a part of the institution. “The publicity of the rules of an institution insures that those engaged in it know what limitations on conduct to expect of one another and what kinds of actions are permissible.”<sup>91</sup>

The first sentence of *A Theory of Justice* goes like, “justice is the first virtue of the social institutions”.<sup>92</sup> Justice deals with the basic structure of the society, and the way in which the primary goods such as the rights and duties are distributed in the social institutions. The

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<sup>89</sup> Ibid., 47.

<sup>90</sup> Rawls, “Constitutional Liberty and the Concept of Justice”, p.01.

<sup>91</sup> Rawls, *A Theory of Justice*, p.49.

<sup>92</sup> Ibid.

distribution of benefits and burdens of the society must be taken care through the structural reform of the society rather than the individuals. Rawls has offered a philosophical interpretation for the role of institutions in forming people's interests, character and sense of justice.

In a well-ordered society, which is determined by the conception of justice, takes care of the understanding of the individuals as to what is just or unjust. The people should be and are well aware of the just and the unjust. It is essential to have knowledge about the constitutive rules of an institution which bases the rights and duties of the institutions and also pertains to the strategies and maxims. The rules should be framed in such a manner that the individuals are led by their interest which is socially desirable ends. The conduct of an individual should be reasonable and aligned in such a manner to achieve results from the standpoint of the social justice.

We should also take into consideration the distinction between the single rule, the institution and the basic structure of the social system. The reason behind this is that there is a possibility that one rule or more than that may be unjust but the institution may not be. Similarly, the institution may be unjust but the social system altogether may not be. "There is a possibility not only that single rules and institutions are not by themselves sufficiently important but that within the structure of an institution or social system one apparent injustice compensates for another".<sup>93</sup> It may also be the case that the social system may be unjust separately and the institutions may not be, the unjust nature of them is the result of how they are combined together to form one system.

In the basic structure of the society there are rules which adhere to the certain conception of justice. We as individuals of the society may not accept certain principles, but they are the principles of justice and determine the division of advantages from the social cooperation. We can also imagine that this conception of justice is accepted in the institutions are impartial and administered by the officials and the judges. The correct rule which has been defined by the institutions is adhered to and interpreted by the authorities. The formal justice expects that the laws and the institutions should be applied equally to those belonging to the class defined by them.

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<sup>93</sup> Ibid., p. 50.

The state of difficulty for distributive justice is the choice of the social system. The principles of justice which have been formulated earlier apply to the basic structure of the society and regulate how the institutions are blended into one. The idea of justice as fairness “that participants in the common practice is to be regarded as having an original and equal liberty and that their common practices be considered unjust unless they accord with principles which persons so circumstanced and related could freely acknowledge before one another and could accept as fair”.<sup>94</sup> The social system should be projected in such a manner that the distribution of benefits and burdens is just however the situation is. In order to accomplish this it is mandatory to set the social and economic process within the appropriate political and legal institutions. The basic structure is governed by a just constitution that insures the liberties of equal citizenship.

According to Rawls, the set of institutions are not sufficient on their own. He considers certain other factors for the same, namely, a just constitution that secures equal liberties of citizenship, freedom of thought and liberty of conscience. The fair equality of opportunity assures equal chances of education and that the government enforces free choice of occupation. Rawls further specifies a background institution that assures the basic structure is just. He further divides the hypothetical government into four divisions, namely, allocation, stabilization, transfer and distributive branch. Each one of the branches has the power to tax and enforce rules for certain specific ends.

The allocation and the stabilization are associated with the functioning of the market. “The allocation branch is to keep the price system workably competitive and to prevent the formation of unreasonable market power. Such power does not exist as long as markets cannot be made more competitive consistent with the requirements of efficiency and the facts of geography and the preferences of the households.”<sup>95</sup> “The stabilization branch, strives to bring out reasonably full employment in the sense that those who want finance are supported by strong effective demand.”<sup>96</sup> The two branches mentioned above are to maintain skillfulness of the market economy.

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<sup>94</sup> Rawls, “Justice as Fairness”, p. 71.

<sup>95</sup> Rawls, *A Theory of Justice*, p. 244.

<sup>96</sup> *Ibid.*

The last two branches are more ambitious. The role of the transfer branch is to check the maintenance of the social minimum and to keep a check whether it is maintained fairly or not. “The essential idea is that takes needs into account and assigns them their appropriate weight. The distributive branch will preserve an approximate justice in distributive shares by means of taxation and the necessary adjustments in the rights of property.”<sup>97</sup>

The idea of an institution demands the concept of equality, that the case which deals with equality is to be treated similarly. The concept of equality implements on the structure of the society as well, or a social system. What equality requires here is mentioned in the two principles of justice. “An institution satisfies the demands of equality if it is in accordance with the principles which would be acknowledged by rational and mutually self-interested persons from an original position of equal liberty.”<sup>98</sup>

Justice may be a virtue of institutions and we may be able to say that particular institutions are in themselves just or unjust. Rawls mentions that it is the duty of the individuals to support the institutions. He further adds, “we are to assist in the establishment of just arrangements when they do not exist, at least when this can be done with little cost to ourselves.”<sup>99</sup> The principles of justice are there to describe the responsibility of the institutions. The responsibility that the individuals have with respect to justice must focus on bringing out just institutions. The individuals should have the responsibility to maintain justice in the society, since the institutions are not individuals and it is not possible for them to take care of the responsibilities, so it is only the individuals who can assure that the principles of justice are followed in the institution to maintain justice.

For Rawls, the distributive justice has to be understood in terms of institutional principle. These principles are the best formulation of a social system which applies to basic structure of society. As he argues,

The basic structure is the primary subject of justice because its effects are so profound and present from the start. The intuitive notion here is that this structure contains various social positions and that men born into different positions have different expectations of

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<sup>97</sup> Ibid.

<sup>98</sup> Rawls, “The Sense of Justice”, p. 04.

<sup>99</sup> Rawls, *A Theory of Justice*, p.334.

life determined, in part, by the political system as well as by economic and social circumstances. In this way the institutions of society favor certain starting places over others. These are especially deep inequalities. Not only are they pervasive, but they affect men's initial chances in life; yet they cannot possibly be justified by an appeal to the notions of merit and desert. It is these inequalities, presumably inevitable in the basic structure of any society, to which the principles of social justice apply.<sup>100</sup>

However, the basic structure of society is not based upon personal interests or specific moral doctrine but it can be constructed through social cooperation where justice is defined through institutional procedure that claims to be fair. In other way, sense of fair cooperation plays an important role in society's socio-political and economic institutional arrangements. Rawls says,

I characterized a well ordered society as one designed to advance the good of its members and effectively regulated by a public conception of justice. Thus it is a society which everyone accepts and knows that the other accept the same principles of justice, and the basic social institution satisfy are known to satisfy these principles.<sup>101</sup>

A well ordered society regulates, promotes the sense of justice because each individual in original position or hypothetical situation assumes that the principle of justice are chosen with the mutual consent of its members. Rawls regards, institution is nothing but the basic structure of the society which specifies public rules as the result of social agreement. He argues,

A person taking part in an in institution knows what the rules demand of him and of the others. He also knows that the others know this and that they know that he knows this, and so on. The principles of justice are to apply social arrangements understood to be public in this sense.<sup>102</sup>

Rawls conception of justice is governed with an institutional mechanism where public rules and regulations specify certain form of action as permissible and forbidden. Hence he has chosen principle of justice in social arrangement which could determine the division of advantages. In this way problem of choosing between various social arrangements could be solved by defining a

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<sup>100</sup> Ibid.

<sup>101</sup> Ibid., p.454.

<sup>102</sup> Ibid., p.56.



set of principle which determine the division of advantage. Rawls breaks down his conception of justice into two components and arranges them according to the lexical principle.

Rawls's distributive justice is a type of procedural justice where justice lies in the fair principles which regulate social practice and institutions. Moreover, contractarian approach to justice has been subject to a lot of criticisms because the participants of the social contract are mutually disinterested in identifying just institutional arrangements for a perfectly just society. It focuses on "identifying fair institutional arrangement in the basic structure of the society and can be called transcendental institutionalism".<sup>103</sup> It is transcendental because it is looking for an ideal society which is regulated by fair institutional arrangements and just principles.

Then, the question arises: is justice the realization of institutions and rules or principles or is it concerned with the society as well? Moreover, Rawls himself criticized in his later work, *Political Liberalism*, where he criticizes justice as fairness through original position by arguing that, "...is a political conception and it is justified by reference to political values and should not be presented as part of a more comprehensive, moral or philosophical doctrine."<sup>104</sup> In other way, Rawls own criticism of his earlier position still amounts to the fairness of the institutions with liberal values.

There is still a lack of realization of the sense of justice not as a matter of judging institutions and principles for distributing primary goods but minimizing injustices at individual and social level. It may be emphasized that institutional choice and arrangement focused approaches to justice are not sufficient conditions because society consists of human beings who are outside of the institutions and the latter gets affected by the former.

Amartya Sen criticizes the contractarian approach because they have developed justice on the basis of hypothetical social contract, which has an insight into perfect or an ideal justice. "Their use of social contract underlies in perfect institutional arrangement can also be called transcendental institutionalism."<sup>105</sup> According to him transcendental institutionalism focuses on perfect justice in terms of fair institutional principle rather on relative comparisons of justice and

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<sup>103</sup> Sen, *Idea of Justice*, p. 7.

<sup>104</sup> Rawls, *Political Liberalism*, p. 20.

<sup>105</sup> Sen, *Idea of Justice*, p. 7.

injustice. Sen mentions, “Rawls original position is searching for perfection and it concentrates primarily on getting the institution right and it is not directly focused on the actual societies that would ultimately emerge.”<sup>106</sup> More importantly, the search for perfect justice could distract us from tackling real life, immediate injustices such as discrimination relating to education, skill, health, environment, etc. Sen is not interested in proposing the theory perfect justice rather he is interested to minimize injustice from the society. Hence, he proposes *realization focused comparison*<sup>107</sup> to justice where justice concentrates on the actual society related to human problems. Despite of all criticism about Rawls’s transcendental mechanism to construct a perfect institution, contractarian approach to justice plays an important role because it addresses problem of justice directly and not via social welfare.

Therefore, social contract in the form of original position has immense effect to construct a well ordered society where justice is considered to be the first virtue of social institution. In other way, the social contract as a device of representation in the original position plays an important role in the following way:

First, it models what we regard here and now as fair conditions under which the representatives of citizens, viewed solely as free and equal persons, are to agree to the fair terms of social cooperation whereby the basic structure is to be regulated. Second, it models what we regard here and now as acceptable restrictions on the reasons on the basis of which the parties situate in those fair conditions, may properly put forward certain principles of justice and rejects others.<sup>108</sup>

Hence, social contract theory in the form of original position ensures each and every individual to be free and equal as a basic criterion for an impartial distribution of social benefits and opportunities under Rawls innovative idea, which is the veil of ignorance.

Robert Nozick in, *Anarchy, State and Utopia* argues that only a ‘minimal state’ is committed to the enforcement of contracts and taking care of the individuals against the crime. Nozick proposes that the ‘fundamental question of political philosophy’ is not how a government

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<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Rawls, *Justice as Fairness: A Restatement*, p. 41.

should be organized but whether there should be any state at all. This position of Nozick is quite close to that of John Locke where he states that the government is authorized only to the degree that it promotes the security of life and property of an individual. Nozick states that the need to security of an individual's life and property vindicates only a 'minimal state' because it is not sure that the individuals will be secured in a fully governmental intervention.<sup>109</sup>

The difference between Rawls and Nozick is in the method of the distribution of the wealth to the individuals. In the place of Rawls's 'difference principle' Nozick adopts an 'entitlement theory' of justice. According to the entitlement theory of Nozick, an individual can hold various social and economic goods only if it is acquired through a just manner. The entitlement theory will be dealt in the next chapter.

Martha Nussbaum is not very satisfied with Rawls's theory of justice as there are many aspects which have not been able to fit in his theory. In fact the theory has not dealt with the applicability of the justice for the people with impairment. Human justice has to deal with the people with impairments. These citizens should be recognized and hence it requires the fulfillment of their basic needs which may be different to those of the physically and mentally fit people.

In Rawls's original position, the party is denied the knowledge of the race, culture, gender, religion, social class of an individual but is allowed the knowledge of their physical abilities. Nussbaum argues that the citizens who are deaf, blind, dumb may come out to be highly productive individuals, performing in a brilliant manner in their respective jobs. She further adds that the lack of productivity by the impaired members is not natural but it is the result of the discrimination which is there in the social arrangements. People with these impairments can do their work in the right manner if the arrangement around them is conditioned properly.<sup>110</sup>

Rawls conception of justice lies in the fact that for justice to be truly just, all individuals should be regarded equal rights under the law. This chapter is divided into three parts where I first dealt with Rawls as social contract theorists, where he mentioned the two principles of

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<sup>109</sup> Nozick, *Anarchy, State and Utopia*, p. 25.

<sup>110</sup> Nussbaum, *Frontiers of Justice*.

justice which are mandatory. The second part deals with the 'veil of ignorance' which is the tool for achieving fairness in the society. The third part deals with the institutions in the just society. For Rawls, we can place justice in the society when we construct just institutions.

Rawls conception of justice is a thought experiment which consists of the original position and the veil of ignorance. To look at the conception of justice, Rawls identifies the two principles of justice which deals with the liberty and equality of the individuals and he further talks about the inequalities which are there in the society should be maintained so that the least is also on advantage. From these two principles, Rawls derives an egalitarian conception of justice.

This work was open to a lot of questions which has been taken up by Amartya Sen and Robert Nozick. I will be dealing with them in the upcoming chapters. Nozick comes up with a libertarian response where he deals with the concept of entitlement. Sen questions on the veil of ignorance and he talks about the welfare in terms of justice and deals with the concept of welfare.

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## CHAPTER 3

### ROBERT NOZICK ON JUSTICE AS ENTITLEMENT: AN EXPOSITION AND EXAMINATION

In this Chapter, I shall discuss Robert Nozick, as a libertarian who has attempted to revitalize Kantian contention that right supersedes the idea of good. The notion of rights has been central to distributive justice in "entitlement theory" of justice. He criticises Rawls' position on State and substitutes it with 'minimal state' which overcomes the discrepancies in the distributive justice in a socialist, egalitarian and liberal direction. Nozick takes his position to follow from a basic moral principle associated with Kant's 2<sup>nd</sup> Maxim which states, one should always treat humanity as an end and never as a means. Nozick proposes the minimal state which constitutes a "framework for utopia" - an overarching system within the boundaries of which any number of social, moral, and religious utopian visions may be realized. It thereby provides a way for people even of radically opposed points of view - socialists and capitalists, liberals and conservatives, atheists and religious believers, whether Jews, Christians, Muslims, Buddhists, Hindus - to make a go of implementing their conceptions of how life ought to be lived, within their *own* communities, while living side by side in peace. This gives us, in Nozick's view, a further reason to endorse it. In order to organize the chapter, I will divide it into three parts:

#### **Part 1) Individual Right and Dignity**

#### **Part 2) Role of Minimal State in Nozick**

#### **Part 3) Nozick's Critique of Egalitarianism**

### PART 1

#### INDIVIDUAL RIGHT AND DIGNITY

Robert Nozick argues for individualism in the 18<sup>th</sup> century and capitalism in the 19<sup>th</sup> century. He is not an anarchist, but he purports radical individualism within the state structure. Nozick

claims, “the minimal state is the most extensive state justified.”<sup>111</sup> If the state gets involved in the broader roles than the function of providing protection against force, theft, fraud, enforcement of contracts, it is violating the individual rights of the agent. The most central thing to Nozick’s work is the individual right which are apparent from his statement on the preface of the book that, “individuals have rights, and there are things no person or group may do to them (without violating their rights).”<sup>112</sup> Nozick states that the rights of the individuals hold the utmost importance and one should not violate their rights in order to do anything.

*Anarchy, State, and Utopia* recreated the interest in the notion of rights which took centrality in political theory. Libertarianism is a political thought which holds the idea that the role of the state should be limited to protection, national defence, and the administration of the court of the law, with other duties which are performed by the government such as, welfare, education, social protection. The main defence of Nozick is the moral one, which states that the libertarian society is that which focuses on the rights and dignity of the individual.

Nozick disapproves the idea of redistribution and asserts that it contradicts the idea of self-ownership. Finding an alternative to Rawls’ theory, Nozick suggests his entitlement theory. Nozick tries to isolate people with individualism which is opposed to the fact that people are formed by the societies into which they socialize and live. Rawls contends for the state where the government is bound to provide the citizens with the basic needs for their living and also look after the welfare of the least well-off. This will imply that the state will take care of the basic facilities of the individual such as health care, education, welfare funded through taxation.

Rawls theory of justice has been discussed in the second chapter where I have discussed his original position and the veil of ignorance which can be remembered here while discussing Nozick’s theory. Let us briefly recall the two principles of justice in the original position, the first one focuses on equality and the second is divided into two parts which focus on the social and economic inequalities and their arrangement in the society.

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<sup>111</sup> Nozick, *Anarchy, State, and Utopia*, p. xxi.

<sup>112</sup> *Ibid*, p. xix.



The idea that Rawls is concerned, deals with how the primary goods, duties, and privileges should be distributed in the society. Rawls also suggests that it is justified to treat some of the individuals unequally where the unequal treatment given to one or some can improve the condition of the others. Hence, we can see that the concern Rawls has in mind is for the benefit and the welfare of the society and in order to achieve this, taxation is a legitimate way for the government.

Nozick asserts that the human beings are born with certain fundamental rights. Nozick eliminates the theories which have focused on the end-results, such as the distributive theories of John Rawls. He had a bent towards Kant's notion of 'individual inviolability', which states that one should not violate the autonomy and rights of an individual and we should never treat humanity as a means but always as an end. The individual should be respected and we should accept the fact of self-ownership.

It is faulty to treat people as means and use the person to achieve certain ends, and also to sacrifice one individual for another. Kant's Formula of the End in itself states, "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end."<sup>113</sup> Kant emphasized that we should not use people merely as means, but always treats them as ends, apart from the services they render. This came out more clearly when Kant gave the Formulation of Kingdom of Ends.

In speaking about it, he regarded those actions as good which in some way or the other lead to the welfare of the human beings. This formulation of Kant has introduced the idea of respect for humanity. Every person has a value in himself; we should never devalue them and also disrespect them. It is not the human beings per se but the humanity that we must treat as an end-in-itself.

The view of Robert Nozick states that the individuals have the full right to control their actions, which is known as the self-ownership right; they have full right on themselves in the same manner as we have full right over our property. While discussing the rights of the individuals, we see that Nozick has given the 'entitlement theory', where the individuals can

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<sup>113</sup> Kant, *Groundwork of the Metaphysics of Morals*, p. 91.

hold the property on an unequal basis also, if it has been acquired legitimately at the first place. The holdings which have been acquired justly, the interference with these holdings such as the imposition of the taxes would be indulging in his rights and hence violating them.

The general outlines of the theory of justice in holdings are that the holdings of a person are just if he is entitled to them by the principles of justice in acquisition and transfer, or by the principle of rectification of injustice (as specified by the first two principles). If each person's holdings are just, then the total set (distribution) of holdings is just. To turn these general outlines into a specific theory we would have to specify the details of each of the three principles of justice in holdings: the principle of acquisition of holdings, the principle of transfer of holdings, and the principle of rectification of violations of the first two principles.<sup>114</sup>

Nozick criticizes Rawls that Rawls has focused on the society rather than the individuals. "One thinks of the possibility that the whole social structure is just, even though none of its parts is, because the injustice in each part somehow balances out or counteracts another one, and the total injustice ends up being balanced out or nullified."<sup>115</sup> He believes that Rawls theory is inducing inequality in terms of gains made by different people, he also states that his theory of redistribution interferes with the individual liberties of the people. Opposed to the theory of Rawls, Nozick believes in the distribution of the primary goods according to the intellect.

Nozick's view of acquisition can be seen in Locke and we can see that a lot has been adopted by Nozick from the works of Locke, his idea of individual right, property right and the acquisition of unowned resources. John Locke states that the taxes should be charged in proportion to the property that is protected by the state for the owner. Adam Smith also claims that, "The subjects of every state ought to contribute towards the support of the government ...in proportion to the revenue which they subjectively enjoy under the protection of the state".<sup>116</sup> It has been stated by various libertarian thinkers, that anything valuable which is protected by the state is subject to taxation. It is essential to acknowledge that the taxes should be collected for the use of redistribution and to take care of the public goods and services, this will watch the 'distribution sector' and the 'allocation sector' of the society.

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<sup>114</sup> Nozick, *Anarchy, State, and Utopia*, p. 153.

<sup>115</sup> Ibid, p. 205.

<sup>116</sup> Smith, Adam, *Wealth of Nations*, p. 54.

Nozick accounts that individual beings are self-owners; the idea of self-ownership can be traced back to John Locke, who stated that the individuals own themselves, their bodies, abilities, talents. The individual is believed to have all the prerogatives with respect to them. This idea rules out the idea of slavery, as no individual can be owned by the other individual in any of the circumstances. As the humans are self-owner, this implies that the individuals have certain rights with respect to themselves, such as the right to life, right to liberty, right to the fruits of their labor and so on.

Since we own ourselves so the other individual possess no right to kill or murder me as this will be like damaging or destroying the property, the other has no right to kidnap me also or to remove my bodily organ for transplantation in someone else's body as this will be stealing my property. We cannot be forced to work for someone against our will. Since an individual owns himself, he has the right to decide what he has to do with himself and has the sole independence to make his or her own decisions.

The work of Nozick can be considered as a libertarian critique of John Rawls' *A Theory of Justice*. Nozick holds the view that the minimal state is the only justified state. The state must confine itself to the functions of the government, be it the judicial sphere, the system of the force, i.e., police and security or the protection of individuals or the property. His question of justice is based on the violation of human rights. There are three principles which have been discussed by Nozick on talking about the just holdings. The three principles are as following:

PRINCIPLE OF ACQUISITION: This principle deals with the things of the world, which do not belong to anyone, becomes appropriate objects.

PRINCIPLE OF TRANSFER OF PROPERTY: Every individual must be able to keep, trade and give away its property.

PRINCIPLE OF REDRESS INJUSTICES: This principle deals with the correction of inequities which results from the first two principles.<sup>117</sup>

Nozick argues that the respect of individual rights is the fundamental way of looking at the state and the only legitimate state is the minimal state that restricts its activities for the protection of life, property, liberty. Nozick is known for the idea of minimal state; the state which controls its

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<sup>117</sup> Nnaji for and Ifeakor, "Robert Nozick's Entitlement Theory of Justice: A Critique", p. 171.

activities for the protection of individual rights of life, property, liberty. The political philosophy of Robert Nozick fundamentally rests on the rights oriented libertarian account.

*Anarchy, State and Utopia* begins with an excessively forward remark stating that, “Individuals have rights, and there are things no persons or groups may do to them.”<sup>118</sup> These moral rights are understood as state of natural rights. These rights precede any social contract; they constrain the conduct of individuals, groups and institutions even in the absence of social contract. According to Locke, these rights are a part of nature which governs the pre-political and pre-contractual state of nature. The term pre-political has been used by John Locke and Thomas Hobbes in their social contract theory. The term means when there was no state and before coming into a contract how the state of nature existed.

The distinction between ‘claim’ rights and ‘liberty’ rights will enable us to be more precise about the state of nature rights that Nozick ascribes to each individual. Liberty-rights are absences of obligations. Claim-rights are moral claims against others for not acting in certain ways. When we speak of rights, we are speaking of composites of liberty-rights and claim-rights. For example, your right to scratch your nose consists in your having no obligation not to do so and others having obligations not to interfere with your doing so. Your moral liberty to scratch your nose is morally protected by your claim against others that they will not interfere with your doing so.

Individuals possess certain rights which are pre-political and pre-contractual. He is ascribing ‘claim’ rights to individuals which are also pre-political and pre-contractual moral obligations of each agent to not do certain things to other individuals.

Rawls takes the contractarian stance in this theory and Nozick have emphasized on natural rights. The utilitarian theory states that to view the social good of the society we can ignore the good of oneself or the other. One should look at maximization of the good of the society. But Rawls has rejected the view stating that this will ignore the separateness and distinctness of the individuals. Rawls summarizes his view on utilitarian by saying that:

If we assume that the correct regulative principle for anything depends on the nature of that thing, and the plurality of distinct persons with separate systems of ends is an

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<sup>118</sup> Nozick, *Anarchy, State and Utopia*, p. xix.

essential feature of human societies, we should not expect the principles of social choice to be utilitarian.<sup>119</sup>

Nozick discusses whether all actions crossing boundaries may be prohibited or should be subject to punishment. To this Nozick has a very surprising reply, he says that not all actions which cross the boundary may be punishable. He says that some actions which cross the boundary may be allowed, as long as compensation is paid to them.

Robert Nozick advocated Libertarianism which states that the role of the state in society should be limited, confined essentially to police protection, national defense, and the administration of courts of law and other tasks performed by governments like education, welfare, insurance taken over by religious bodies, and other private institutions operating in the free market. Nozick endorses such arguments, but his main defense of libertarianism is a moral one, his view being that whatever its practical benefits, the strongest reason to advocate a libertarian society is simply that such advocacy follows from a serious respect for individual rights.

If individuals are self-owners and end-in-themselves, they have certain rights, in particular right to life, right to property. These rights function as side constraints on the actions of others; they set limits on how others may treat a person.

Nozick's idea of self-ownership takes us towards anarchism. The minimal need has to be funded through taxation and that has to be taken care by the state. It would hence take taxation as forced labor or slavery but Nozick doesn't agree to this. According to Nozick even if anarchism existed it would eventually lead to minimal state that would not violate an individual's self ownership rights. According to him such a state would have to come into existence.

Nozick suggests us to imagine that if a geographical area is under no government and there everyone is responsible to take care of his right to life, property, security, liberty, then in such a situation the people of that area would form associations within that area who would be responsible of taking care of their security, one has to watch each other's property and also form punishments for those who would not follow the rights of the area and break the harmony of that region.

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<sup>119</sup> Nozick, *Anarchy, State, and Utopia*, p.153.

The members of this anarchist community themselves will form an association and give a charge to few people who would take care of the society of all in exchange of fee. With the onset of these, other people would like to compete with the formed group and hence will form its own group and then there will be multiple groups who would be in charge of the security of the people and there will be competition in the market. This will lead to fraud and also violation of certain rights of the individuals. People would be accusing a firm for violating the rights of the individuals and this will lead to havoc in the market.

To maintain harmony and peace in the society certain rules should be created and all the respective firms should be asked to obey the rules of the firm which would ensure the safety of the individuals and would also take care of the rights of the individuals. Eventually we will see that this anarchist community is being converted to an evolving state, this agency will still be a private firm rather than a government.

If certain clients accuse the protection agency of violating their rights, then in such a scenario should independents take in charge of or should the protection agency take hold? Nozick suggest that it is the protection agency who has taken the control to protect the rights of the individuals, and also to take care of the punishment and they are the ones who will decide whether they should be arrested or not and what nature of punishment should be given. The independents should have no say on it. The protection agency know the clients and they should have the exclusive rights to decide which of its clients is worthy of punishments and what sort of punishment that ought to be.

## **PART 2**

### **ROLE OF MINIMAL STATE IN NOZICK**

Now this situation leads to the 'ultra minimal state' where the independents could not defend their own rights and the protection agency took in charge but this was to avoid injustices being done to the independents and its clients. Now the protection agency has to compensate to the independents that were not able to defend their rights, they will compensate by defending their

rights by providing them the protection services it affords for its own clients. The 'ultra minimal state' has taken on another feature of the state; it will protect the clients within its borders.

A minimal state will hence evolve out of the anarchist society looking at both practical circumstances and the moral one. This would function in such a way that it does not violate the rights of self ownership. So the anarchist can have no principled objection to it. The details of the state originating process in Nozick are very different to that of the social contract thinkers. For Nozick the individual right does not arise but they exist very prior to the existence of state, this thought of Nozick is different from the social contract thinkers.

The critics of the minimal state of Nozick say that it demands too little of the government and hence they claim that a little more than a minimal state is essential to fulfill the requirements of the distributive justice. The state should engage in redistribution of taxation so that there is fair distribution of income, wealth in the society. Nozick's answer to this critic gives rise to his 'entitlement theory'. When Nozick talks about distributive justice, it implies that there is some authority in the center that controls the distribution of goods, income and wealth, as if they appear like the "manna from heaven". If Things fell from heaven like manna, and no one had any special entitlement to any portion of it, and no manna would fall unless all agreed to a particular distribution, and somehow the quantity varied depending on the distribution, then it is plausible to claim that persons placed so that they couldn't make threats, or hold out for specially large shares, would agree to the difference rule of distribution.

Nozick's theory of justice enumerates three principles of justice. Talking about the three theories of justice, the first is the principle of justice in acquisition, which says the appropriation of natural resources which no one has owned before. The second principle would be the principle of justice in transfer, governing the manner in which one might justly come to own something previously owned by another. According to Nozick, the transfer of the holdings is just if and only if it is voluntary. The final principle would be a principle of justice in rectification, which governs the accurate means of setting right past justices in acquisition and transfer.

The person who possesses things consistent with these three principles would be entitled to it, if one has abided by these three principles stated by Robert Nozick will have no complaint

against him. This is Robert Nozick's entitlement theory of distributive justice. A distribution of wealth in the society is just when everyone in the society is entitled to what he has, that is, has possessed the holdings with principles of acquisition, transfer and rectification. The distributions of wealth in the society have certain structures like the egalitarian structure. The entitlement theory of justice is historical and yet unpatterned, the justice of distribution is determined by certain historical circumstances. The idea is that the people get only what is consistent with the three principles of justice.

Nozick illustrates and defends the entitlement theory in a famous thought-experiment involving the basketball player Wilt Chamberlain. Imagine a society in which the distribution of wealth fits a particular structure or pattern favored by a non-entitlement conception of justice - suppose, to keep things simple, that it is an equal distribution, and call it D1. Nozick's opponent must of course grant that *this* distribution is just, since Nozick has allowed the opponent himself to determine it. Now suppose that among the members of this society is Wilt Chamberlain, and that he has as a condition of his contract with his team that he will play only if each person coming to see the game puts twenty-five cents into a special box at the gate of the sports arena, the contents of which will go to him. Suppose further that over the course of the season, one million fans decide to pay the twenty-five cents to watch him play. The result will be a new distribution, D2, in which Chamberlain now has \$250,000, much more than anyone else - a distribution which thereby breaks the original pattern established in D1. Now, is D2 just? Is Chamberlain entitled to his money? The answer to these questions, Nozick says, is clearly "Yes." For everyone in D1 was, by hypothesis, entitled to what he had; there is no injustice in the starting point that led up to D2. Moreover, everyone who gave up twenty-five cents in the transition from D1 to D2 did so *voluntarily*, and thus has no grounds for complaint; and those who did not want to pay to see Chamberlain play still have their twenty-five cents, so they have no grounds for complaint either. But then *no one* has any grounds for a complaint of injustice; and thus *there is no* injustice.<sup>120</sup>

This example portrays that it is not necessary that all distribution ways should have a pattern, it shows that there was no structure and pattern in this distribution theory, this was the just manner of being entitled to the amount earned by his fans for watching the basketball match. According to Nozick, the minimal state should be looked upon as "inspiring as well as right". The minimal

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<sup>120</sup> Nozick, *Anarchy, State and Utopia*, p. 161.



state constitutes in his view a kind of utopia. Nozick says that if an individual or a group wants to live according to the socialist or the egalitarian principles then they are free to do so. Further they can also establish a community of their interest but that has to be within the boundaries of the minimal state. The only restriction one has in this kind of a state is that they are forbidden to force people to join or contribute to that community.

The minimal state focuses on the framework of utopia where the social, moral and religious utopian visions may be realized. The example set before is a good and lucid example for us to understand the theory of Robert Nozick. I will briefly discuss the example and show it in the light of the three principles stated by the thinker. Let us consider the story of Wilt Chamberlain. Imagine a state that is running in a complete just state. In that same society, Wilt Chamberlain is a highly talented basketball player. Wilt decides to play in different cities in front of the crowd, and charge the audience 25 cents per person who wishes to visit and watch him play the basketball match. There are around a million people who visit to watch him play and now Wilt has around \$250,000.

Nozick wants to ask that in this situation, where the one million of the population have 25 cents less and Wilt Chamberlain has \$250,000 more is the situation just? Nozick states that this situation is a clearly just case. The people willingly and fairly gave 25 cents to Wilt and hence in this case the transfer was just. Let us further imagine the two different versions of the story.

**ACQUISITION:** Now imagine those spectators who found the quarters lying around and picked it up. Now in this situation is the possession of those quarters just? In this situation, possession of 25 cents is just. Finding something that does not belong to anyone can be owned and especially when it does not harm anyone.

**RECTIFICATION:** In this situation, Wilt does not charge anything from the audience but pickpockets 25 cents from every spectator. In this case, will this be just? This situation will not be just. Wilt should return all the money that he had pick-pocketed from the people.

This example that I have discussed earlier aligns with Nozick's theory where he has discussed the three principles of justice. Robert Nozick states that the distribution of wealth is just as long as it follows from the three principles of justice.

Justice of acquisition: In this if an individual acquires something justly that is previously unowned by anyone and acquiring this does not harm anyone or leave them worse off, then he can own it. As an example of finding something unowned and claiming it for one's self which is not, we might imagine a group of settlers arriving at their destination, and one person finding and claiming the unowned water source as their own. This sort of acquisition is NOT just because it leaves everyone else worse off (for instance, because the other settlers will all now die of thirst).

Justice of transfer: If someone who justly owns something transfers that willingly to the other, then it is just for the other to own that, provided that this does not leave the person worse off. Rectification of injustices: If someone unjustly owns something, by unjust transfer or acquisition, then the situation has to be rectified. In this case the possessions have to be restored to the rightful owner.

Nozick makes a distinction between principles that are historical and those that are non-historical. Historical principles of justice: If we were to examine the principles of the distribution of wealth, we cannot determine whether it is just or unjust unless we have some historical details about how this distribution came about. Non-historical principles of justice: The principles in which we have to determine whether the distribution is just or not, here we need to look at the distribution only and we do not have to know any of the historical details how this distribution came about.

The records in the past will show whether the distribution done to the individual or in the society has been just or not, whether it has been satisfying and delivered justice in the society. Nozick defines the historical principle of justice as; "Historical principles of justice hold that past circumstances or actions of people can create differential entitlements or differential deserts to things".<sup>121</sup> If the distribution system has been unjust and defective then it can be rectified according to the principle or removed and like this the distribution process moves from one stage to another in a just manner.

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<sup>121</sup> Ibid, p. 155.

The non-historical principles are also termed as “time-slice” principles. They are ones where we need to look at a single “snapshot” of a time (a single moment, or slice of time) in order to determine whether or not it is just. Nozick calls these non-historical views “end-state” views—i.e., ones which are only concerned with the resulting distribution, or the ends, rather than the means by which it is brought about.

The other principle the end-result principle is also termed as current time-slice principle. This principle deals with how duties, rights, and privileges are distributed and as the result of this distribution who has got what has been distributed. In this principle it is not about the distribution per se, but about the consequences of the distribution. If the end result of the distribution is satisfactory among the people then the distribution of the goods, duties, rights and privileges is said to be just. Nozick states this as, “According to current time-slice principles or the end-result principle, all that needs to be looked at, in judging the justice of the distribution, is who ends up with what, in comparing any two distribution one need look only at the matrix presenting the distribution.”<sup>122</sup>

But we have to see that Nozick’s principles are historical. Nozick’s notion of justice of ownership or possession is historical. For example, if we consider the case of Wilt Chamberlain and he has \$250,000 and the others has a lot less. In this we cannot know whether the distribution is just or not, unless we know how the distribution was brought about. In the example of Wilt Chamberlain, where the audience decides to give 25 cents to watch the game is a just situation. On the other hand, where Wilt pickpocketed the audiences, in this situation the means is not just, and hence this transfer was not just.

The utilitarian principles are non-historical. Contrast Nozick’s view with utilitarianism, which says that a situation is just if it is the one with the maximum amount of happiness (no matter how that maximum was achieved— the Organ Harvest example, where the end result of four patients being alive and one being dead is just, regardless of the fact that the doctor had to murder the one healthy patient to save the other four). Rawls’s Principles are Non-Historical, consider Rawls’s theory, which says (according to Nozick) that a situation is just so long as it is

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<sup>122</sup> Ibid, p. 154.

one where the worst off are as well off as possible (with no need to look at how this distribution is brought about).

**Patterned and Non-patterned Principles:** Nozick makes another distinction between the patterned and non-patterned principles of justice. **Patterned principles of Justice:** This principle states that we distribute goods according to some kind of pattern, structure or formula. For example: we might think that it is just to distribute goods according to merit, need, morality, uselessness, etc. **Non-patterned principles of Justice:** This principle states that we distribute goods not according to any pattern or structure.

Utilitarian Principles are patterned as according to them we distribute the goods in such a manner that maximizes the total amount of happiness. Rawls principles are patterned since Rawls theory states that we should distribute in such a manner that maximizes the situation of the worst off. Nozick's Principles are non-patterned: Nozick's principles propose that the transfer and acquisition of goods is always just so long as we do it willingly.

Nozick has criticized the patterned principle which is used by Rawls in order to explain his theory of justice. For instance, let us take the example of Wilt Chamberlain. In this case the distribution was said to be just when the audience was ready to pay 25 cents each to watch the game of Wilt Chamberlain, this was the just transfer by the people to the player. In this scenario, though the distribution has exemplified the just patterned, the end of the story brings the disturbance in the pattern. After the transfer in the account of the player, the player has now 250,000\$, now he is not equal to the rest of the people.

The question arises that, has this inequality benefited everyone? This is certainly not the case. In this case Rawls would say that the end-result is unjust. The transfer of 25 cents in the account of the player by the people has disturbed the pattern; the people behind the veil of ignorance will not choose the new pattern. This gives rise to the inequality and the focus has not been on the well-off of the disadvantaged people.

Since this kind of distribution is unjust in the society, for Rawls we should restore justice. In this we should restore the situation to the original state where the justice was delivered. How can this be performed? Should we take away Wilt Chamberlain's money and distribute it among the people as this has caused inequality in the society? This would be wrong and here injustice

would be done to Wilt Chamberlain. The money he earned was through his hard work, he had worked hard to become a famous player where people would come to enjoy his game.

Nozick states that it is difficult to maintain the patterned principle without violating the liberty of the other. In this situation people voluntarily transferred 25 cents from their pocket to the player and if this caused inequality this should not be considered unjust, this was done voluntarily and should be permissible. Rawls would consider for heavy regulation, redistribution of taxation, or both and this violates the rights of the individual which is not accepted by Nozick.

According to Nozick, the taxation (i.e., the redistribution of wealth) is unjust? To understand this let us take another example:

Peggy, the Materialist: Peggy likes to spend her extra time working a little more than she would need to in order to feed, clothe, and house herself—she works the extra hours so that she can buy some extra luxury goods and services (e.g., a giant flat-screen television, a nice car, an awesome laptop and cell phone, concert tickets, etc.). Sue, the Naturalist: Sue likes to work the bare minimum number of hours that she needs to in order to support herself. She spends her extra time hiking, swimming, looking at sunsets, and playing hockey sack. Peggy has more material wealth/more goods than other people—but her acquisition has not made anyone else better off. Should we take some of these goods away from her in order to try to restore the just Rawlsian pattern? To some extent, this is what we already do via taxation. Peggy will get taxed more than Sue. Sue on the other hand, will not get taxed at all (let's assume that she earns too little to be considered taxable by the government; i.e., she is below the poverty line). But, now imagine that Sue does reap the benefits of the taxation of others (e.g., by driving on roads built with tax dollars, and attending public schools, and being benefited by police protection, etc.). Is it fair that, just because Peggy enjoys the sorts of things that cost money (and therefore has to work longer hours in order to afford them), she is taxed a lot more than Sue (who says “the best things in life are free”)? Nozick finds it bizarre that we currently focus on monetary or material wealth, but not experiential wealth. Sue has a lot of great experiences, and so (like Peggy) she TOO is better off than most people in some sense—

though she has not made anyone else better off. She is “rich in life”. Perhaps we should tax Sue as well, but in a different way?<sup>123</sup>

The government takes the pay of 8 hours worth from Peggy each week, it should in the same manner take 8 hours of leisure time from Sue each week and give those hours to the government. This act of forcing Sue to work for the government for 8 hours a week is unjust, and taking away her liberty. This would be named as ‘slavery’. According to Nozick, “Seizing the results of someone’s labor is equivalent to seizing hours from him and directing him to carry on various activities.”<sup>124</sup> As Peggy works for 40 hours a week, it is considered that for 8 hours she is not working for herself but for the government as the government takes away that pay from her in the form of taxation.

In this case, is it justified that the pay of Peggy is taken by the government in the form of tax and not in the case of Sue. Nozick states, if it is wrong to take away the labor from Sue, it is also wrong to take away the labor of Peggy. Nozick considers this to be unjust and he states that one should be free to do what we want to do with our goods, even if it means that the rich are getting richer and the poor are getting poorer. It belongs to us and we have earned it through our hard work and no one has the right to take away the goods from us in any form. It depends on us whether we invest it in the form of luxury goods or experiential goods.

Forcing us to give away the time, money or goods that we have earned by our labor is slavery or theft and this is totally unjust. We are entitled to those goods or that income and it is considered wrong and unjust to take away our entitlements. This is the reason that the theory of Nozick is known as the “Entitlement Theory”. To answer the above questions, Nozick states that Peggy is aware of the situation that if she works more, she will earn accordingly and hence she will be taxed more so indirectly she consents to taxation. So taxing Peggy without forcing Sue to work for the government is just.

Nozick focuses on protecting the liberties of the individual. If I have achieved something in the just manner then no one can take away that particular thing from me as I am entitled to it. It will be wrong and unjust for the person to do so. Are we obliged to help the people who are least well-off? If someone comes to my house and has no clothes on and is starving to death, am I

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<sup>123</sup> Ibid, p. 271.

<sup>124</sup> Ibid, p. 275.

obliged to provide him with clothes and food? If I am obliged to share things with the less fortunate, then the one's who has more should be taxed accordingly and that money should be used for the well off or the less fortunate.

Nozick's theory lies on the liberty and the freedom of the individual, for him freedom is the most important thing. What should one do when one is too poor to even be free (he has no shelter, no food and no clothes, the basic necessities are not fulfilled).

Nozick has stated a theory of natural rights. He imagines a situation where there was no government, the state of nature, where there was no authority to take care of individual's right, so the individual's were protecting their own rights. "In a situation, where there is no government, the individuals will have to protect their own fundamental rights by using their mutual protection association."<sup>125</sup>

In a state of nature, individuals have certain procedural rights to protect themselves from violation or threats against their fundamental rights. A dominant protection protective agency might well want to curtail the non-clients who live in the area, the association operates from protecting their own rights against the agency's clients. The agency would do so if it concluded that the exercise by the independents, by the non-clients, of their procedural rights of protection sometimes actually harmed the agency's own clients or, even that such exercises might harm them on occasions. Such a conclusion would be drawn, especially, where the non-clients exercise their own procedural rights of protection often seemed to the protection agency to be ill judged or excessive and thus highly risky to the rights of the agency's clients. (The independents might rely on ill-behaved guard dogs, or set poorly designed booby traps in dubious locations, or engage in harsh punitive or even preventive raids against nearby outsiders).<sup>126</sup>

As I have discussed it in the first section, the members of the society rely on the mutual protective association where the agency has to protect the rights of the individuals. "Nozick believes that no state more extensive than the minimal state can be justified".<sup>127</sup> He argues this proposition in two stages. The first stage deals with the just transfer that occurs between the individuals. Nozick's account of just holdings through transfer presupposes the statement that the

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<sup>125</sup> Ibid. p. 12.

<sup>126</sup> Martin, Rex, "Rights and Economic Justice in Nozick's Theory", p. 7.

<sup>127</sup> Nozick, *Anarchy, State and Utopia*, p. 149.

holdings had been acquired, which had been previously unowned, and this directs us to the second stage of the argument.

Nozick first talks about just holdings (they can be either income or personal property). In one case, the person is entitled or has a right to holding where acquiring of income or property is justly done and in the other case, something which has been justly acquired is voluntarily transferred to someone else. Nozick states, “in a sequence of just acquisitions and transfers whatever results is just. Nozick describes this entitlement theory as historical; it depends on what actually has happened.”<sup>128</sup>

Nozick’s best example of the just transfer is of the basketball tickets of Wilt Chamberlain. Let us discuss the second stage of Nozick’s defense of the minimal state. “The argument for just and voluntary transfers presupposes (by hypothesis or as an idea of reason) that, at some point, something previously unowned was justly acquired by an act of original acquisition. Here, on this latter point, Nozick draws on Locke, not on Locke’s idea of mixing one’s labor with that thing nor on Locke’s idea of the value added through labor but, rather, specifically on Locke’s proviso that as much and as good for others must remain when one takes a previously unowned thing, for example, a parcel of land, from the common stock.”<sup>129</sup>

An individual’s ability to use a thing or something similar to that is not reduced by someone else owing that particular thing. But owing of a particular thing under a specific set of circumstances involves a reduction or denial of usage by the other, which in hand makes the situation worse. Nozick calls this aspect as the Lockean proviso.

When talking about distributive justice, we see that the goods, income, property that is to be distributed or transferred to other individuals is previously acquired by someone. Like the goods belong to the person or the government or the nature and the property or income belongs to an individual and he can transfer it to the other individual, so the main point which comes in here is the acquisition of the holdings, which one holds in before.

The subject of justice in holdings consists of three major principles which have been discussed earlier as well. The first to discuss is the original acquisition of holdings, the

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<sup>128</sup> Ibid., p. 152.

<sup>129</sup> Martin, Rex, “Rights and Economic Justice in Nozick’s Theory”, p. 8.



ownership of the unheld things, which have not been previously owned by anyone. This focuses on the ownership of the things not previously owned by anyone and the process which one should follow for the acquisition is to be just. The other one is transfer of holdings from one person to the other. One should be aware of the process of the transfer of holding from one person to the other? By what manner and how should a person acquire a holding (income or property) which is owned by someone else? This principle focuses on the transfer who takes place voluntarily, transfer in the form of the gift, and also by fraud.

If the world were wholly just, the following inductive definition would exhaustively cover the subject of justice in holdings.

- 1) A person who acquires a holding in accordance with the principle of justice in acquisition is entitled to that holding.
- 2) A person who acquires a holding in accordance with the principle of justice in transfer, from someone else entitled to the holding, is entitled to the holding.
- 3) No one is entitled to a holding except by repeated applications of 1 and 2. <sup>130</sup>

A distribution of the holdings such as income or property is just only if the distribution is done in the manner that the person is entitled to the holdings that he possesses. "A distribution is just if it arises from another (just) distribution by legitimate means. The legitimate means of moving from one distribution to another are specified by the principle of justice in transfer. The legitimate first 'moves' are specified by the principle of justice in acquisition. Whatever arises from a just situation by just steps is itself just".<sup>131</sup> Some people hold the holdings of another person through an unjust manner such as by stealing from others, through fraud, slavery and seizing their product. These modes of transition are not permitted; some people acquire the holdings through means which have not been sanctioned by the principle of justice in acquisition.

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<sup>130</sup> Nozick, Robert. "Distributive Justice". p 47.

<sup>131</sup> Ibid, p. 48.

### PART 3

#### NOZICK'S CRITIQUE OF EGALITARIANISM

Nozick also points at situations where one person voluntarily provides gifts to the other individual may not be just. In a situation, when a man offers his valuable to the thief, in this case the transfer of valuable is not just. This is unjust as the thief is not entitled to his ill-gotten gains. The justice in holdings is historical; it depends upon what actually has happened. There are situations in which the holdings are neither acquired, nor transferred but are stolen or taken as a means of fraud or enslave them seizing their product and preventing them from living as they choose, or forcibly exclude others from competing in exchanges. The third principle arises from the injustices in the past, the previous violations of the first two principles of justice in holdings. This has raised the third principle of justice in holdings: the rectification of injustice in holdings.

The general line behind Nozick's theory is that the holdings of the individual are just if the person is entitled to them by the principles of justice in acquisition and transfer or by the principle of rectification of injustice. If each individual's holdings are just then the total set of distribution is just.

I will further discuss Locke's principle of justice in acquisition. The idea of the entitlement theory draws light upon the nature and defects of the conceptions of distributive justice. The entitlement theory of justice in distribution is historical; we will see that the distribution is just only on how it came about. In contrast, current time slice principles of justice states that the justice of distribution is looked upon how the things or resources are distributed among people, as judged by few structural principles. A utilitarian will look at the things upon how the things are distributed by seeing the greater sum of utility. The same would be of the individual who would look at trade-offs between the sum of happiness and equality. These things will be controlled by the current time slice principle, by focusing on who should end up with what. Where one compares between the distributions, one should look at the matrix presenting the distributions.

The structurally identical principles are equally just, we see that they are structurally identical when they have the same profile, just the difference is of the individuals who are occupying the situation. The current time-slice principles has a theory called welfare economics where the matrices of the distribution of the current information is looked upon.

The traditional socialist view states that the workers are entitled to the thing or resource and full fruits of their labor they have gained through their hard work. The distribution would be unjust if the labors are not given what they are entitled to. We see that such entitlements are looked upon based on the past. “No socialist holding, this view would find it comforting to be told that because the actual distribution A happens to coincide structurally with the one he desires D, A therefore is no less just than D; it differs only in that the ‘parasitic’ owners of the capital receive under A what the workers are entitled to under D, and the workers receive under A what the owners are entitled to under D, namely very little. Rightly, in my view, this socialist holds onto the notions of earning, producing, and entitlement. Desert, etc. and he rejects current time slice principles that look only to the structure of the resulting set of the holdings. (The set of holdings results from what? Isn’t it implausible that how holdings are produced and come to exit has no effect at all on who should hold what?) His mistake lies in his view of what entitlements arise out of what entitlements arise out of what sorts of productive processes.”<sup>132</sup>

In contrast to the end result principles of justice, the historical principles of justice states that the past situations and actions of people can create differential entitlements. We can see that the injustice can be worked by moving from one distribution to another structurally identical one, and in the other case, violates an individual’s entitlements and hence not fit in the actual history.

The entitlements principles of justice that has been stated are historical in nature, to understand their nature; we have to distinguish it from another class of historical principles. To understand this in a better way, we have to consider an example of the principle of distribution according to moral merit. This principle will see how the distribution shares vary directly with moral merit. No individual should have the greater share than anyone whose moral merit is greater. In the other case, let us substitute ‘usefulness to society’ instead of the ‘moral merit. Or

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<sup>132</sup> Ibid, p. 51.

instead of ‘distribute according to moral merit’ or ‘distribute according to usefulness to society’, we should consider ‘distribute according to the weighted sum of moral merit, usefulness to society and need. The distribution is patterned if it is according to some patterned principles.

No end-state principle or distributional patterned principle of justice can be continuously realized without continuous interference in people’s lives. Any favored pattern would be transformed into one unfavored by the principle, by people choosing to act in various ways: e.g. by people exchanging goods and services with other people, or giving things to other people, things the transferrers are entitled to under the favored distributional pattern. To maintain a pattern one must either continuously interfere to stop people from transferring resources as they wish to, or continually interfere to take from some person’s resources that others for some reason chose to transfer to them.<sup>133</sup>

When we talk about the distributions of the resources and goods in the society, there comes a clash between the egalitarians and the libertarians. In order to provide everyone with food, shelter, medical, education, we must take resources from the wealthy members of the society and distribute it equally to the one who cannot afford and are less well off. This egalitarian view and their rights come at an expense of the rights and freedoms of the libertarians. Robert Nozick is a libertarian and his position is that if an individual acquires his property and wealth in a just manner, then the person owns it and hence they can fairly pass it on to their children and further on in the family. Nozick believes that the property and wealth of the individual and its distribution should not be decided by the government or the state as a matter of a public policy. The state should not interfere in the matters of the individual and the interference should be as minimum as possible.

As you read Nozick, ask yourself whether you agree with him that the state has no right to the wealth legitimately earned by individual citizens. Also, try the thought experiment. Suppose you want to set up a small business in your home town. Think of all the facilities and infrastructure that the town provides or makes possible (roads, telephone, water, sewage, internet servers, cable links, banks, police and legal services, post office and law governing the use of such facilities). How likely is it that your business would succeed

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<sup>133</sup> Ibid, p. 58.

without access to these facilities? Likewise, consider the education- so necessary for your business- that you have received through the public education, provided by your town. Is the town entitled to a just 'return' on its investment? What would be the impact on your new business if you had to pay private providers for all these services? Do you think the state should be free to use tax revenue to equalize the opportunities of all its citizens, or should it have to limit its budgetary expenses to matters of national infrastructure- highways, banks, military, etc?<sup>134</sup>

Rawls theory of justice was based on liberty, equality and inequality, the philosophy was based on how the distribution of resources should take place in the society and how it should be of advantage to the least well-off. On the other hand, Nozick's theory of justice came up in response to that of Rawls and his theory is based on rights. The libertarian political theory believes that the state is the night watchman which implies that the state should perform its minimum functions in the society.

The state had to maintain law and order, stop violence and take an action against it, to fight the foreign aggressors and to stop the fraud and theft happening in the state. The functions of the state could not be confined to the above activities and hence the state that performed these actions came to be known as the minimal state. The liberal thinkers believe that more the functions of the state, the more infringement of rights of the individuals take place. Although the minimal state has the minimum functions to perform, still it has enough power to enter the rights of the individual. The minimal state is the most extensive state and hence it is the justified state.

The minimal state has been justified for the reason that this kind of a state is the best vehicle for arriving at distributive justice. The political theory is under the duty to look that no one is deprived of justice and to achieve a just situation the state will have to interfere and take action against any injustice happening in the society.

Robert Nozick's theory of justice is based on rights and the rights come from the concept of entitlement. One has the right to a particular thing means that one is entitled to it. If we talk

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<sup>134</sup> Blocker. H. Gene, *Anarchy, State and Utopia*, p. 2.

about justice in terms of the distribution of rights, income, privilege then it is the entitlement of the rights, income, wealth and privilege. Thus, the distributions of justice and entitlement theory of justice are same. The entitlement theory of justice has three principles according to which we are able to decide whether the possessions of income, wealth, property are just or not.

When we see that the three come under one head, then we can see that it gives shape to a precise theory of justice. Nozick states; “The general outlines of a theory of justice in holdings are that the holdings of a person are just if he is entitled to them by the principles of justice in acquisition and transfer or by the principle of rectification of injustice. If each person’s holdings are just then the total set of holdings is just.”<sup>135</sup>

The question arises that how does one come to know that the injustice has been done to someone. Nozick states that there has been a record in the past and we must look into the history of the other case and decide from various sources of information people gather the news that something wrong has been done and one works on rectifying the situation.

The distribution of the rights, duties, goods, resources, property, privileges should be clearly stated, it only then one can determine whether justice has been delivered or not. We also get to know about the just in the distribution is through the comparison, while one is comparing the situation which can be either from the past or from the consequences of the other set of distribution it is then that one can determine whether justice has been delivered or denied. According to Nozick, it is only through the historical principle that one can tell the exact nature of justice. If the procedure of the distribution is defective or not accurate then one can change the procedure in order for justice to be assured.

For a concrete theory of justice it is necessary to focus on the entitlement concept, what are we justly entitled, how has the distribution of rights, duties, goods, resources and privileges happened in our part. If there has been any unjust activity in the acquisition or the transfer then it must be rectified else the system of distribution will be defective. The entitlements of the rights,

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<sup>135</sup> Nozick, *Anarchy, State and Utopia*, p. 151.

property, income and wealth will be unjust, where one may lose his just entitlements to the unjust individual leading to the defect in the system of distribution.

Nozick talks about the patterned principle. He states, “Let us call a principle of distribution patterned if it specifies that the distribution is to vary along with some natural dimension, weighted sum of natural dimensions, or lexicographic ordering of natural dimensions”.<sup>136</sup> The distribution of rights, things should be controlled by certain criterions such as merit, moral, usefulness to society. The distribution of rights, duties, and goods should depend on the moral, merit, usefulness in the society. This means that if an individual has greater moral merit or has greater usefulness to society then he must own the large number of shares or he must be rewarded with more of the rights or the wealth. This would reject many other principles such as the liberty or the equality principle stated by Rawls.

Nozick was very much aware of the shortcoming of the patterned principles and has stated a few criticisms. Nozick suggests that justice depends on both- the giving aspect and the receiving aspect of the property and the goods, but the patterned principle focused on the receiving aspect more and ignores the giving aspect. This becomes a one side gain. Secondly, there arises a conflict between a patterned principle and the end-result principle, as the patterned focuses on the moral merit which is of the past and hence it is historical which is totally opposed to the end-result principle.

Nozick’s own theory of justice is an historical unpatterned theory. It is an entitlement theory in which the distribution of individual property-holding is just if it is a consequence of a fair acquisition. The only other aspect of justice is rectification, the principle which allows past injustices that is unfair acquisition to be corrected.<sup>137</sup>

Any theory which is related to property rights or the acquisition of the property or inheriting the resources is bound to reflect on Locke’s theory of acquisition. Locke in his social contract theory has also discussed the property rights and acquisition of property in the just manner.

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<sup>136</sup> Ibid, p. 156.

<sup>137</sup> Nozick, “Distributive Justice”, p. 9.

According to Locke, a person who has touched the untouched part of nature and used it in a proper way with his labor, that part of the usable land becomes the property of the individual. This is the acquisition of the land by the person for his personal use to fulfill his requirement; this is the acquisition of the property in the just manner. This kind of acquisition is of a problem, if everyone starts doing in the same manner then there will be a shortage of land one day and hence everyone will not be able to satisfy his requirement.

The main factor behind is that of labor, everyone can acquire the land but it will be the dirt with his labor. Locke made such a statement looking at the population at that time and he thought there would be enough land for people to acquire with this method. “Whatever then he removes out of the state that nature has provided and left it is he has mixed his labor with, and joined to it something that is his own and thereby makes his property. There is enough and as good left in common for others.”<sup>138</sup>

Nozick’s work has largely focused on the distribution aspect considering the acquisition, transfer and also the rectification. He has neglected the production of the resources and things. When we are talking about justice and specifically distributive justice, we need to look into the production also, not just the distribution. In a society which is basically formed of two opposing class, the economically strong and weak class, then in this case it is a must that the economically weaker section of the society will be deprived of justice. The drawback that lies in the theory of Nozick is that the justice is all connected, the social, the economic and political aspects. Nozick’s theory is least concerned about the connection of the social, political and economic aspect of justice. His theory is based on certain principles instead.

Nozick’s view on libertarianism is an appeal to a moralized account of freedom. According to Nozick, we should be free in all respects from external limitations; the only limitations which are justifiable are by the ones of self-ownership. Nozick’s theory of justice has been drafted as a theory against the traditional distributive theories. The distribution is just or not depends totally on how it came about.

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<sup>138</sup> Locke, *An Essay Concerning The True, Original, Extent and End of Civil Government*, p. 15.



Nozick states that the person owns himself, this is his self-ownership theory. It states that the individual has all the rights to use his body as the slave owner does to his slave. Self-owners enter into the relation where one exploits the other, and this kind of relation is not unjust as long as the accumulation of wealth has been cleaned up. If an Asian immigrant in any of the states of America accumulates some savings and opens a grocery store on the corner of the street and hires some individual for labor, in this case the exploitation is not unjust. According to Marx, workers are the rightful owners of their labor power and this Lockean view is known as the 'bourgeois right' when he described the phase of society in which the distribution of the income is done according to the need of the individuals.

To bring the chapter to close, it can be said that Nozick has focused on the rights of the individuals more than on the distribution of resources, income and privileges. His theory of justice is based on the entitlement theory of justice which consists of the three major principles which have been discussed at length in part 1 of this chapter. The principles are principle of acquisition, principle of transfer and principle of rectification. They deal with how we acquire certain resources and the property and the transfer of the holdings from one individual to the other or the group and lastly the principle of rectification which deals with rectifying the injustices which have been done in the past. Nozick comes up with his idea of the minimal state, the state which takes care of the rights of the individual but has no right to interfere the lives of the individuals deeply by encroaching their rights.

There are different theories of justice like the patterned, unpatterned, historical and unhistorical. Nozick's entitlement theory is historical and unpatterned as Nozick has established through the example of Wilt Chamberlain that the unpatterned theory of justice are also just. The concept of self-ownership is appealing especially for those who believe in the strong foundation of individual rights. The idea that I belong to myself and not to any state or community explains that it is unjust to sacrifice my rights for the welfare of others.

Following up with the libertarian critique of Rawls by Nozick, I will move to the next chapter on Amartya Sen and his critique to Rawlsian theory. Sen critiques the transcendental institutionalism and proposes the *realization-focused comparison* which is primarily interested in

removing the injustices prevalent in the society. He proposes the *niti* and *nyaya* approach and formulates the capability theory by arguing that liberty is at extreme in Rawls and questions why hunger, medical neglect are regarded less important than liberty.

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## CHAPTER 4

### AMARTYA SEN ON JUSTICE AS WELFARE: AN EXPOSITION AND EXAMINATION

Justice as welfare through capability approach tackles the issues by highlighting human beings having dignity and with their ability to pursue their own ends. But they have divergent views on the concept of capability to promote human welfare. For Sen, capability is a comprehensive moral doctrine since it simply specifies some necessary conditions for a decently just society, say, gender discrimination, in the form of a set of fundamental entitlements of all citizens. Sen criticizes the original position, i.e. ‘veil of ignorance’ of Rawls’ theory of justice. Sen has also criticized the utilitarianism of Bentham and Mill on the ground that act utilitarianism and rule utilitarianism along with hedonistic calculus cannot help us much either in minimizing injustices or enhancing happiness. Instead of transcendental institutionalism, Sen proposes *realization – focused comparison* which is primarily interested in removing the manifest injustice from the society and hence he goes to ‘retreat of justice.’

Sen proposes that the place of impartiality in the evaluation of social justice and social arrangements is central to the understanding of justice. Sen argues that Kant and Rawls have developed perfect justice to concentrate primarily on getting the institutions right with transcendental institutionalism, and it is not directly focused on the actual societies that would ultimately emerge. He has distinguished between *niti* and *nyaya*<sup>139</sup>, both concepts give the vision of justice but the notion of *nyaya* underlies relative justice in terms of individual’s suffering and with this, I will formulate and understand justice in broader sense for the sake of entire humanity. I will bring out the discrepancies and the implications between well-being (collective) and happiness (individualistic) to substantiate minimizing injustice in Sen. In order to organize this chapter, I will divide it into the following parts:

#### **Part 1) Freedom and Well-being**

#### **Part 2) Capability and Re-visiting Impartiality**

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<sup>139</sup>Sen, *The Idea of Justice*, p.20.

### Part 3) Public Enlightenment: Re-visiting Goodness

#### PART 1

#### FREEDOM AND WELL-BEING

I will begin this section by discussing the *niti* and *nyaya* approach or the arrangement-focused comparison and the realization-focused comparison which is quite momentous. In the Rawlsian theory of justice as fairness, we see that the entire focus of justice is on the ‘just institutions’ rather than focusing on the ‘just societies’.

We are trying to wrestle with injustices in the world in which we live, with the combination of institutional lacunae and behavioral inadequacies, we also have to think about how institutions should be set up here and now, to advance justice through enhancing the liberties and freedoms and well-being of people who love today and will be gone tomorrow. And this is exactly where a realistic reading of behavioral norms and regularities becomes important for the choice of institutions and the pursuit of justice. Demanding more from the behavior today than could be expected to be fulfilled would not be a good way of advancing the cause of justice.<sup>140</sup>

Sen mentions that the need for an accomplishment-based understanding of justice should be linked with the lives that the people are living. One must not neglect or be indifferent to the human lives, experiences, realizations. Institutions and the rules are very crucial for the justice but the actuality of the world goes above the organizational picture. The imagination may be as perfect and beautiful but we cannot live our lives on the grounds of the imagination, we have to face the reality no matter how it is. So, we have to focus on the realization-focused arrangement more than the arrangement-focused.

In investigating the limitations of focusing on the index of the primary goods in the formulation of the principles of justice in the Rawlsian general approach, it is not, my intention to suggest that all would be well in his transcendental institutionalist approach of concentration on primary goods were to be replaced by direct engagement with capabilities. The serious difficulties arising from Rawls’s transcendental rather than

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<sup>140</sup> Ibid, p. 81.

comparative orientation and from the purely institutional focus of his principles of justice would remain, no matter what informational focus is used to assess distributional concerns. I am arguing here that in addition to the general problems of relying on a transcendental institutionalist approach, Rawlsian theory is further impaired by its concentration on the primary goods to deal with distributional issues in its principles of justice.<sup>141</sup>

We see the clear departure from Rawls in Sen's writing as his focus is more on the actual realizations of the world which cannot be avoided when considering social justice. Rawls and Kant took up the contractarian approach and focused on perfect justice, whereas Sen takes up the capability approach and focuses on minimizing injustices. The chapter will focus on justice as welfare through freedom and well-being of an individual, which can be developed considering the capability approach. We have seen earlier that Kant have given a lot of focus on freedom and autonomy of an individual. I will briefly discuss how Rawls and Sen depart in thought.

Sen argues that the excessive emphasis on liberty in Rawls' theory of justice is problematic in itself. Sen argues that hunger, starvation, medical neglect and other such issues should be given more importance than personal liberty as an important aspect of justice. Second, in the difference principle, Rawls judges the opportunities that people have through the means they possess. It means those who have access to primary goods can easily access the opportunities. Sen problematizes this straight connection between available means and opportunities. He gives an example of disabled person. A differently abled (disabled) person can do far less with the same level of primary goods and income than the able-bodied human being. A single woman needs more support and care in taking care of her family than any male person to take care of his family. Thus Sen strongly argues that an access to only primary goods will not enhance the capabilities of people so that they can get access to the available opportunities.

The third most important criticism Sen proposes is in the difference between *niti*-centred and *nyaya*-centered approach. The former idea, that of *niti* relates to organizational properties as well as behavior correctness, whereas the latter, *nyaya*, is concerned with what emerges and how, and in particular the lives that people are actually able to lead. Sen argues that Rawls' theory of justice is closer to *niti*-centred approach. In the Rawlsian system of justice as fairness, direct

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<sup>141</sup> Ibid, p. 262.

attention is bestowed exclusively on 'just- institutions' rather than focusing on 'just societies' that may try to rely on both effective institutions and actual behavioral features. So the Rawlsian understanding of justness would not be able to bring substantive changes in society. Sen thus blames the Rawlsian theory of merely presenting 'the political conception of justice' by creating a base only for just institutions and ignoring the inescapable relevance of actual behavior of people and as well as the actual social realization of those principles.

The fourth criticism Sen presents of the contractualist approach of Rawls theory of justice. Rawls develops his approach as a contrast to utilitarian understanding of justice but Amartya Sen has issues with it. For Sen, the "Theory of justice" provides transcendental solutions and more conscious of the demands of institutions and rules. It completely ignores the fact that what kind of role these theories are playing in the social realization and formulations of these principles, whether these theories are concerned with the voices of those who are not the part of contract.

Fifthly, Sen critiques Rawls theories of justice in terms of its lack of global perspectives. Rawlsian theories of justice take into account people but this group of people is limited only to a polity which restricts it within the limits of nation states. Thomas Pogge has attempted to expand this Rawlsian understanding of justice to the point where it would handle the global aspects of justice. Sen argues that in the era of globalization, things are related. For example, US led attack on Iraq has impacted the whole world. It has completely changed the relationship between two major religions in this world. It has also impacted the world's point of view on terrorism. The issue of sovereignty of individual nation in international arena also became an important aspect of idea of justice after this incident. There is a different aspect of this global concern. Each country and each society may have some parochial beliefs. These beliefs and ideal of particular society could influence the concern of justice negatively and become a reason for some political and ethical judgments.

As Sen is focusing on the way of lives that people are living so one should have the freedom to choose the different styles and the ways of living. If we have the freedom to determine the nature of our lives it is believed to be one of the treasures. Freedom has its

importance because of two reasons. The more freedom we have gives us more opportunity to pursue the things that we value. Also, we see that the importance is given to the choice. One does not want to be forced into some situation because of the constraints imposed by others.

Freedoms as an idea have two different aspects of freedom: one is opportunity aspect and the second is process aspect of freedom. This can be explained with the help of an example. A man named Kim decides to stay at home on a Sunday and rest. If he manages to do the same thing then we call this situation as A. Alternatively, if some thugs enter his house and drag him and dump him into the gutter then this situation can be named as B. In the third situation, the thugs restrict Kim by commanding that he has to stay at home and if he goes out he will be given a severe punishment. We can clearly see in the situation B that the freedom of Kim is affected and his freedom to decide anything for himself is also affected. So here there is violation of both the kinds of freedom; the opportunity aspect and the process aspect. In the third situation, we see that the process aspect of freedom is affected. This shows that there is no difference between the A and C situation when it comes to opportunity aspect. But this is not the case. There is a distinction between the A and the C situation. We see that the opportunity aspect in situation C is destroyed as he has been ordered by the tugs to stay at home. <sup>142</sup>

Amartya Sen's idea about freedom and well-being is compatible with each other. Freedom is of five distinct types: political freedom, economic facilities, social opportunities, transparency guarantees and protective security.<sup>143</sup> All these kinds of freedom help to advance the capability of the person which in turn focuses on the development. "Freedoms are not only the primary ends of development; they are also among its principle means".<sup>144</sup> All kinds of freedom as discussed above are linked with each other and they strengthen each other. Freedom, capability and development are all much interconnected. "Development has to be more concerned with enhancing the lives we lead and the freedoms we enjoy. Expanding the freedoms that we have reason to value not only makes the lives richer and unfettered, but also allows us to be fuller social persons."<sup>145</sup>

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<sup>142</sup> Ibid, p. 230.

<sup>143</sup> Sen, *Development as Freedom*, p. 10.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid, p. 14.



We see that if a person is not free socially, politically, economically or physically he is not capable of performing something which he values or wants to achieve. Our capability depends on several conditions related to freedom. Amartya Sen calls it unfreedom, if a person is unable to do something because of certain restrictions naturally or from the society. Likewise, if a person is economically weak (unfreedom related to finances) he will not be capable of doing it. Also, if a person is physically unfree like he is disabled or handicapped, he will not be able to do what he desires to do. Consider the case of person who is economically weak, in this case he will be unfree when it comes to finances, he will not be capable of doing certain things which he desires and values and also he will not be able to develop himself in terms of education, health, nutrition and so.

The idea of ‘capability’ (i.e. the opportunity to achieve valuable combinations of human functioning’s- what a person is able to do or be) can be very helpful in understanding the opportunity aspect of freedom and human rights. The capability approach can help to identify the possibility that two persons can have very different substantial opportunities even when they have exactly the same set of means: for example, a disabled person can do far less than an able-bodied person can, with exactly the same income and other primary goods. The disabled person cannot be judged to be equally advantaged- with the same opportunities- as the person without any physical handicap but with the same set of means or instruments (such as income and wealth and other primary goods and resources).<sup>146</sup>

There are certain things which have value in our lives and it becomes very necessary for us to achieve those values. Behind this is the idea of freedom, we have to be free for what we want, what we value and also what we choose at the end. The concept of capability is hence linked with the opportunity aspect of freedom. The approach focuses on the kind of life the person is living, by the term kind I mean, some people are unhealthy, poor, illiterate, disabled and living in bad environmental conditions. It does not focus on the means of living but on the actual opportunities of living.

Consider a case where a person has a good income but is persistently ill or is physically disabled, in this case a person should not be considered as being advantaged on the grounds that

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<sup>146</sup> Sen, “Human Rights and Capabilities”, p. 3-4.

he has a high income. Here the person is incapable of doing so many things that he would want to do and is not able to convert his high income into a better living because of his illness and disability.

There are other features of the capability approach that may also be worth commenting on here dealing respectively with: 1) the contrast between capability and achievement; 2) the plural composition of capabilities and role of reasoning in the use of the capability approach; 3) the place of individuals and communities and their interrelations in the conception of capabilities.<sup>147</sup>

This section of the study deals with freedom and well-being from Sen's outlook. Sen has taken a departure from the Rawlsian transcendental approach where Rawls focuses on the institutions and perfect justice, whereas Sen takes the different approach where he deals with minimizing injustices by looking at the actual world and taking care of some fundamental issues which are prevalent all over the world. The rest of the section will deal with that.

Sen states, freedom is the real opportunity that we have to accomplish what we value. The good life is a life of a genuine choice, and not the one in which a person is forced to choose a particular life- however rich or good that life be in other respects. This kind of freedom of living one's life is authentic self-direction, where we have the ability to shape one's own destiny as a sole person who is responsible for one's life and a part of various communities.

The term freedom has been regularly misunderstood as; freedom has not to be a 'paper' freedom but an *effective* freedom, which is a real possibility. One must understand that freedom is not maximization of choice without considering the quality of the life and also not giving people value. The ethical considerations behind the value of the individual have to be considered. We have to keep in mind that the other individual has the same amount of freedom and also the autonomy and the dignity. With respect to justice, we have to keep in mind the autonomy and the dignity of the other individual. We cannot violate the freedom and the dignity of the individual on the note that we are free beings.

Kant's second categorical imperative states: "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means,

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<sup>147</sup> Sen, *The Idea of Justice*, p. 235.

but always at the same time as an end.”<sup>148</sup> The maxim teaches us that we should always consider the other individual always as an end and never as a means. We should not violate his rights and consider his autonomy while practicing our freedom.

For Sen, freedom has two aspects: Process aspect and the opportunity aspect. The process aspect is the ability to act on behalf of what matters, like the agency. On the other hand, the opportunity aspect is the real opportunity to achieve valued functioning, selected from among various possibilities, like the capability. The agency can be stated as, “someone who acts and brings about change, and whose achievements can be judged in terms of her values and objectives, whether or not we assess them in terms of some external criteria as well.”<sup>149</sup>

The capability on the other hand, is the human centric agency where the individuals are put at the center of the stage. The fundamental role of the social opportunities is to increase the freedom of the individual both as an end in itself and as a means of expanding the freedom of the individual. One should not see the individuals and the opportunities they receive separately, they are the same, and we should consider those opportunities that are influenced by the public policies.

We have talked about freedom, but there are varieties of unfreedom existing around the world which we have to consider in order retreating justice. There are many numbers of people who have been denied the basic freedom to survive. There are so many disadvantaged people who do not have an access to good health, nutrition, education, sanitation, morbidity, premature mortality, clean water, gainful employment and also the inequality between the men and the women which has been deep rooted.

Unfreedom can arise either through inadequate processes (such as the violation of voting privileges or other political or civil rights) or through inadequate opportunities that some people have for achieving what they minimally would like to achieve (including the absence of such elementary opportunities as the capability to escape premature mortality or preventable morbidity or involuntary starvation).<sup>150</sup>

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<sup>148</sup> Kant, *Groundwork on the Metaphysics of Morals*, p. 91.

<sup>149</sup> Sen, *Development as Freedom*, p. 19.

<sup>150</sup> *Ibid*, p.17.

Unfreedom arises through the violation of certain basic rights that one is entitled to and also the basic needs that one needs for a good living. We see that if a person does not get good health care then he is unfree from the medical aspect. The basic health care as the polio drops at the young age and basic vaccinations that an infant should get so that he is not exposed to diseases. If a person does not have enough money to support his child's education, then again he is unfree towards. Poverty, bad sanitation, no clean water, famine are some conditions when a person is unfree from certain basic facilities that one needs for a good living.

With this we see that there is a clear connection between the freedom of an individual and the well-being.

The well-being achievement of a person can be seen as an evaluation of the 'wellness' of the person's state of being (rather than say, the goodness of her contribution to the country, or her success in achieving her overall goals). The exercise, then, is that of assessing the constituent elements of the persons being seen from the perspectives of her own personal welfare. The different functionings of the person will make up these constituent elements. The functionings relevant for well-being vary from such elementary ones as escaping morbidity and mortality, being adequately nourished, having mobility, etc., to complex ones such as being happy, achieving self-respect, taking part in the life of the community, appearing in public without shame.<sup>151</sup>

The well-being of a person can be seen as when the person is in full state of being adequately nourished, with good health facilities, having mobility and is in a state of being happy, having basic civil and political rights with full autonomy and dignity. The person is not being treated in an unfair manner and is entitled to the basic facilities that he needs for a good living. The nature of life that an individual is living in each period is of importance in dealing with the quality of life. Individuals have different values to achieve, such as being free from avoidable morbidity, being well nourished, have the freedom to move around as desired and so on. These doings and beings are called functionings of a person. Hence, the well-being of an individual are considered by the functioning's achieved by that person. The achievement of the functioning's is not only dependent on the commodities of the individuals but also on the availability of the public goods and having the freedom to use the private goods wherever desired. The achievements such as

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<sup>151</sup> Sen, "Capability and Well-being", p.05.

being health, nourished, literate depends on the public facilities such as the health services, medical facilities and the educational department. What is being looked upon here is the importance of development under the functioning's achieved.

Sen is primarily interested in removing various types of injustices from the world and hence he goes on to 'retreat of justice'. Often, when we are concerned for justice, we understand justice is to be treated fairly, just society and its fair institutional arrangement in the matter of resource allocation. Justice is a complex and contested concept because of the discrepancies that arises out of debates on the moral, legal, religious, human rights issues. There are systematic types of injustices which comes in various forms, wherever the institutional principle of distributive justice, procedural justice, or human rights relating to political, economic and social rights are violated.

It can be argued that an institutional principle does not address society's real problems that manifest injustices in the form of lack of freedom, poverty, malnutrition, slavery, hunger and deprivation, subjugation of women, lack of education, health facilities, etc. To remove various forms of injustices, Sen relies on welfare mechanism that plays an important role to enhance people's standard of living. For Sen, "there is no law against dying of hunger."<sup>152</sup> For the elimination of such type of injustice requires attention to not only employment and food entitlement but also promotion of health care, elementary education as well as clean water, environment, sanitation, etc.

There are number of important questions surrounding justice being fiercely debated over the course of human history like what is justice? What is a perfectly just society? Is justice has much to do with being treated fairly, equally, etc? How can the form of injustices relating to the discrimination between rich and poor, caste system, racism, sexism of the present state of affairs be removed? There are number of ways where systematic forms of invisible injustice persist in a society which can be difficult to recognize. These are discrimination between privileged class of people and underprivileged class who are less well off in society. In comparison to well off people the less well off lacks freedom and gets lesser opportunities. As a result, many of them are deprived of basic necessities such as food, education, housing and employment. Their access

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<sup>152</sup> Sen and Dreze, *Hunger and Public Action*, p. 20.

to resources is limited and most of the time; they feel helpless as there is nothing much they can do about it.

Ultimately, the well off are getting richer and the worst off are getting poorer. The unequal distribution of wealth between the rich and the poor are concern. For example, the caste discrimination in India is one of the important forms of injustices that have been there in our society since a long time. The caste system based on different caste hierarchies has fragmented the society among various sections. The upper caste dominates the lower caste people. This kind of caste based discrimination creates a huge gap between the economic condition of the rich and the poor which leads to injustices at individual and social level in the case of India. Racism is one of the other forms of invisible injustices. The superiority complex of one race against other races often imparts hatred in the minds of the people.

In justice as welfare, Amartya Sen is not looking for the perfectly just society rather tries to remove various ‘forms of social injustices’<sup>153</sup> that are occurring in our society. He argues that, “we do need to know what perfect justice is to know that a particular state of affairs is unjust and comparatively more unjust than some other state of affairs”.<sup>154</sup> Instead of looking for a perfectly just society, Sen attempts to remove various forms of social injustices to make ‘less unjust society’ wherein each and every individual can develop the capacity of self-determination so that they can realize their full potential. In search of the less unjust society, he propounded the realization focused approach to justice which is not concerned for fair institutional arrangement and its process rather tries to seek social outcomes through a comparative evaluation of social injustices relating to unfreedom, poverty, malnutrition, slavery, hunger, deprivation, subjugation of woman, lack of education, health facilities on the one hand and invisible injustices relating to social discrimination between rich and the poor, caste system on the other hand.

These forms of injustices have been occurring in the society since really long time and the way to tackle this problem is through Sen’s realization focused approach to justice. The realization focused approach to justice is not concern for perfectly just institutions rather tries to seek ‘least unjust society’. For Sen, the search for ‘least unjust society’ can be possible through comparative evaluation of social alternatives based on plurality of reason and a principle of

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<sup>153</sup> Sen, *The Idea of Justice*, p. 5

<sup>154</sup> *Ibid*, p. 5-7.

democracy is the central concern of justice. Moreover, the concern for Sen's advancement of justice makes to move beyond comparative focused to realization understanding wherein actual realization of justice in the society is more important than the institutional arrangement per se. According to Sen,

It is some time claimed that justice is not a matter of reasoning at all; it is one of being appropriately sensitive and having the right nose for injustice. It is easy enough to be tempted to think along these lines. When we find, for example, a ranging famine, it seems natural to protest rather than reason elaborately about justice and injustice. And yet a calamity would be a cause of injustice only if it could have been prevented, and particularly if those who could have undertaken preventive action had failed to try. Reasoning in some form cannot but be involved in moving from the observation of the tragedy to the diagnosis of injustice. Furthermore, cases of injustice may be much more complex and subtle than the assessment of an observable calamity. There could be different arguments suggesting disparate conclusions, and evaluations of justice may be anything but straightforward.<sup>155</sup>

An eternal law of justice demands that one should be sensitive towards injustices that emerges which deeply concerned about how to minimize injustices from the society. The idea of perfectly just society seeks to identify just or fair institutional arrangement. However, it ignores society's real problems that manifests in the form of injustices such as slavery, suppression of women, hunger and deprivation, lack of health and educational facilities, and more importantly, inability to social opportunities in valuable activities and states of beings. It primarily concentrates on right institutions and does not concern for the identification of injustices in the form of capability deficiency.

Sen tries to construct an inclusive society wherein each individual can pursue their well-being and minimize various forms of injustices at individual and social level. In formulating the notion of minimizing injustices, Sen has revisited the two traditions of reasoning about justice and injustice during European Enlightenment of the 18<sup>th</sup> and 19<sup>th</sup> century. For him, "identification of perfect justice is neither necessary nor sufficient and more incline towards comparative justice. It aims to clarify how we can proceed to address question of enhancing

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<sup>155</sup> Ibid, p.04.

justice and removing injustices.”<sup>156</sup> It is not based on compliance with the fair institutional principles formulated by social contract theory which limits itself to comparing social states with respect to degrees of injustices. Sen’s alternative approach to justice is based on social choice theory that identifies welfare society wherein all possible injustices would be removed.

Social choice theory as a discipline is concerned with arriving at over all judgments for social choice based on a diversity of perspectives and priorities. The outcomes of the social choice procedure take the form of ranking different state of affairs from a social point of view in the light of assessment of the people involved.<sup>157</sup>

Justice based on social choice theory underlies comparative justice is very different from transcendental institutionalism which is looking for a perfectly just society. Sen proposes his idea of justice as welfare in terms of minimizing injustice as a departure from both enlightenment traditions. However, in contrast to transcendental institutionalism, Sen proposes what he calls a *realization- focused approach* to justice. Now it is necessary to see what makes him to move beyond comparative focused to realization focused understanding wherein actual realization of justice in the society is more important than the transcendental institutional arrangements in the conception of justice. Sen has two fundamental problems with transcendental institutionalism and he calls it the problem of (a) infeasibility and (b) redundancy.<sup>158</sup> It can be argued that there are two problems,

The problem of ‘transcendental institutionalism’ and its arrangements are surrounded with two flaws i.e. infeasibility and redundancy. It is infeasibility because transcendental institutionalism tries to search for perfectly just institutions which are based on the assumption that there is a mutual consensus arrived through public reason on the perfectly just of fair institutions and society. However the plurality of argument based on public reason does not reach the stage of mutual consensus to what constitute fair or just society or institution. To Sen, contractarian are unable to realize this problem of infeasibility, for instance utilitarian, egalitarian and libertarian approach to justice argues for their own institutional principle and their logical ground for their claim to be just.

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<sup>156</sup> Boot. Martijn, “The Aim of a Theory of Justice”, p. 8.

<sup>157</sup> Ibid. p.16.

<sup>158</sup> Pankaj. K. Ashok, “Review of Idea of Justice”, p. 74.



Take for example, in the debate on the conception of justice, Sen provides a practical illustration- which he calls “Three children and a Flute.”<sup>159</sup> Imagine a situation where three children named, Anne, Bob and Carla are quarrelling about a flute. Anne says that the flute should be given to her because she is the only one knows how to play it. Bob, on the other hand, claims that the flute should be given to him because he is so poor that he has no toy of his own. Carla then intervenes and says that she is the one who owns it and she should get it. The question arises, how should we decide between these three claims?

Who should get the flute, will depend on the institutional arrangement, for instance, utilitarian will argue for Anne because she is the only one among three who can actually play the flute and hence the utility of the flute will be fulfilled. Bob, the poorest, will have the support of the egalitarian. The libertarian would opt for Carla. However, for Sen, no such institutional arrangement can help to resolve the dispute in a universally acceptable manner. However, their position would not arrive at mutual agreement and therefore does not solve the problem of arriving on a perfectly transcendental solution. The second problem is the problem of the redundancy in transcendental institutionalism and it states that if the exercise of reason for the actual choice of perfectly just institutions demands comparisons of existing situation, then there is no need to search for transcendental perfect institutions.

Sen says, “If a theory of justice is to guide reasoned choice of policies, strategies or institutions, then the identification of fully just social arrangements is neither necessary nor sufficient”.<sup>160</sup> For example, Sen has illustrated the problem of redundancy in accordance with the choice between *Picasso* and *Dali*. It is obvious that the ideal picture in the world is the *Mona Lisa* and it is not essential to talk about what may be the greatest picture in the world, to choose between the two alternatives that we are facing at that moment. When the choice is between *Dali* and *Picasso* only then it is neither sufficient nor any help to know that the *Mona Lisa* is the most perfect picture in the world and in this way if the choice has to be made out of possible alternatives then the search for ideal one is unnecessary.

To minimize various forms of injustices requires the “removal of major sources of unfreedom: poverty, as well as tyranny, poor economic opportunities as well as systematic social

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<sup>159</sup> Ibid. p. 12.

<sup>160</sup> Sen, *Idea of Justice*, p. 15.

deprivation, neglect of public facilities as well as intolerance or over activity of representative states”.<sup>161</sup> There are varieties of unfreedom which restricts people’s substantive freedoms that they enjoy for instance, lack of nutritional food, health care, basic education and other social and economic security etc, deprives their basic freedom to survive a good life.

The expansion of human freedom is not undertaken only as the primary end of development but also its principle means. It is a fact that, “many people across the world suffers from varieties of unfreedom. Famines continue to occur in particular regions, denying to millions the basic freedom to survive”.<sup>162</sup> By focusing on freedom, justice can be seen in terms of human welfare where,

Freedom to choose gives us the opportunity to decide what we should do, but with that opportunity comes the responsibility for what we do to the extent that they are chosen actions. Since a capability is the power to do something, the accountability that emanates from the ability – the power- is a part of the capability perspective. And this can make room for demands of duty- what can be broadly called deontological demands.<sup>163</sup>

In assessing the quality of lives, it is argued that life can only be lived well when people are free, and can make real choices. For Sen, human welfare can be defined, “as a process of expanding the real freedoms that people enjoy.”<sup>164</sup> The question arises- what does we imply by real choice? Real choice is something that possesses a transformative effect in the quality of the human life, for instance, person’s quality of life is grounded on his/ her freedom to choose that he/ she finds truly worth living. Lack of people’s substantive freedom creates injustices at the individual and the social level because they are deprived of their substantive freedom to transform their lives. On Sen’s view, human welfare should be founded on their development as a process of expanding the real freedom that they enjoy as a substantive freedom in society.

Justice in the form of human development argued here, as a process of expanding the real freedom that people enjoy and its concern is not to focus on material welfare (people’s well off) rather on human welfare (people’s well- being). “In the field of development, many other approaches have been moving away from the income-led definition of poverty by including

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<sup>161</sup> Sen, *Development as Freedom*, p. 3.

<sup>162</sup> *Ibid.*, p. 15.

<sup>163</sup> *Ibid.*, p. 19.

<sup>164</sup> *Ibid.*, p. 3.

people's perception and accepting the multiple facets of poverty."<sup>165</sup> Its purpose is to make a shift from the income led evaluation method to assess people's ability to achieve those things they value. It ensures that people's well-being cannot be measured by their income rather their freedom and choices that they have. The concern is not of development as economic growth rather maintains that the main purpose of justice is to provide freedoms to human beings. According to Sen,

Development can be seen; it is argued here, as a process of expanding the real freedoms that people enjoy. Focusing on human freedom, contrasts with narrower views of development, such as identifying development with the growth of gross national product, or with the rise in personal incomes, or with industrialization, or with technological advance, or with social modernization. Growth of GNP or of individual incomes can, of course, be very important as a means to expanding the freedoms enjoyed by the members of the society.<sup>166</sup>

For him, focus on development in terms of resources has been misleading us because justice is not sum total of commodities but what and how people use these resources to be what they want. In justice as welfare, freedom as employed in human development discourses which emphasize that people must have freedom of opportunity and choice. It is not maximization of choices without regards to people's quality and their values. Rather freedom includes the capabilities to perform activities that people's value to develop themselves in ways of their own choosing. It makes clear that justice in terms of human development tries to focus on person's well-being and their substantive freedom.

For Sen, "sometimes the lack of substantive freedom underlies poverty which hurts people of the freedom to satisfy hunger, or to achieve sufficient nutrition, or to obtain remedies for treatable illnesses, or the opportunity to be adequately clothed or sheltered, or to enjoy clean water and sanitary facilities."<sup>167</sup> It is argued that each individual holds some capacity to choose what is best for him or her and freedom is that capacity of persons to do things that they themselves choose. Freedom enhances human capabilities to live as they wish and to do what they desire. The process aspect of freedom implies that each and every individual is free to make

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<sup>165</sup> Frediani, Alexandre. "Sen's Capability Approach as a Framework to the Practice of Development", p. 173.

<sup>166</sup> Sen, *Development as Freedom*, p. 3.

<sup>167</sup> *Ibid*, p. 4.

choices and social arrangements must represent their choices. The opportunity aspect of freedom promotes person's freedom to choose what he/she value and this freedom should not be restricted and curtailed by others.

The opportunity aspect of freedom, involve the ability to fulfill all the vital human capabilities, from the capability of a child to drink clean water or have elementary medical care, and the capability of a young woman to have the education which will enable her to hold a job and attain independence to the capability of a scientist or an artist to carry out their work.<sup>168</sup>

It is clear that person's substantive freedom is utmost important to pursue their life plan and which is valuable for them. For instance, Sen has often distinguished between a starving child and a fasting monk; both have same level of functioning because both are kept away from food. Though the starving child does not have freedom to eat while the monk has, but he does not eat. In one case starving child does not have freedom of opportunity as well as agency freedom to choose what he wants.

The idea of freedom particularly opportunity aspect and agency aspect of freedom is one of the important keystones in minimizing injustices at individual and social level. It argues that, Sen has conceived substantive freedom into two forms namely opportunities and processes freedom. The processes freedoms allow freedoms of actions and decisions, and the actual opportunities that people have, given their personal and social circumstances. According to Sen, unfreedom can arise either through inadequate process such as violation of voting privileges or other political or civil rights which are important freedoms in people's lives.

## **PART 2**

### **CAPABILITY AND RE-VISITING IMPARTIALITY**

People's freedom in the form of agency aspect primarily included a state of affairs that a person chooses the things they value. Moreover, people's freedom particularly agency freedom is affected by their personal and social conditions such as personal, social, environment, and other

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<sup>168</sup> Walsh, Vivian, "Amartya Sen on Rationality and Freedom", p. 59.

factors. These factors affecting an individual's capability to choose what he/she values and the way those choices become achievements. The notion of capability is closely related with Sen's conception of freedom, which he defines as the real opportunity that we have to accomplish what we value. According to Sen,

The concept of capability is thus linked closely with the opportunity aspect of freedom, seen in terms of comprehensive opportunity. It points to an informational focus in judging and comparing over all individual advantages and does not propose any formula about how that information may be used.<sup>169</sup>

Sen's capability approach underlies justice that focuses on individual's command over goods and opportunities to achieve the kind of lives he/she has reason to value. It makes interpersonal comparisons by focusing on person's functionings of what he/she wants to do and be what they want to be which includes being physically fit, being well nourished, being healthy, being confident, etc.

The capability to be happy is an aspect of freedom that we have good reason to value. Capability is an aspect of freedom which concentrates on opportunities. Capability is also connected to the well-being of an individual. The promotion of the well-being of an individual is seen with the person's overall agency goals. An increase in the well-being of the individual involves the higher agency achievement. On the other hand, if the person is not able to achieve its goals it causes frustration, thereby reducing one's well-being.

A person's capability can be characterized as well-being freedom (reflecting the freedom to advance one's own well-being), and agency freedom (concerned with the freedom to advance whatever goals and values a person has reason to advance). While the former may be of more general interest to public policy (such as poverty removal, in the form of eradicating major deprivation in well-being freedom), it is latter that can, arguably, be seen as being of primary interest to the person's own sense of values. If a person attaches more importance to some goal, or some rule of behavior, than no personal well-being, it is a decision that could be seem to be for him or her to make( except for special cases,

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<sup>169</sup> Sen, *Idea of Justice*, p. 232.

such as mental dysfunction that may prevent the person from thinking clearly enough about their priorities).<sup>170</sup>

The freedom-centered position has a similarity with the quality of life which focuses on the way human life goes, looking over the income and the resources that the person is looking for. Capability approaches to justice is distinct from utilitarianism and Rawlsian theory of justice. On Sen's view, capability approach focuses on the effect of goods on human rather than the mental reaction to that effect and people's basic capabilities shifted attention from the goods of themselves to what goods do to human beings on the other hand.

Rawls approach to justice is not satisfactory in minimizing injustices at individual and social level. Sen criticizes the original position, i.e. 'veil of ignorance' of Rawls's distributive justice which amounts to the lack of genuine information concerning injustice. Sen argue that index of primary goods cannot adequately account for inter individual differences in people's capacities to convert these primary goods into what people are able to be and to do in their lives. According to Sen,

The primary goods approach seems to take little note of the diversity of human beings. If people were basically very similar, then index o primary goods might be quite a good way of judging advantage. But, in fact, people seem to have very different needs varying with health, climate conditions, locations, work conditions, temperament and even body size. So what is being involved is not merely ignoring a few hard cases, but overlooking very widespread and real differences.<sup>171</sup>

It makes clear that the capacity of every individual is very much different from the other. It is important to concentrate on people's being and doing, i.e. on their capabilities to function rather than on accessibility of primary goods. However, Rawls primary goods are considered to be the means and not end to pursue one's own life's plan. It is a fact that the person's life plan is not only determined by the primary goods that he/she has at his/her disposal, but there are various factors that determine to what extent he/she can utilize these primary goods into valuable states of beings and doing. Take an example, a person who is severely disabled and his disability is not

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<sup>170</sup> Ibid, p. 289.

<sup>171</sup> Sen, "Equality of What?" p. 215.

address by the conceptualization of index of primary goods. Moreover, it does not justify any redistribution to the disabled on the ground of their disability.

Sen's capability approach can be understood in terms of people-centric rather resources centric because capability approach primarily concerns for people's real opportunities to do what they want to do and be what they want to be. Instead of focusing on social primary goods and its distribution for people's advantages, capability approach surrounded with their agency and functioning is called as people- centric approach.

A person's capability set can be defined as the set of functioning vectors within his or her reach. In examining the well-being aspect of a person, attention can legitimately be paid to the capability set of the person and not just to be chosen functioning vector. This has the effect of taking note of the positive freedom in a general sense (the freedom 'to do this' or 'to be that') that a person has.<sup>172</sup>

Sen mentions in *Inequality Reexamined*, "Capability is primarily a reflection of the freedom to achieve valuable functioning. It concentrates directly on freedom as such rather than on the means to achieve freedom, and it identifies the real alternatives we have. It can be read as the reflection of substantive freedom."<sup>173</sup> It shows that capability approach tries to reflect person's substantial freedom so that people can freely choose to realize their basic functioning. For instance, Mr. 'A' has the capability of being nourished but he might choose to fast for religious purpose because he/she has substantive freedom to choose either being nourished or being deprived of food in the form of fast.

Sen's formulation of capability approach holds the expansion of individual's freedom as the central objective of development. The objective of capability approach is to see either in the form of '*realized functionings*' (what the person is actually able to do) and the *capability set* of alternatives one has (one's real opportunities). It gives two different types of information such as realized functioning implies about the things a person does and capability set holds about the things a person is substantively free to do. It states about well-being of a person which can be assessed in the space of various vector of functioning. According to Sen, "Capability is primarily a reflection of the freedom to achieve valuable functioning. It concentrates directly on freedom

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<sup>172</sup> Sen, "Well-being, Agency and Freedom: The Dewey Lectures 1984", p.169.

<sup>173</sup> Sen, *Inequality Reexamined*, p. 49.

as such rather than on the means to achieve freedom, and it identifies the real alternatives we have....it can be read as the reflection of substantive freedom”<sup>174</sup>

It underlies in the concept of functionings which are valuable activities and states that become a person’s well-being such as a healthy boy, being safe, being educated, having a good job, being able to move and visit people. Sen defines functionings as the “various things a person may value doing or being.”<sup>175</sup> The concept of capabilities refers to the freedoms one has to do of these valuable activities or reach these valuable states. For example, Mr. A and Mr. B is considered as a starving man and a fasting man and both are performing their functionings, however the functioning of Mr. A differs largely from that of Mr. B because A has been starving unlike B’s fasting involves a choice, Mr. B is fasting for religious purpose despite the presence of other alternatives.

Further Sen’s capability approach can be contextualized in terms of various combinations of functionings (beings and doings) that the person can achieve. “Capabilities are, thus, a set of vectors of functionings, reflecting the person’s freedom to lead one type of life or another to choose from possible livings.”<sup>176</sup> Sen’s capability approach relates to the idea of agency as an ability to pursue goals that one has reason to value. It entails a key normative argument that social arrangements should aim to expand people’s capabilities, that is, their freedom to achieve valuable doings and beings, and in doing so those arrangements should respect people’s agency. In other words, agency aspect of capability approach includes ‘the substantive freedom’s a person enjoy to lead the kind of life he or she has reason to value.’<sup>177</sup> Capability in the form of functioning emphasizes on human well-being which includes various states of activities that people can undertake in their day to day life.

Let’s consider that a man has raw materials for food such as, rice, millet, vegetable, etc, and he knows (functioning) how to convert these resources into its characteristics i.e. nutritional meal. Functioning reflects how efficient a person can succeed in converting these resources into its valuable characteristics according to their purposes. So with the help of functioning, for instance, a carpenter with his skill can convert bare wood into valuable item such as chair, table,

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<sup>174</sup> Ibid.

<sup>175</sup> Sen, *Development as Freedom*, p. 75.

<sup>176</sup> Sen, *Inequality Reexamined*, p. 40.

<sup>177</sup> Sen, *Development as Freedom*, p. 87.



and other wooden accessories. It minimizes injustices through normative framework of valuable state of affairs and activities that inculcates various aspects of functioning of person's wellbeing.

In other words, individual's functioning is the subject of the capabilities which assess their opportunities in terms of what and how people are capable in various things of doing and being. It underlies in human capability that implies a person can be recognized either as a doing and being which incorporates in terms of doing includes travelling, caring for a child, voting in an election, taking part in a debate, paying the taxes, and donating money to charity, etc. Functioning in terms of being implies being educated, being well nourished, being employed, being safe, happy, and calm and having a dignity and so on.

Therefore, capability approach to justice has been the foundational elements in the assessment of people's well-being in the following way:

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

One should focus on the freedom through which we can assess the person's advantage. One should make sure that the resources are being transformed into the valuable activities. When

looking at the human welfare there should be a balance between the materialistic and the non-materialistic things. There are several opportunities present in the society and when should have the concern to distribute them appropriately.

Poverty is also seen as capability-deprivation. One should not only focus on the functioning of the individual but also the capability that is possessed by one. The capabilities that the individual have are of two kinds, one is the innate capability that the person is born with. According to John Locke, a British philosopher a person is born with a blank slate i.e. *tabula rasa* but one has innate capabilities that is one is a born singer or a dancer. These are the capabilities that an individual has inherited from birth. The other kind of capability is the capability that an individual develops during one's life time. The person trains himself for that capability through practice and coaching.

According to Plato, as he states in *The Republic*, everyone is not meant for everything. One cannot be a carpenter, lawyer, doctor all on one. Everyone has a capacity and can work in that field only, and he deserves to that class only as the reasonable people are the kings who should rule the society, the courageous are the soldiers who are responsible for taking care of the society and the craftsman are the class of people who take care of mending, repairing. One should not interfere in the others work as one is not capable of doing that and that will create chaos in the society and hence leading to injustice.

As Sen points out that people can be deprived of certain capabilities such as government oppression, no financial security, poor health care or no health care, disability, poor nutrition, no clean water, no sanitation, no education, and gender injustice.

People with physical and mental disability are not only among the most deprived human beings in the world, they are also, frequently enough, the most neglected. Furthermore, in the developing world, the disabled are quite often the poorest of the poor in terms of income, but in addition their need for income is greater than that of the able-bodied people, since they require money and assistance to try to live the normal lives and to attempt to alleviate their handicaps. The impairment of income-earning ability, which can be called 'the earning handicap', tends to be reinforced and much magnified in its effect

by the 'conversion handicap': the difficulty in converting incomes and resources into good living, precisely because of disability.<sup>178</sup>

The understanding of the disability is important not because it is one of the reality of the world and the feature of humanity, but because of the awareness there are many consequences and the sufferings that can be overcome through the intervention of the people. There are several public policies that can be made to deal with the problems faced by the people and also certain awareness programme can be organized to prevent the development of the disabilities as there are few of them which are there because of the ignorance of the public.

Social intervention against disability has to include prevention as well as management and alleviation. If the demands of justice have to give priority to the removal of manifest injustice, rather than concentrating on the long-distance search for the perfectly just society, then the prevention and alleviation of disability cannot but be fairly central in the enterprise of advancing justice.<sup>179</sup>

This approach is a framework which looks upon two kinds of claims: one that the individual should have the freedom to achieve well-being which is of fundamental importance and the second, the freedom to gain the well-being should be understood in terms of the capability of the individual. The capability approach can be looked as a framework about development, well-being and justice. The aim behind this approach is that the person should have the freedom to achieve well-being of what he is capable of doing and being.

One should look at the approach through assessing the well-being of the individual, then evaluating and assessing the social arrangements, and then the framework of the policies about the social change in the society. One should look at the person's doings and beings and the opportunities to realize them (like the opportunity a person gets to be educated, the ability to move around). This kind of approach is in contrast to other kind of approaches which focus on subjective categories (such as happiness) or on the material well-being (focusing on the wealth and the income of the individual).

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<sup>178</sup> Sen, *The Idea of Justice*, p. 258.

<sup>179</sup> *Ibid*, p.259.

The capability approach is not an explanatory theory but a normative one, it does not explain issues like poverty, inequality, injustice, illiteracy, but this theory on the other hands helps us to think about the issues which are prevalent in the society. Functionings are known as 'beings and doings', which is the present state of an individual and the activity one can uphold. For example, beings are understood as being well-nourished, having a pleasant and a warm house, being educated, being illiterate, being depressed. It is the situation in which a human being is present. The examples of doings are taking care of a child, travelling, voting in an election, taking part in a debate, donating money to charity. This will include the activities that one individual is involved in.

Functionings can be good or bad, one can be in a good health or one can be suffering from some illness. Capability of a person depends on the freedom and opportunities to achieve these functionings. As travelling is a functioning, the opportunity to travel is the capability. The difference between the capability and the functioning is between the effectively possible and the realized or between opportunities and the achievements.

The functionings vary from small fundamental things such as being in good health, being educated, having a decent job, taking part in the community, etc. Functionings are constitutive of a person's being and then evaluating the well being of an individual can be taken from assessing these elements. Every individual have a range of various functionings which makes the life of a human. But then all doings are not functionings like being able to fly, or reaching an unexpected age in your life span are not human functionings.

We have to see which set of opportunities are open to us and which are potentially open. For instance, an individual is a poor single parent who lives alone and does not have proper facilities. The functionings are a) to take up a job where I have to be involved for a couple of hours to generate income to take care of my basic needs and my child and b) to take care of my child at home and give him all the care and attention. Here, both a and b are opportunities which are open to me, but the problem is they are not both together open to me.

Here we have to see which set of opportunities are open to me where I can raise income and also take care of my child. The situation should not be such that I have to take some harsh choices between both the functionings which will affect the basic needs and basic moral duties.

The things we value most are particularly important for us to be able to achieve. But the idea of freedom also respects our being free to determine what we want, what we value and ultimately what we decide to choose. The concept of capability is thus linked closely with the opportunity aspect of freedom, seen in terms of ‘comprehensive’ opportunities, and not just focusing on what happens at ‘culmination’. It is important to emphasize certain specific features of this approach that should be clarified at the outset, since they have sometimes been misunderstood or misinterpreted. First, the capability approach points to an *informational focus* in judging and comparing overall individual advantages, and does not, on its own, propose any specific formula about how that information may be used. Indeed, different uses may emerge, depending on the nature of questions that are being addressed (for example, policies dealing respectively with poverty, or disability, or cultural freedom) and, more practically, on the availability of data and of informative material that can be used. The capability approach is a general approach, focusing on information on individual advantages, judged in terms of opportunity rather than a specific design for how a society should be organized.<sup>180</sup>

The capability approach points to the inequality of capabilities in assessing the social disparities, but it has no specific formula for making any decision. We do not have to consider the social policies for evaluating, no matter what the consequences are. The human capabilities are expanded in order to judge the progress of the society, but the shortcoming of this is that it has not laid down any blueprint on how to deal with the problems and the conflicts among them. The societies and the institutions are a lot influenced by the information which is discharged by this society.

The capability perspective is inescapably concerned with the plurality of different features of our lives and concerns. The various attainments in human functioning that we may value are very diverse, varying from being well nourished or avoiding premature mortality to taking part in the life of the community and developing the skill to pursue one’s work-related plans and ambitions. The capability that we are concerned with is our ability to achieve various combinations of functionings that we can compare and judge against each other in terms of what we have reason to value.<sup>181</sup> The capability approach

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<sup>180</sup> Ibid, p. 232.

<sup>181</sup> While talking about the individual capabilities, it is necessary to keep in mind that the capability approach is concerned with the ability to gain combinations of valued functionings. There are situations when the person has

focuses on the human life, and not just on some detached objects of convenience, such as incomes or commodities that a person may possess, which are often taken, especially in economic analysis, to be the main criterion of human success. Indeed, it proposes a serious departure from concentrating on the means of living to the actual opportunities of living. This also helps to bring about a change from means-oriented evaluative approaches, most notably focusing on what John Rawls calls 'primary goods', which are all purpose means such as income and wealth, powers and prerogatives of offices, the social bases of self-respect, and so on.<sup>182</sup>

The capability approach is more concerned with correcting the focus on means rather than focusing on the opportunity to fulfill the ends. Take a situation, a person who has high income but he has some persistent illness, or is disabled. In this case the person should not be considered in being in any advantage, on the ground that the income is high. The person has advantage of money and can live well and get whatever he desire but here the person faces a lot of difficulty in translating the life which is under medical conditions into a good living. Here the person has to achieve a state of good health and wellness and should be fit to do what they value and has reasons for.

The approach focuses not only on what a person ends up doing, but also on the fact that what a person is capable of doing, whether the person is thinks about using that opportunity. The critics of this approach argues that one should focus on what really happens and not on what could happen as the reality consist of what happens and not what could have happened. One should pay attention to the achievements when there arises some confusion about the capability that an individual is possessed with. "This can be an important issue in the assessment of gender equity, in which seeking some actual evidence of critically important achievements may be reassuring in a way that a belief in the existence of the corresponding capability may not be".<sup>183</sup>

Sen's response to this achievement-based critique is that the capabilities are defined on functionings and possess all the information based on functionings combinations that a person chooses. The groups of functionings that are chosen by the individual are obviously the feasible

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choices between to be well nourished or to have a shelter; here we have to see the capability in terms of combined achievements.

<sup>182</sup> Sen, *The Idea of Justice*, p. 233.

<sup>183</sup> *Ibid*, p. 236.

combinations which are chosen by the rational being. If we concentrate on the achieved functioning, nothing can prevent us from evaluating the capability on assessing the combination of functionings chosen. “If freedom had only instrumental importance for a person’s well-being, and choice had no intrinsic relevance, then this could indeed be the appropriate informational focus for the analysis of capability.”<sup>184</sup>

While talking about the capability we generally think it to be the attribute of the individual but we can also consider the group capabilities, adding on to the individual capabilities. For instance, during the cricket or the football or any other sport matches, we do consider the capability of the group. We also consider the capability of a particular player but here the capability of the group should also be taken into consideration. An individual does think, choose and does a thing, we do think about particular issues and choose to perform certain actions but one cannot achieve a thing without the influence of the society, as one is the member of the society and there are rules, regulations and institutions in which a person does an action. An individual thinks, chooses and performs an action with respect to their societal relations.

An individual is a part of different groups present in the society, for example, gender, language group, community, religion, race and so on. One should not be seen only as a member of one particular group which denying the other, this will be a denial of the freedom of the individual in order that he should see oneself within a particular group. One should not be treated as, ‘you are a Muslim and hence is not allowed to enter here’ or ‘as a Chinese your priority should be national engagement’, here there is an external pressure to follow certain rules and a person is denied liberty that one has the right to possess.

### **PART 3**

#### **PUBLIC ENLIGHTENMENT: RE-VISITING GOODNESS**

According to Sen, the well-being and public enlightenment of an individual is of top priority ascertains that the people are the most important and real wealth than the resources. Its purpose is to measure the individual and collective quality of life through altering the society where the

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<sup>184</sup> Ibid.

focus is to enlighten the individual in terms of capability. The society which is capable of some task promotes public enlightenment, where the well-being of the individual is understood by “person’s capability to do things which he or she has reason to value”.<sup>185</sup> Each and every individual has different capacity to convert the opportunities into valuable and reasonable achievements due to individual and societal factors.

Marianne T. Hill has made a point in “Development as Empowerment” about Amartya Sen’s capability approach to human welfare which is an alternative to traditional welfare theory. “The capability space- that is, the matrix of all attainable functionings in turn is the proper evaluative framework for measuring a person’s advantage, or the capability to achieve well-being. It can also be used in evaluating social arrangements.”<sup>186</sup>

The capability approach takes into account the uniqueness of each person. A young child, for example, needs fewer calories than an adult, a disabled person may require more than usual economic resources to attain a given level of mobility. Since each individual has different needs and abilities, a given set of goods and services will result in a different outcome relative to the set of functionings attainable by each person. What Sen stresses is the outcome in terms of valued functionings, including the ability to choose? Only valued functionings contribute to well-being.<sup>187</sup>

Hence, public enlightenment is concerned about the well-being of an individual in terms of capabilities, the capacity of the individual to do certain things which are valuable to them. It integrates that justice is going beyond a mere consideration of the material aspect of well-off (focusing on wealth and income) and taking into account a sphere more inherently related to the people’s well-being in the concept of basic needs, command over resources, ability to achieve a functioning, and capabilities, etc.

This focuses on the enlightenment of the people and the capabilities to become autonomous and self-sufficient for their well-being. The idea behind well-being of an individual is that it focuses on the betterment of each and every individual socially, economically, spiritually, psychologically, and medically. The well-being of an individual ensures that how

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<sup>185</sup> Ibid., p.231.

<sup>186</sup> Marianne T. Hill, “Development as Empowerment”, p. 132.

<sup>187</sup> Ibid., p. 113.



well-off a person is not in terms of material aspects but in terms of freedom to pursue all that they value and aspire. Public enlightenment underlies people's well-being.

Development consists of the expansion of substantive freedom; Sen recognizes the importance of institutions to development. A variety of social institution contributes to the process of development precisely through their effects on enhancing and sustaining individual freedoms. He mentions in the particular the role of democratic institutions, civil liberties and free press in the formation of social norms, ethics, and goals, and the importance of public deliberation in addressing problems ranging from corruption to the neglect and oppression of women and the poor. Although, democratic institutions alone do not ensure that injustices affecting those with lesser power will be addressed, there are strong arguments that democratic institutions do increase equity.<sup>188</sup>

Social institutions and the capability approach bring out people's enlightenment to become capable to make decisions about an issue that affect their lives and minimize injustices to that extent. The social institutions which are based on the capability approach guarantees not only basic needs relating to autonomy, freedom, human right, toleration, and public and private reason but their basic capabilities so that the individuals can attain their psychological and physical well-being.

It is argued that the just society promotes the well-being of the individual and public enlightenment so that gender, caste, religion, class, status and all such divisions created by man do not exist and everyone should have the access to basic capabilities. If these requirements are not met, the society will be termed as unjust. The reason behind the focus on public enlightenment in terms of people's capabilities is to respect the choices of people in determining their well-being.

The concept of public enlightenment and well-being is a foundational element in Sen's justice as welfare which represents an important parameter in assessing people's quality of life. However, to substantiate public enlightenment in Sen's view, it is imperative to revisit enlightenment in general and Kant's enlightenment rationality in particular. The insight of enlightenment in 18<sup>th</sup> century claims that progress is possible only through the use of reason.

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<sup>188</sup> Ibid., p.135.

During this time there are remarkable great changes that occurred in scientific thought and invention.

Kant's intellectual autonomy focuses that each man has to be his own guardian in thinking, willing and feeling. There is no doubt that these are the factors within which the enlightenment process will take place. However, Kant's intellectual autonomy is unable to culminate in the form of public enlightenment because "rationality in terms of some formulated conditions that have been proposed in the literature such as satisfying some pre-specified axioms of internal consistency of choice, or being in conformity with intelligent pursuit of self-interest, or being some variant of maximizing behavior."<sup>189</sup>

According to Amartya Sen, "Rationality is interpreted here, broadly, as the discipline of subjecting one's choices- of actions as well as objectives, values and priorities- to reasoned scrutiny different values."<sup>190</sup> Furthermore, rationality conceived in general terms as the need to subject one's choices to the demands of reason. Freedom is central to rationality in the same way rationality is important in assessing individual's freedom. Kant's intellectual autonomy is unable to culminate in the form of people's capabilities which make them enlighten. It is the people's capability that has played an important role to reach at the stage of public enlightenment because it does not recognize only basic needs approach which concern for the assessment of poverty and deprivation only.

"The concept of basic needs approach concerned with providing all human beings, but particularly the poor and the deprived, with the opportunities for the full life."<sup>191</sup> However, capability approach extends beyond the analysis of people's rights and duties, and basic needs. It focuses on poverty and deprivation in the one hand and their well-being on the other. It recognizes not only people's diversity but drawing attention on individual disparities based on gender, race, caste or age. It is people's capability embracing human agency and participation to promote public enlightenment by emphasizing the role of practical reason, deliberate democracy and public action in forging goals, making choices.

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<sup>189</sup> Sen, *Rationality and Freedom*, p. 4.

<sup>190</sup> Ibid.

<sup>191</sup> Clark, A. David, "The Capability Approach: its Development, Critiques and Recent Advances", p. 23.

In the notion of justice as welfare, Sen's idea of freedom and capabilities enhances people's collective quality of life to promote public enlightenment in the form of enabling society wherein each individual becomes capable to make decision about issues that affect their lives and minimizes injustice to that extent. As Jonathan writes,

Four fundamental elements that foster an enabling environment: awareness of the problems poor people face and ways of mitigating them; access to all resources required to enhance the quality of their lives; affordability of the resources required for people to improve their welfare; and accountability of those in positions of power, and who claim to represent the interests and welfare of ordinary people.<sup>192</sup>

This enabling environment promotes an attitude that facilitates public enlightenment for all people. Public enlightenment refers to the enhancement of human capabilities which involves process of decision making as well as opportunities to achieve valued outcomes. In justice as welfare, it tries to seek each and every individual becomes capable to get enlighten. It is argued that capabilities are people's potential functioning but it is insufficient in the way of enlightenment rather capability becomes the foundational tool for the enlightenment. It is the capabilities rather than the functioning of individual which indicates the habit of autonomous and self-sufficient to reach at the stage of enlightenment.

Therefore, public enlightenment tries to seek an enabling attitude in the form of capability to make decisions about issues that affect their lives and minimize injustice to that extent. This enabling society ensures public enlightenment with the views of people's substantive freedom and their capabilities promotes not only individual well-being but social well-being as well.

In formulating justice as welfare, the notion of public enlightenment becomes the foundational element because it encourages each individual to become enlighten. It ensures that justice is going beyond a mere consideration of the material aspect of well-off and taking into account a sphere, more intrinsically related to the individual's enlightenment and their personal dimension such as freedom, rights and opportunities, etc. It focuses on people's freedoms, rights,

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<sup>192</sup> Makuwira, Jonathan, "Development? Freedom? Whose Development and Freedom?" p. 193.

opportunities and capabilities to become autonomous and self-sufficient to reach at the stage of enlightenment. Now the basic question is that how one can become enlightened?

This is possible through assessing freedom particularly opportunity aspect of freedom. In assessment of opportunities that a person has would require some understanding of what the people would want to have and have reason to value having. In public enlightenment, capability approach can be used to assess individual advantage in a range of different spaces, for instance, the assessment of poverty might involve concentrating on a relatively small sub set of basic capabilities on the one hand and evaluating well-being on the other hand requires diverse list of capabilities. Public enlightenment promotes people's capabilities which refer their freedom to function in certain ways and ability to do certain things that are deemed valuable.

To properly understand Sen's view of well-being, it is important to have a comprehensive conception of well-being which implies for the betterment of human being in their economic, social, psychological, spiritual and mental state. It ensures people's well-being and how well a person's life goes not in terms of the material aspect but the freedom to undertake valuable doings and beings. However, human well-being underlies not in subjective sphere but objective aspect as well. The subjective sphere would focus on the spiritual, mental, emotional and psychological factors which affect well-being. On the other hand, the objective sphere focuses on the external condition which affects people's functionings and the well-being of an individual.<sup>193</sup>

There are wide variety of concepts and ways of seeing the quality of living such as "pleasure, happiness, the satisfaction of desires or preferences, the fulfillment of needs, the achievements of aims or objectives, the development of capacities or potentialities, virtue or excellence, the maintenance of normal functioning, living a form of life appropriate to one's nature and doubtless many other besides."<sup>194</sup> In assessing the quality of life, the objects which are valuable such as, pleasure, happiness, excellence, functioning, etc can be taken as aspects of the life that one succeeds in living.

For instance, pleasure, happiness, doings and beings a person achieves are potentially relevant to the assessment of the person's standard of living. The quest for the well-being of the

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<sup>193</sup> John F. Tomer, "Human Well-Being: A New Approach Based on Overall and Ordinary Functioning", p. 40.

<sup>194</sup> L. W. Summer, "The Subjectivity of Welfare", p. 764.

individual is not primarily focused on the material aspect, but focuses on the subjective aspect, focusing on the psychological and emotional aspect of the individual. The economic well-being of the individual is also of little importance unless it is translated into falling child mortality and greater life expectancies. That is why Sen distinguishes between the idea of well-being from being well-off and the former is not based on the concept of opulence while the latter is based on material pursuits.

According to Sen, “well-being is not something outside her that she commands, but something in her that she achieves. What kind of a life is she leading? What does she succeeds in doing and in being?”<sup>195</sup> Further, the concept of being well-off is “really a concept of opulence-how rich is she? What goods and services can she buy? And what all offices are open to her? This refers to a person’s command over things outside.”<sup>196</sup>

Sen discusses the standard of living in *The Tanner Lectures on Human Values*, “opulence in the form of commodity possession is undoubtedly important in enhancing the standard of living, but is the standard of living best seen as opulence itself.”<sup>197</sup> Being well-off refers to the people’s command over things. Moreover, an opulent person can command over things but is unable to pursue his/her well-being. For instance, Mr. A and Mr. B both are quite poor in terms of opulence. In comparing, Mr. A is better-off to Mr. B in terms of high income and is able to fulfill his need of hunger. However, Mr. A is suffering from some disease so that despite of his high consumption of food, he is unable to pursue a good standard of living because is undernourished due to his illness in comparison to Mr. B. Hence, a person’s well-being or standard of living is not a standard of opulence.

Being well-off refers to a person’s command over things outside of person’s capabilities in them that one can achieve being healthy, being educated, etc. For Amartya Sen, “The primary feature of a person’s well-being is the functioning vector that he or she achieves”.<sup>198</sup> This well-being is consistent with Sen’s capability approach which focuses on various functionings and capabilities. It plays an important role in the assessment of people’s quality of life. It tries to seek

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<sup>195</sup> Sen, “Well-Being Agency and Freedom: The Dewey Lectures 1984”, p. 195.

<sup>196</sup> Ibid.

<sup>197</sup> Sen, “Standard of Living”. p.15.

<sup>198</sup> Sen, “Well-Being, Agency and Freedom: The Dewey Lectures 1984” p. 198

people's well-being which includes variety of functioning related to nourishment, safety, security, health, literacy, entertainment, and comfort, housing and social relationships.

Going back to the history, we can see that the concept of well-being can be located in the Greek times and its nature is as old as philosophy itself. Aristotle, the Greek philosopher is acknowledged behind this. For him, the well-being of an individual is a life of well-lived and it emerges from what we do and what we become, not from what we possess. According to Aristotle, "The good life is one in which a person most fully, and at the highest level of excellence, fulfills his deepest nature. It is a life in which there is a flourishing of one's truest self. This kind of life is an end in itself and not as a means to some other ends."<sup>199</sup>

According to the Greeks, *eudaemonia* means living a good life and this is the reason Aristotle believes *eudaemonia* is the *telos* of human life which affects all our choices and decisions. In modern times, the concept of well-being described about living well and doing well which is the ultimate end of human life. Further, Aristotle's concept of well-being in the philosophy of *Eudaemonia*, Amartya Sen has introduced the concept of human capabilities in the assessment of their well-being that departed from the narrow utilitarian approach and Rawls' approach of social goods. The former approach based on the utility principle and the latter is based on commodities or index of primary goods.

While assessing the well-being of a person at an individual level and social level, Sen sees neither commodities nor utility as a measure of well-being of an individual but the capacity to achieve valuable functionings.<sup>200</sup> The content of utility is seen differently, it has a look of pleasure, satisfaction or happiness, but as the fulfillment of desire, or as some kind of person's choice behavior. Sen criticizes utilitarianism in general and the most criticism is that of utility principle namely pattern of choice, happiness and desire fulfillment in the assessment of one's well-being.

It is argued that the well-being of the human is not emerged from what they achieve in terms of their pattern of choice, happiness, desire, fulfillment and commodity instead what can be done or achieved in terms of various functionings. It is further argued that, that the idea of a

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<sup>199</sup> Aristotle, *The Ethics of Aristotle*, p. 51.

<sup>200</sup> Sen, "Capability and Well-Being", p. 31.

person's well-being comes with terms of opportunities and capabilities to achieve a certain level of functionings by virtue of the alternative combination of functionings available to them. For Sen, well-being can be actualized through valuable functionings which implies what the person is succeeding in doing or being.

It can be seen as consisting of set of interrelated functionings consisting of beings and doings.<sup>201</sup> Functionings range from the fairly specific, such as being well dressed, being well nourished, and the ability to obtain pleasure from food or music, to the broad and/or vague, such as having self-respect, being free, being psychologically well adjusted and being wise and contented.<sup>202</sup> According to Amartya Sen,

A functioning is an achievement of a person: what he or she manages to do or to be. It reflects, as it were, as a part of the state of person. It has to be distinguished also from the happiness generated by the functioning. A functioning is different from both from having goods and the corresponding characteristics to which it is posterior and having utility in the form of happiness resulting from that functioning to which it is, in an important way prior.<sup>203</sup>

It is important to focus on people's functionings that what he/she can or cannot be lead to lead a valuable life. Therefore, the purpose of well-being is to achieve well lived where life would not be evaluated in terms of material pursuit but rich in valuable life. This valuable life could acquire through people's functioning and their capabilities so that they can pursue their well-being.

Concluding this chapter, all that can be said that Sen's justice as welfare tries to promote the well-being and the capability of the individual so that an individual can pursue their life with a good standard of living not in terms of being well-off but being well. Here, it is meant that it is not captured by income and about what people have but about what each individual is able to do and able to be with what resources one has. We have seen that before that Sen has not focused on just institutions and the means of primary goods but its focus is on minimizing injustice in the society by removing the obstacles in an individual's opportunities which he has in his day to day life.

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<sup>201</sup> Sen, *Inequality Reexamined*, p. 39

<sup>202</sup> John F. Tomer, "Human Well-Being: A New Approach Based on Overall and Ordinary Functionings", p. 23.

<sup>203</sup> Sen, *On Ethics and Economics*, p. 7.

Its focus is on minimum level of welfare in terms of education, health, nutrition and the political right that one has which one can practice in minimizing injustices to some extent. It further promotes public enlightenment which makes them “capable to live long life, healthy life, being educated and more being well fed, taking part in the community, being sheltered and being healthy, having a voice to participate in public life which affects their life”.<sup>204</sup> This constitutes a welfare mechanism where institutional choice and arrangement focused approaches to justice is not sufficient because it is unable to acknowledge immediate injustices such as discrimination relating to basic education, skill, health, etc.

Justice as welfare is not concerned with people’s desire fulfillment and commodity but what can they do and achieve in terms of various functioning. It can be argued that, human welfare occurs in their opportunities and capabilities to achieve a certain level of functionings by virtue of the alternative combination of functionings relating to their nourishment, safety, security, health, literacy, recreation, comfort, housing and social relationship, etc. For instance, being happy, being well-dressed, being well-nourished, being educated, being employed, being safe, calm, having dignity and other activities that inculcates various aspects of functioning of person’s well-being.

Sen’s capability approach is a comprehensive doctrine and Nussbaum’s capability approach is an outcome oriented approach. I will discuss Nussbaum’s capability approach as a principled account with a set of ten human central capabilities which are held to be essential for a good human life and government in all nations should guarantee to their citizens.

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<sup>204</sup> Robeyns, “Sen’s Capability Approach and Gender Inequality: Selecting Relevant Capabilities”,p. 70.



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## CHAPTER 5

### MARTHA NUSSBAUM ON GENDER JUSTICE: AN EXPOSITION AND EXAMINATION

In this Chapter, I will discuss Martha Nussbaum's capability approach, not as a procedural justice but as an outcome-oriented approach that gives impartial account of justice as welfare. Nussbaum's account of justice seems to reconcile the account of both Rawls and Sen. What Sen objected in Rawls' theory gets affirmed by Nussbaum i.e. Sen criticized Rawls for focusing his attention on institutional choices, and bringing forth the theory of justice which is arrangement focused rather than realization focused. Rawls' arrangement focused approach to justice proceeds in two-fold ways, namely; (i) public criterion, which stipulates that the conception of justice must be public and the necessary information to make a claim of injustice must be verifiable by all, and easily accessible. (ii) A public standard of interpersonal comparisons as the obtained principles of justice among the citizens with diverse conception of the good life will not prove stable. These two points of public criterion and public standard seems to be affirmed by Nussbaum in her account on capability approach to justice. Nussbaum's account is a principled account of a set of, ten fundamental human capabilities which are held to be essential to a good human life and government in all nations should guarantee to their citizens.

The main demarcation between Nussbaum and Sen regarding the theory is that it provides the principles, though partial and minimal account of social justice. I'll attempt to bring out the close relationship between the institutional and constitutional design. I'll address the questions concerning minimizing injustice in terms of discrimination, particularly gender discrimination in the cultural practices of different peoples on the one hand and legal, political, social and economic status of women on the other. The discrimination and the deprived situation of women are due to the cultural traditions and practices that mould their lives. I'll try to interrogate the conflict between cultural practices and women's rights. The question arises – are we going to minimize women's injustice and bring gender equality under the purview of human rights or let the culture or tradition decide their lives? With feminist perspective, Martha

Nussbaum attempts to establish an inclusive society which not only incorporates the basic philosophical visions of Kant, Rawls and Sen, but also transcends them. In order to organize the chapter, I will divide it into three parts:

**Part 1) Women and Human Rights**

**Part 2) Poverty and Gender Inequality**

**Part 3) Capability and Gender Justice**

## **PART 1**

### **WOMEN AND HUMAN RIGHTS**

In various parts across the world, women are less nourished as compared to men, less healthy and more vulnerable to physical and emotional violence and sexual abuse. They are also less likely to be literate and also gain professional and higher education. Similarly, they face obstacles in political participation. In many nations, women don't have the same equality before the law, not having the same property rights as men, the same rights of association as men and religious liberty. The unequal political and social circumstances give women unequal human capabilities. Women are not treated as ends; instead they are treated as instruments for the ends of others, often considered as caregivers, reproducers, sexual outlets.

A girl child doesn't get the basic rights and capabilities which every individual is entitled to. Neither is the marital home of a woman is a place where she gets the respect which she deserves. The in-laws see her as the adjunct of their son, a means to grandchildren, as an addition to their household workers and also as an instrument to extract payment in the form of dowry. Even when she is not abused, physically or emotionally, she isn't treated with warmth, nor is her education or employment (in a few cases) nurtured. In case her husband dies, her situation is likely to be worse off, given the stigma attached to the widowhood in many parts of the world. This situation is not rare but the common realities across various parts of the world.

“According to the *Human Development Report 1997* of the United Nations Development Programme, there is no country that treats its women as well as its men, according to a complex

measure that includes life expectancy, wealth and education”.<sup>205</sup> Women as considered the second class citizens of the society lack basic rights which are obligatory for their well-being, which includes bodily integrity, dignity, autonomy, be free from sexual abuse, political freedom, education, professional freedom, equal pay and property rights. Mary Wollstonecraft, a British writer and philosopher, argued in her book *A Vindication of the Rights of Woman* that it is the education and the upbringing of a woman that created limited expectations. She spoke on gender oppression, demanding for equal educational opportunities and demanded justice and rights to humanity for all.<sup>206</sup>

Inequalities between the genders is exhibited around the globe, it just changes in degree as we cross the borders. There are varieties of subjects that demands attention when we talk about equality and rights for the women. I will briefly shed light on some of the pertinent issues. The Employment rights for the women focus on the access of women to jobs and of equal pay and equal benefits. In the 1970s the British Hong Kong government denied equal pay and equal benefits for the equal amount of work to women and also was unfair to the women after their marriage. The married woman was denied the right to be a permanent employee and the status of the permanent employee was changed to temporary post marriage, thereby losing their pension benefit.

The women are not allowed to work without the permission of the husband. No matter how qualified the women is, she doesn't get the same acknowledgement of her education as compared to a man, considering that the woman is emotional and will not be able to handle all the situations at a workplace. More than that, the women faces a lot of harassment at the workplace and most of the women are not allowed to work because of the safety issues.

Freedom of movement is a crucial right but it has been restricted by laws, the reason behind this is also the attitude which is there for the women in the public areas. Women in the public spaces face abuse, insult and harassment which have been the reason of the restriction. The women are not allowed to move out without any male member of the family. It was in

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<sup>205</sup> *Human Development Programme 1997*, United Nations Development Programme.

<sup>206</sup> Wollstonecraft, *A Vindication of the Rights of Woman*, p.44.

August 2019, that Saudi Arabia ended the male guardianship laws, thereby allowing women to travel on their own.

World Health Organization defines health as, “a state of complete physical, mental and social well-being and not merely the absence of disease and infirmity.”<sup>207</sup> The health of the women is diminished in various parts of the world due to factors like inequality, lack of autonomy, lack of financial help, and restriction to homes. The denial of their rights to health care leads to their death during pregnancy and a certain traditional practices such as genital mutilation.

The other issues to be considered with respect to health care are their reproductive rights, abortion rights, and birth control, abuse during child birth and force pregnancy. A woman has a right to bodily integrity and autonomy to exercise her reproductive rights. She should have the right to access of legal and safe abortion. In many countries, abortion is illegal due to which quite a number of women risk their lives while taking such measures at home which harm them. Violations of a woman’s reproductive rights such as forced abortion, forced pregnancy, mistreatment of women during pregnancy is considered inhuman and degrading their dignity and integrity.

The women’s right to academic education is considered very essential. It is the basic rights which every individual is entitled to and the education will help the women to make rational decision about herself and her life and also stand against the injustices against her. The education will not only be the source of income for her but will also help her to nurture her children in an appropriate manner.

Women suffer physical and emotional abuse that violates the bodily integrity, which includes rape, marital rape, domestic violence, sexual violence and genital mutilation. Domestic violence is the gravest problems which are faced by women all over the world. The concept of marital rape is an alien concept to many traditions which gives unlimited sexual access to husband, without considering the choice of the wife.

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<sup>207</sup> “Constitution of the World Health Organization”. p.01. *American Journal of Public Health*.

Women face discrimination even inside the four walls of her home as they are kept under strict control of the male guardian of the house. She is often considered as the caregiver with no desire and choice of her own. There are various practices which undermine the value of the women, the dowry or the bride price is yet practiced in most of the houses. In case if the women losses her husband, she is asked to either practice sati or restrict herself to one room till her last breath.

The family is a large area where women face inequality, religious norms and laws play the role here. The religious belief limits the freedom of choice for women with respect to marriage and of child custody in case when the marriage ends. The woman does not have the right to get a divorce and more than that it is difficult for the woman later on in terms of financial security, social security. Polygamy continues to exist which is an unequal practice and the plural marriages are unavailable to the women.

Domestic violence may be emotional, psychological, physical, or sexual. This kind of abuse involves relationships between individuals and takes place in the private sphere as well. The States have obligations to prosecute and investigate domestic violence, they should have affirmative obligation to take measures to prevent and end violence against women, including prosecution of domestic violence.

The Indian Constitution is a woman-friendly document, which guarantees the right of non-discrimination on the basis of gender, thus imparting that the citizen of the nation should not be deprived of liberty and life. The constitutions of many nations talk about liberty and equality, just like the Indian Constitution, but when these ideas are accepted they are accused of following the western ideology. They ignore that the women have been suffering and they fall back on the culture when asked for a reason.

The charge of 'Westernizing' looks like a shady political stratagem, aimed at discrediting forces that are pressing for change. Surely opponents who claim that women were all happy in India before western ideas came along to disrupt them hardly deserve the time

of the day. They are ignoring tremendous chunks of reality, including indigenous movements for women's education, for the end of *purdah*, for women's political participation that gained strength straight through the nineteenth and early twentieth centuries in both Hindu and Muslims tradition, in some way running ahead of British and U.S. feminist movements.<sup>208</sup>

Human beings have a dignity and it deserves to be respected from laws and the social institutions. This idea of human dignity revolves around an idea of equal worth between rich and poor, female and male, rural and urban. All individuals deserve equal respect and this shouldn't be abridged. "This idea of equal worth is connected to an idea of liberty: to respect the equal worth of persons is, among other things, to promote their ability to fashion a life in accordance with their own view of what is deepest and most important." <sup>209</sup>

The dignity of the individual is violated on the basis of gender and sexuality. Women around the globe find themselves treated unequally with respect to bodily safety, integrity, basic nutrition, health care, employment, education and political freedom. There should legal, social and political treatment to treat people as dignified and equal around the world. In most of the situations women have been regarded as mere means to certain ends and not ends-in-themselves.

The equality of the sexes should be a prominent part of the public political culture, and that religions that dispute sex equality should not have the option of making law to that effect, as of course they do in very many nations of the world, including quite a few that have constitutional guarantees of sex equality. I also believe that in some areas of the religion's daily life, it ought to be held to public laws protecting sex equality (e.g., in the hiring of workers and in matters of sexual harassment). In general, individuals and groups may choose to view and treat one another in all sorts of hierarchical ways without legal interference, although there may be good moral arguments against each conduct.<sup>210</sup>

Mill linked the concept of liberty with the idea of the dignity of an individual. One should respect the individuals and regard their personal choices in order to make decisions about their

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<sup>208</sup> Nussbaum, *Women and Human Development: The Capabilities Approach*, p. 38.

<sup>209</sup> Nussbaum, *Sex and Social Justice*, p. 05.

<sup>210</sup> *Ibid.*, p. 21.



life and how they want to conduct their lives in accordance with moral views and with the sense of dignity as equal citizens of the society and not the second-class citizens. Kant seeks to explain justice and law in terms of a distinct concept of freedom as independence. A person is independent if he is capable of setting his or her purposes, while a thing is something that can be used in pursuit of purposes. According to Kant, there is one innate right and that is freedom, which means independent from being constrained by another person's choice

According to Kant, freedom plays a very important role in reason based moral decision. The human will is influenced by moral law because it has freedom as an inherent virtue. The moral law expresses the autonomy of the pure reason which is the freedom. This autonomy or freedom is the conditions of all the maxims which are universally accepted and are the moral laws, the categorical imperative. According to Kant, freedom plays a very important role in reason based moral decision. The human will is influenced by moral law because it has freedom as an inherent virtue. The moral law expresses the autonomy of the pure reason which is the freedom. This autonomy or freedom is the conditions of all the maxims which are universally accepted and are the moral laws, the categorical imperatives.

Kant has focused on the idea of freedom and autonomy which is the basis of dignity for all the individuals. Every individual should be treated as an end and not as a means irrespective of the gender. Martha Nussbaum goes back to the ancestors such as Mill, Aristotle, and Kant in order to develop the notion of individual liberty and autonomy.

The religious traditions across the globe threatens the human rights and particularly the women's rights, it generates the dilemmas between the religious tradition and the society norms. We have seen that the nature of the cultures is complex, it is very difficult to determine to what extent the traditions reflect or influence the culture. India being a country of diversified religions reflects different political and cultural factors. "Our assessments are made still more complex by the fact that when religions act politically their religious discourse is often powerfully colored by the issues of political party. Thus, the Hinduism represented today in India by the Bhartiya Janta Party (BJP, the leading Hindu nationalist party) is not very much like the inclusive, loosely

defined, polytheistic Hinduism of earlier tradition; political and cultural forces are likely to have shaped the BJP's selection of religious principles and emphases."<sup>211</sup>

The Hindu tradition proposes different pictures of the situations of the women, socially, politically, and sexually. The idea behind this is not to criticize the religious traditions but rather to address the rights of the individuals. A human right does not derive from the particular situation of power or privilege or skill but focuses on the fact of being human. CEDAW<sup>212</sup> defines "discrimination against women" as follows:

Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>213</sup>

After ratifying CEDAW, the government pledges, to represent the principle of equality of women and men in their Constitution, also to make law against discrimination between men and women, to constitute legal protection of the women's rights, to ensure protection of life, bodily integrity, political rights, education. The state should also take measures to eliminate the existing discrimination and to change the laws, customs and practices which are against the rights of the women.

Women are entitled to enjoy the same human rights and fundamental freedoms as other individuals of the society. The state parties should take certain steps to ensure that women's rights are respected by the law and the elimination of inequalities, discrimination and practices that negatively affect women and their rights. Women are in fact entitled to certain additional rights such as those concerning reproductive health. CEDAW requires states to take measures to

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<sup>211</sup> Ibid., p. 86

<sup>212</sup> Convention on the Elimination of All Forms of Discrimination against Women is an International Treaty adopted in 1979 by the United Nations General Assembly. It is an international bill of rights for women, instituted on 3<sup>rd</sup> September, 1981.

<sup>213</sup> Women's Convention, Article 2, International Women's Development Agency.

eliminate discrimination in matters related to family and marriage and underlies equal responsibilities of men and women in the context of family life.

The women is burdened with the responsibilities of the family and upbringing of the children and it will always be a context of debate how a working women should manage her work and family. The women are considered to be the caregivers and sympathizers; they are the one who has to manage the old people, sick people at home and the upbringing of the children along with cooking and cleaning.

Nussbaum theory addresses the questions concerning minimizing injustices in terms of discrimination and especially gender discrimination. The discrimination and deprived situation of the women are due to the cultural practices which shape the lives of women. The equality of opportunity is what matters the most for the well-being of the individual. The basic idea behind the capabilities is the concept of dignity of the human being. A society that does not guarantee these to all its citizens at some threshold level falls short of being a fully just society.

In order to access the quality of life of a woman a universal framework has to be proposed. There are three arguments which have to be answered and those are argument from culture, argument from good diversity and argument from paternalism. The Indian culture contains strong norms such as female modesty, obedience, deference and self-sacrifice that have defined women's life for centuries. "One might try to refurbish the argument from culture by an appeal to the idea of cultural relativism: the idea, that normative criterion must come from within the society to which they are applied."<sup>214</sup>

People have often confused relativism with the idea of toleration for diversity, and find relativism appealing on the ground that it shows respect for other kinds of living. "Most cultures have exhibited considerable intolerance of diversity over the ages, as well as at least some respect for diversity. By making each tradition the last word, we deprive ourselves of any more general norms of toleration or respect that could help us limit the intolerance of cultures. Once we see this, our interest in being relativists should rapidly diminish"<sup>215</sup>

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<sup>214</sup> Nussbaum, *Women and Human Development: The Capabilities Approach*, p.48.

<sup>215</sup> *Ibid.*, p. 49.

Relativism has several problems of its own; the traditional values cannot undermine the value and dignity of a woman. There are different cultural values in the east and the west, the Indian traditional system has undermined the value and dignity of the women in the form of taking away the freedom of movement, employment rights, political rights and family life.

The other argument from good of diversity reminds us that our world is rich in part because we don't agree on single set of categories. We are rich in diversity and heritage, speaks a variety of languages, each culture has its own beauty and value. Is cultural diversity really like linguistic diversity? We see that the cultural practices to some extent harm the value and dignity of the people but the linguistic diversity doesn't. The diversity which is compatible with the human dignity and other basic values should be preserved.

Finally, we have argument from paternalism. When we set universal norms as the benchmarks for the society, we show little respect for people's freedom. We assume that the people cannot make choices for themselves and are not able to decide what is good or bad for them. "Thinking about paternalism gives us a strong reason to respect the variety of ways citizen actually choose to lead their lives in the pluralistic society, and therefore to prefer a form of universalism that is compatible with freedom and choice of the most significant sorts".<sup>216</sup>

One should not treat the other as means or as means to an end. This imperative was formulated by Kant, which has been adopted by Nussbaum, considering that women should not be considered as means to achieve certain ends or as the second class citizens of the society. They should be given the same rights and opportunities as that of men. The universal norms which should be accepted should be compatible with the rights, freedom and liberty of the individual.

## **PART 2**

### **POVERTY AND GENDER EQUALITY**

The social development approaches, policies related to welfare and strategies to end poverty have preceded on the idea that increase in income and material wealth of households is the best

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<sup>216</sup> Ibid., p. 51.

way to end poverty. The developing countries has adopted the neo-liberal strategies such as privatization, capital accumulation and investment in poor countries with cheap labor markets are ignoring the well-being of an individual and the basic rights of the people. These paths for social development ignore how people are living their lives and these approaches are affecting the poor people to the highest degree. “Poor and low income individuals are at risk and have low functioning not just because they have no money, but because they may lack certain freedoms or capabilities.”<sup>217</sup>

The poor women are the victims of violence and abuse have less freedom and access to basic facilities. Poverty is often looked as a deprivation of basic liberties; income is not looked as an end in itself but as a means to certain ends. Low income if looked at from a utilitarian point of view does not fulfill the basic living standard of the individual thus neglecting the well-being of an individual. The United Nations Human Development Index (HDI) is a way to measure development not just based on income alone, but incorporates other valuable aspects of human life.

The basic capabilities that is essential for a good standard of living is the ability to be well-nourished, to avail good healthcare, to communicate, to read and write and to participate in the community with dignity and respect. It is essential to understand the difference between capability and functioning. A functioning is what people actually do and capability is what they are able to do in the personal and social situation. If one has a capability of being able to eat, the person can still choose to fast. The woman can choose to stay at home and look after the family and take care of the children but she should still have the opportunity to choose to work, provided that it is safe and facilitates economic independence.

Women face violence which affects their ability to achieve full functioning. The violence against women and girls can be physical, emotional and sexual violence by their family members, acquaintance or the strangers. The violence against the women limits their access to the institutions, the women who has been victimized, experience the sense of fear, shame and choose isolation on their own or are forced isolation by the abuser. The abuser has a fear that her connection with the people outside is a threat to his power and control. This way the women are

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<sup>217</sup> Sen, *Development as Freedom*, p. 50

often cut off from the institutions as such healthcare, law and court and other social support systems.

This scenario mostly exists for the poor women who have no other choice rather than staying with the abuser because they are financially depended on the male member. This mainly affects to the section of the society who has low income and are less educated. This harms the physical, emotional and psychological well-being of the people.

Many survivors of violence must cope with memories of traumatic events, thoughts of suicide, and the effects of physical injuries. A participant describes her experience as: 'I have trouble at work as a result of past domestic violence....I worry that I am always missing something. I am always watching for an attack so I am on guard all the time and I am not listening. I always need to ask for clarifications and that angers people on the job'.<sup>218</sup>

The other factor which the women suffer from the violence is the ability for them to generate income for themselves for their basic needs. Women are not allowed to work as it is believed by some men that it harms their image in the society. The women are believed to be the caretaker and the caregivers and are asked to stay at home and look after the house. The women are not allowed to focus on their profession but rather be at home and take care of the household in order to be a good wife, daughter or daughter-in law. They are often prevented from working outside due to several factors as it hampers the respect of their husband, or the unsafe public spaces.

This keeps them away from financial security leading to high poverty levels. "Violence appears to be a direct contributing factor to the poverty levels of women. Women who have left abusive relationships may find themselves with multiple barriers to employment in the formal sector, such as transportation, childcare and other ongoing safety issues. Thus, it has been reported that many women stay in abusive relationships for economic reasons."<sup>219</sup>

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<sup>218</sup> Pyles, Loretta, "The Capabilities Approach and Violence against Women: Implications for Social Development", p. 04.

<sup>219</sup> Ibid., p. 05.

Gender inequality is one of the inequalities that have existed in the parts of the world at large. Women have been denied the basic rights which men have been practicing since ages, they are denied freedom of speech, devalued the work they do, and their work is treated unequal to that of men ranging from household to the national or global level. Within the recent years there have been a lot of debates and discussions for the women to be treated as the equal member of the society. Despite the efforts, the women have not achieved economic equality with men and the women are more likely to live in poverty than the men.

There are several reasons for this adverse situation, such as low wages, lack of decent work, unpaid care work, unequal wages for the same amount of work and longer work days. There is a huge gap between the earnings of men and women; women tend to earn less than men. The developing countries or the under developed countries take huge contracts from the first world countries and hire women for long hours with very less wages. In most of the scenario, the women lack decent work as they are less likely to have legal contracts or social protection and are not paid well to escape the poverty.

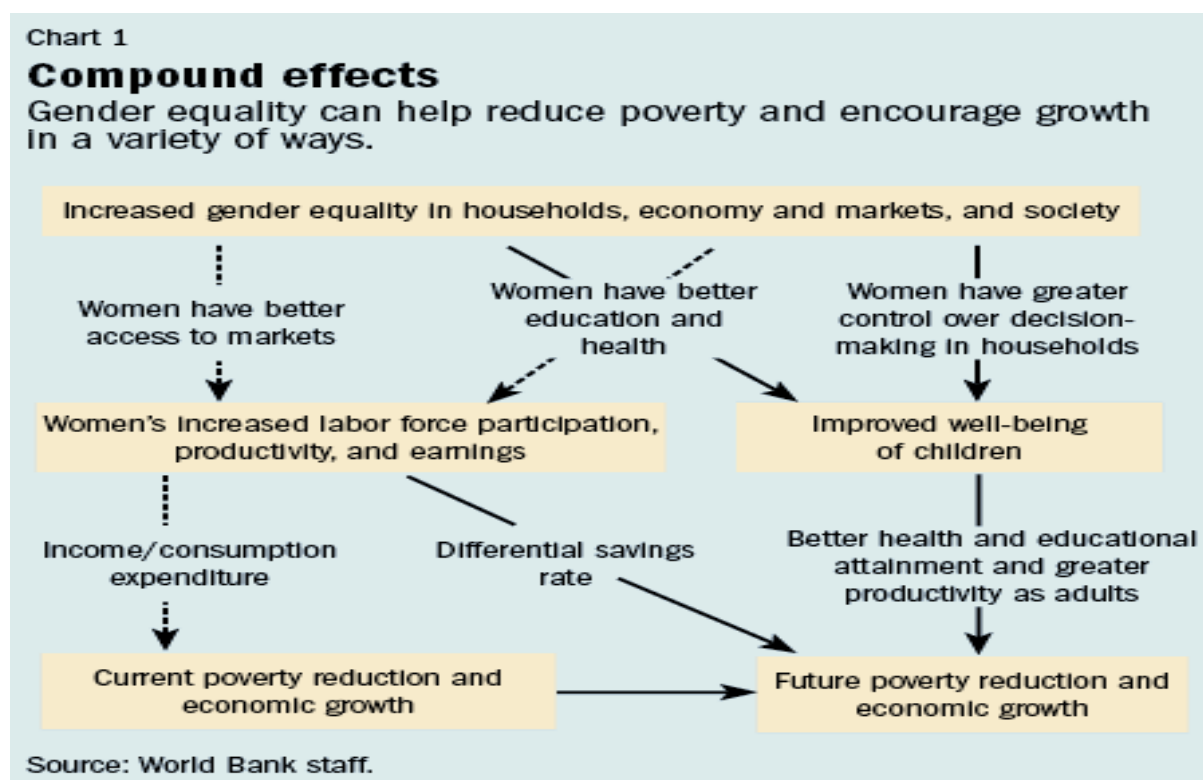
The household work such as cleaning, cooking, childcare or taking care of the ill or old at home is not considered to be work and that work is considered to be unpaid work as it is believed to be the sole duty of the women. According to the study, “women work for longer days than men when paid and unpaid work is counted. It means globally, a young woman today will work on average the equivalent of four years more than a man over her lifetime.”<sup>220</sup>

The inequalities between the genders affect the social development, global development and prosperity of a nation. The equal opportunities provided to women will let her use her talent at the workplace, the education provided to her will help her make better choices for herself, her family and the community. Women have low literacy rate, the reason being that the family cannot send all children to school, so they decide to send the sons to school assuming that the potential of the boy to earn is more.

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<sup>220</sup> Patterson, Adam, Oxfam International. <https://www.oxfam.org/e/whythemajorityoftheworld'spoorarewomen>. Retrieved on 20th January, 2021.

Gender equality can help reduce poverty and encourage growth in a variety of ways. The diagram below explains it how. With the increased gender equality in economy and markets, households and society, which results in women’s access to markets, women have better education and health, women have control over decision making in households. This will further increase the well-being of the children, better health and education which will result in more productivity. Women will have more participation in work which will result in productivity and income. This will over all improve the poverty situation and increase in economic growth.



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Asia, Africa and Latin America are the most male-dominated regions where we can see the gender inequality evidently. Women there not paid for their labor or are underpaid. The basic needs and rights of the girl child or women are not addressed in the same manner as the men. The girls are married at an early age and they get pregnant at a young age and the responsibility of nourishing the child becomes their sole responsibility and hence becomes one of the reasons

<sup>221</sup> World Bank Staff. The Life You Can Save. <http://www.thelifeyoucansave.org/blog/what-does-gender-equality-have-to-do-with-global-poverty>. Retrieved on 20<sup>th</sup> January, 2021.



they can't step out of the homes for work. They are not entitled to education which also prevents from working and improving the standard of living and their well-being.

The political will and social support is crucial to encourage the well-being of the individuals and especially the women. The situation of the society can improve by not only educating women but also advancing realization in men, that they are not superior to the women but are equal to them. The structure of the society needs to be looked at deeply and largely, starting from home, to school, workplace and in communities that men and women are equal citizens of the society and together to have to survive and fulfill their needs and desires.

The gender inequality is also the cause of poverty. The girls at the young age are not sent to school as the parents cannot afford education for every child, so they prefer to send the son to school. Secondly, the girls have to do the work at home, like fetching water from the nearby source (which can be a few miles away), cleaning and helping the mother at home. Thirdly, it is believed that the girl will marry off soon and the education is of no importance to her. Fourthly, the schools are far off and the parents are scared to send the daughters to schools for safety purposes.

As they are not educated, so they do not get good jobs which are based on degree. The women have to suffer the most in case of separation or divorce. She doesn't get a good job and the single women faces barriers created by the society. In this situation, the women have to live in poverty which affects their physical and social well-being.

Looking at the economic inequalities, we see that there are two kinds of inequalities here, the wealth inequality and the income inequality. The wealth contributes to the assets, savings, deposits and investments. The income is the current earning which a person is earning. Now looking at both the kinds of inequalities, the global wealth is estimated to be about 260 trillion dollars which is not distributed equally around the world. North America and Europe contributes to 67% of the world's wealth having only about 20% population of the world. China which has

more than North America and Europe combined contributes to only 8% of the wealth. India and Africa together contributes to only 2% of the wealth, which has 20% of the total population.<sup>222</sup>

The gap between the rich and the poor nations is massive, the distribution is not equal and the poverty in the under developed nations and developing nations is evident. In this the ratio of the poor women is more than the man. The women earn less than man for doing the same job. They bear the burden of the household work and cooking and are the primary caregivers of the family hence they are able to take out less time for job or can't go out for job at all. Since women have fewer opportunities with respect to education, income we see that poverty is intrinsic to gender inequality.

Once the women overcome the barriers which the society has construed upon her and consider her equal with the men, we will notice the poverty rate will go down and the well-being of the individuals will improve.

Situation of poor woman in the developing countries, give us yet more reason to turn to a universal normative account for the philosophical underpinning of basic political principles. I assume that if a account fails at the less demanding normative task of telling us how well people in a given country are doing, it must fail, a fortiori, at the more demanding task of providing a normative account of a basic social minimum of life quality.<sup>223</sup>

The universal principles are the prominent approach to assess the quality of life, the normative assessment of how a nation is doing; we would need to know how each one is doing. There should be an approach that is respectful for each individuals flourishing, which treats every person as an end and as a source of agency and worth in their own right. "Part of this respect will mean not being dictatorial about the good, at least for adults and at least in some core areas of choice, leaving individuals a wide space for important types of choice and meaningful affiliation."<sup>224</sup>

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<sup>222</sup> World Health Organization. <https://www.worldwealthreport.com/>. Retrieved on 20<sup>th</sup> January, 2021.

<sup>223</sup> Nussbaum, *Woman and Human Development: The Capabilities Approach*, p. 60.

<sup>224</sup> *Ibid.*, p. 69.

Rawls focused on the institutions rather than the individuals, which was later criticized by Amartya Sen where he focused on the choices and the desires of the individuals. Amartya Sen is the pioneer of the capabilities approach, an approach to quality of life assessment. I have discussed this in Chapter 4 of the thesis. Martha Nussbaum's approach is different in several ways to that of Amartya Sen, both in its emphasis on the philosophical underpinning of the capability approach and to take a stand of what these capabilities are.

### **PART 3**

#### **CAPABILITY AND GENDER JUSTICE**

The capabilities approach directs us to examine the real lives in the social and material settings. The question which the capabilities approach address is not how happy or satisfied the individual is but what can a person do or what liberties or the opportunities a person has. The idea behind the approach is two-fold: there are certain functions which are central to the human life and secondly, that these functions should be done in a truly humanly way and not an animal way. The senses of the human being can operate in an animal way if they are not cultivated well.

In *Sex and Social Justice*, Nussbaum states that,

For we do not want politics to take mere survival as its goal; we want to describe a life in which the dignity of the human being is not violated by hunger or fear or the absence of the opportunity. The idea is very much Marx's idea, when he used an Aristotelian notion of functioning to describe the difference between a merely animal use of one's faculties and a truly human use. The following list of central human functional capabilities is an attempt to specify this basic notion of the good.<sup>225</sup>

All the citizens should be furnished with the capabilities; these should be the goal of public policy. Nussbaum claims that the life which lacks any one of the capabilities will fall short of a good life. The list of capabilities should be taken under concern in assessing the quality of life of an individual and looking at the needs of human by framing these in the public policy. All the

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<sup>225</sup> Nussbaum, *Sex and Social Justice*, p. 40.

capabilities are of equal importance and are in distinct in quality; we cannot satisfy the person by giving one of the capabilities in large amount and neglecting the other.

The items on the list are related to one another in many complex ways. Employment rights, for example, support health, and also freedom from domestic violence, by giving women a better bargaining position in the family. The liberties of speech and association turn up at several distinct points on the list, showing their fundamental role with respect to several distinct areas of human functioning.<sup>226</sup>

Nussbaum lists down the list of ten central human functioning capabilities:

- 1) Life: The individual should be able to live a life of normal length, not dying prematurely due to lack of resources or a life without dignity.
- 2) Bodily health and integrity: The individual should be able to have a good health, which includes the reproductive health of a woman and a well nourished body and have shelter.
- 3) Bodily integrity: The individual should have the freedom to move freely from one place to another, should be secured against abuse, sexual violence, domestic violence, rape. The individual should have choice in matters of reproduction.
- 4) Senses, imagination and thought: The individual should be able to use their senses, should be able to think, imagine, and to reason in a human way. The individual should be informed and cultivated with education and should not be restricted or limited to literacy and professional training. One should have the freedom of expression and freedom of religious exercise.
- 5) Emotions: The individual should be able to have attachments to persons and things, one should be able to love the ones who love us and care for us. One should be able to practice emotions such as grieve, love, gratitude and experience longing for a loved one or an experience. This capability means that supporting the form of human association which is important for the human development.
- 6) Practical reason: The individual should use their rational skill in order to form the conception of good and bad and reflect over one's life and choose what is best for them.

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<sup>226</sup> Ibid., p. 42.

- 7) Affiliation: The individual should be able to live in relation with the other individuals, to show their concern for the other people and have compassion towards them. The individual should respect the other and treat the others as an end and never as means to reach the ends.
- 8) Other species: The individual should be concerned not only for other humans but should be able to live in relation to animals, plants and the nature.
- 9) Play: The individual should be able to play, laugh and participate in the recreational activities.
- 10) Control over one's environment: The individual should have the right to participate in political activities, they should have the rights of freedom of speech, freedom of association, have employment rights, property rights. The individual should be able to work and generate income using his practical reason and have a meaningful life.<sup>227</sup>

These are the list of ten central capabilities listed down by Nussbaum which is open for revision in future. In order to measure the quality of life of an individual, these capabilities have to be assessed. There should be no compromise with these capabilities in order to lead a good and a just life. From the list of these ten capabilities, two capabilities, practical reason and affiliation has special importance as they suffuse all the other making them truly humanly. For example, work is a functioning which includes both practical reason and affiliation, one should be able to think rationally as a human being and it must behave with others out of respect and dignity. It must be noted that practical reason and affiliation are not like two ends to which all others can be reduced to.

Martha Nussbaum states there are three different kinds of capabilities which play a role in analysis of the human powers and abilities. The first is the basic capability; these are the innate capacities in the individuals which have the basis of developing the advanced capability. These capabilities are quite fundamental and cannot be converted into functionings. The basic capability of hearing and seeing is an example of it. The second is the internal capability; these are the developed states of the individual provided with sufficient conditions in order to exercise them. These capabilities are matured with time and body and need the support from the external

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<sup>227</sup> Ibid., p. 41.

conditions for development, a person gradually learns to practice its political rights, love the near and dear ones. The third is the combined capability, which is the internal capability combined with the external favorable conditions. For example, a person who is professionally trained has a capability but has no employment so she cannot practice her training. The citizens who belong to non-democratic regions have the internal but not the external capability to exercise their freedom of speech and expression.

The difference between the internal and combined capability is of a very less degree, as developing the internal capability also demands external favorable conditions same as the combined capability. The internal capability mostly requires developing or practicing the basic capability with the help of external conditions. We can see the distinction more clearly when there is a sudden change of the environment. There are conditions when the person has practiced his internal capability but the external conditions are not favorable hence we notice the absence of combined capability.

Women have been undermined, treated with a prejudice because of their gender, and are followed by sexist views by people all over the men. It is sad to see that certain cultures and traditions practices by people have caused inequality for women and hindered the progress of women causing gender discrimination. This has continued to exist all around the globe and the ethical and moral questioned always arose on the ground looking for a universal norm which will allow women to gain significant and respectful place in the society.

The 'Capabilities Approach' construed by Nussbaum became a way in which one could associate the central universal capabilities in order to raise the situation of women in the society. The approach helps in lifting the lives of women and lifting them up from the miseries which the culture and traditions has placed upon the lives of the women enabling injustice towards women. The Ten Human Functional Capabilities proposed by Nussbaum presents that all human beings should get the opportunity of these capabilities at the threshold level in order to lead a good and a just life. These capabilities should be equally available for men and women to embrace them and live a quality life.

The Capabilities Approach is significant and meaningful as it provides an advantage for women especially in those areas which are male dominated. As a bare minimum, without any one of these capabilities, Nussbaum's approach "claims that a life that lacks any one of these capabilities, no matter what else it has, will fall short of being a good human life."<sup>228</sup> Any human life that lacks any of these capabilities finds a barrier to develop their life in the way they want to. "The ability to have control over one's own life and the ability to make their own decisions not only contributes to a person's individuality, but also gives them the personal validation that the choices that they make are those in which they have taken into consideration."<sup>229</sup>

Nussbaum's approach exhibits a route for a woman which elevates their status in the society as equal to that of men, which has always been undermined. She integrates a set of universal principles instead of an idea of how an individual should be treated. Nussbaum presupposition on the capabilities approach that, "human capabilities exert a moral claim that they should be developed, human beings are creatures such that provided with the right educational and material support, they can become capable of the major human functions."<sup>230</sup>

In most of the world, the traditions, cultures and the mentalities of the people do not allow women to avail these capabilities, thus making the environment harsh for them to excel in their personal, social, financial and political front. Thus the set of capabilities are necessary for to follow, which provides conditions for people to develop and rise above the situations which the cultures and traditions have portrayed for them.

Nussbaum doesn't eliminate the cultural diversity by presenting the capabilities approach but questions to look at the cultural practices which harm the individuals especially the women. Capabilities Approach can be utilized as tool towards equality of men and women. All individuals are possessed with capabilities, they should get the opportunities to exert on those capabilities and come out as a potential being. The cultural practices harm the individuality of a woman by forbidding them to pursue their choice of life by claiming that it the cultural

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<sup>228</sup> Nussbaum, *Sex and Social Justice*, p. 42.

<sup>229</sup> Ashaq, "Nussbaum on Gender Equality", p. 02.

<sup>230</sup> Nussbaum, *Sex and Social Justice*, p. 43.

environment and ought to be respected. Hence, relativism becomes an argument against the capabilities approach.

Relativism has been dangerous as it accepts the horrible things practices against the women in different cultures around the world. It is used to defend the way women have been treated unequally and capabilities approach can be ignored on its basis. Another argument made against the approach is the historical belief of the division of labor between the men and women. It has been believed that there are certain jobs which a man can do better and certain jobs which are fit for the women. This creates a dichotomy between different roles for men and women that have been classified for them since ages. Be it the physical or mental role, women has always been considered as the weaker section of the society.

Alice Kessler-Harris writes, “Women have always worked, but the form and meaning of their labor has varied through history.”<sup>231</sup> It has been presupposed that men can do more labor and tasks which are intensive and are more capable in it. It has been presumed that the women can nurture the children and take care of the household responsibilities. Women has always done and performed the roles which the man has been doing throughout the history. The gender has been socially constructed and the roles have been set for the gender claiming that it is the social structure or the traditional practices. Men have also performed certain roles which have mostly been reserved for women, keeping the platform equal for both men and women.

Another argument against the capabilities approach states that the capabilities approach is a set of universal principles which have to be followed by all. The argument states that this neglects the individual’s autonomy, because now they will have to adhere to the list of ten capabilities which have been stated. It should be the person’s choice to follow them or not. It would take away the personal choice of the individual whether they want those capabilities for themselves or not. We cannot expect all the individuals to understand those capabilities and abide by them. In many situations, the culture has been so dominant that the women accepts their inferiority to men and responds to unjust behavior willingly.

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<sup>231</sup> Kessler-Harris, “The Meaning of Work in Women’s Life”, p. 105.



The positive outcome of the approach is that it will allow the highest amount of autonomy on the individuals. It will also provide an option of free choice. The approach intends to provide the opportunities to men and women equally and it says that they have the full potential to do things should be able to realize those potentials.

Each one of the ten capabilities that Nussbaum outlines opens the door for autonomy, from integrity and emotions to playing and environment. This approach doesn't create any barriers that withhold the bare minimums that constitute a good life. By applying the capabilities approach would not be forcing people, especially women, to be a certain way or follow certain values, instead it gives them the opportunity to choose and decide without the imposing authority of a male dominated atmosphere.<sup>232</sup>

These capabilities are essential in providing each and every individual with autonomy, dignity and respect and treat every individual as an end and never as a means to achieve to certain ends. This is a progressive step and it holds for every institution such as education, family, political. The question arises what position should be taken when the rights of the women are harmed in the name of culture? Culture in a general term should be understood as '*way of living*'. Culture and religion is a correlated term when apprehended.

The western societies like North America and Western Europe practice a general way of living focusing less on the religion aspect. In order to avoid cultural imperialism and focus largely on universal norms, Martha Nussbaum states in defense of universal norms that:

It is one thing to say that we need local knowledge to understand the problems women face, or to direct out attention to some aspects of human life that middle-class people tend to take for granted. It is quite another matter to claim that certain very good general values, such as the dignity of the person, the integrity of the body, basic political rights and liberties, basic economic opportunities, and so forth, are not appropriate norms to be used in assessing women's lives in developing countries.<sup>233</sup>

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<sup>232</sup> Ashaq, "Nussbaum on Gender Equality", p. 06.

<sup>233</sup> Nussbaum, *Woman and Human Development: The Capabilities Approach*, p. 41.

Most of the cultures around the globe are structures in a way that men are considered to be superior to the women. It is the beliefs in the culture that has allocated the duties and roles within the society. The roles allocated by the culture have created a hierarchy in the society due to which the women have been subordinated by men in most of the regions. And secondly, the power and the position of decision making are disposed towards the men. There have been lots of debates, discussion and awareness around the world regarding the equality between men and women. It is just in theory that women and men are considered to be equals.

The cultural norms have been deeply rooted in the society and the practice to bring out gender equality may worsen the situation. The tension which exists between the culture and feminism can be resolved by integrating cultural values with a flexible understanding of feminism. Capabilities have a close connectedness with the human rights, it covers the first-generation rights which are the political and the civil rights and the second-generation rights which are the economic and the social rights. Bernard Williams comments:

I am not very happy myself with taking rights as the starting point. The notion of the basic human rights seems to me obscure enough and I would rather come at it from the perspective of basic human capabilities. I would prefer capabilities to do the work, and if we are going to have a language or rhetoric rights, to have it delivered from them, rather than the other way round.<sup>234</sup>

The rights can be seen as the combined capabilities, securing rights to the citizens is to have them in the position of combined capability. Most of the nations around the globe have nominal participation of women in politics. The rights are the basic entitlements which belong to all human beings simply because they are humans. Human capabilities are applied as an answer to various questions regarding the living standard and the quality of life. Martha Nussbaum argues:

The equality of the sexes should be a prominent part of the public political culture, and that religions which dispute sex equality should not have the option of making law to that effect, as of course they do in very many nations of the world, including quite a few that have constitutional guarantees of sex equality. I also believe that in some areas of the

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<sup>234</sup> Nussbaum, *Women and Human Development: The Capabilities Approach*, p. 121.

religion's daily life, it ought to be held to public laws protecting sex equality (e.g., in the hiring of workers and in matters of sexual harassment). In general, individuals and groups may choose to view and treat one another in all sorts of hierarchical ways without legal interference, although there may be good arguments against such conduct.<sup>235</sup>

We must notice that poverty alone is not the reason for gender inequality and the greater number of deaths in women than men but customs and political arrangements also play a large role in it. They are also causes of women's death and misery. Any approach which assesses the quality of life offers an account of the relationship between women's equality and tradition. The common practical way of assessing the quality of life is simply checking the GNP (gross national product) per capita. We have often ignored the major constituents of life quality which is infant mortality, life expectancy, education, political liberties, and health.

In order to assess the quality of life in a nation, we must question how the people have been able to perform the central human functions which are the list of ten central human capabilities. The intuition behind the capability approach is that the capabilities exercise the moral claim that they should be developed. Human beings if provided the right material and educational support can become capable of the human functions. Human beings are the creatures with lower level capabilities which we call the basic capabilities. If the human beings are deprived of the essential nourishment they will not grow into high level capabilities.

Women belong to cultures. But they do not choose to be born into any particular culture, and they do not really choose to endorse its norms as good for themselves, unless they do so in possession of further options and opportunities- including the opportunity to form communities of affiliation and empowerment with other women. The contingencies of where one is born, whose power one is afraid of, and what habits shape one daily's thought are chance events that should not be permitted to play the role they now play in pervasively shaping women's life chances. Beneath all these chance events are human powers, powers of choice and intelligent self-formation. Women in much of the world lack support for the most central human functions, and this denial of support is frequently caused by their being women. But women, unlike rocks and plants and even horses, have

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<sup>235</sup> Nussbaum, *Sex and Social Justice*, p. 21.

the potential to become capable of these human functions, given sufficient nutrition, education, and other support. That is why their unequal failure in capability is a problem of justice. It is up to all human beings to solve this problem.<sup>236</sup>

The theorist of capability approach states that the individuals are and should be entitled to certain capabilities despite of their satisfaction without them. There are certain opportunities which are necessary for a flourishing life, the person may be living a satisfied life but that isn't the good quality of life. Nussbaum's calls this as adaptive preferences, where the individuals adapt to certain adjustments which the individuals accept because they have not been given the full opportunities to flourish in their life. Women have been objectified at every stage of their life; they are expected to look their best and are considered to give away comfort and compassion to everyone around. Kant's notion of humanity of treating an individual as an end and never as a means to reach certain ends has been the epigraph and is used as a critique for the injustices against the women.

In order to understand we need to know, what is the idea behind treating the other individual as an object? Martha Nussbaum has listed down seven notions that need to be considered:

- 1) Instrumentality: The individual treats the other individual as the tool of his/her purposes.
- 2) Denial of autonomy: The individual treats the other individual as deficient of autonomy and self-determination.
- 3) Inertness: The individual treats the other individual as devoid of agency and also an activity.
- 4) Fungibility: The individual treats the other individual as an object which can be interchanged with other objects.
- 5) Violability: The individual treats the other individual as devoid of integrity, also treating someone as permissible to break up and smash.
- 6) Ownership: The individual treats the other individual as someone who can be owned by another can be sold or brought as an object.

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<sup>236</sup> Ibid., p. 54.

- 7) Denial of subjectivity: The individual treats the other individual as someone whose feelings, desires and reason need not be taken into account.<sup>237</sup>

These notions are a part of life for women as they have to go through these at all stages of life with respect to their desires of playing, education, marriage, children, and family life. The feelings, desires, experiences of the women have not received any respect from the individuals around or the strangers in the public space. The women have been considered as the caregivers, whose sole duty is to take care of the household and elderly at home. They haven't been provided with the autonomy to take decisions with respect to their lives such as of what profession to choose, their choice in marriage and to decide what is good or bad for them. It was very common in the history and in some cases it still exist that women have been the exchange object in respect to any business deal or in exchange of regions during the British Raj.

Men have always been dominated on women and it took them nothing to smash their respect, dignity or integrity. The women doesn't have the authority to choose the kind of life they want to live, it is assumed that it is the duty of the women to sacrifice their needs or desires in order to fulfill the desires of the others. Women have to leave the important decisions of their lives on the head of the family which is generally the male member, could be the father or the husband.

The feminist thinkers have stated that the women in the society are associated with their bodies than are the men; they are valued for how they look. In order to get social acceptance they are and have been under constant pressure to look beautiful and have beautiful bodies. There are certain standards that have been set for the appearances for women and they have to match these standards in order to be accepted socially. This notion of objectification have treated women a things who are expected to keep themselves decorated and gazed upon.

It is true, and very much to the point, that women are objects, commodities, some deemed more expensive than others- but it is only by asserting one's humanness every time, in all

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<sup>237</sup> Ibid., p. 218.

situations, that one becomes someone as opposed to something. That, after all, is the core of our struggle.<sup>238</sup>

The term 'objectification' has passed into many people lives. It is commonly used in advertisement, films and other representations where the women are shown as mere objects and the attitude and attention towards the women undermine their integrity and dignity. The sexual objectification is not a petty problem but a central in women's lives. The instrumentality of women for the sexual desire is powerful which treats them as not ends in themselves but as means or a tool for the satisfaction of their desires. With this instrumental zing the person is denied of the autonomy and subjectivity. The person is not asked how her experiences and feelings and the other person only focuses on his satisfaction.

The international economic and political thought should focus on the policies to contribute to gender equality. Women have been facing inequality all over the world, but the third world countries have major issues concerning women. Nussbaum's thought has not only contributed towards the equal rights of women but also other aspects of their life, such as political, education, family. There has been a wrong method of distribution and the misguided construction of identity. Martha Nussbaum's work has four aspects; the conjunction of indicators for measuring the quality of life, there is respects for dignity and freedom, the diversity of cultures have recognition and shaping a thought that returns to ethics and justice.

The understanding and evaluating of the situations of women has by no mean a criticism to men, the problem of inequality between the men and women has been a matter of context, history, socialization. The roles have been given to both the genders since ages, as submissiveness is a part of women, toughness and leadership has been allotted to men. Looking for empowerment is not the solution to gender injustice, it is just the beginning. There is a need for social reconsideration in order to construct the notion of gender.

There is no doubt that there has been an improvement in the position of women from the last centuries, there have been new policies in favor of women and strong initiatives paving a just

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<sup>238</sup> Dworkin, *Woman Hating*, p. 213.

way for women but there is lot be done more. Empowerment is at two levels, the individual and the community level. “Other than being a two-leveled structure, empowerment is also multi-dimensional, as it involves different factors of determination such as, social, cultural, political and economic.”<sup>239</sup>

The Capability Approach is a tool to evaluate the inequality, poverty, and well-being. This approach focuses on the well-being and the freedom of the individual and the opportunities an individual deserves in order to do and be what he deserves and is capable of. “To improve people’s quality of life it is required that the individual needs and their access to capabilities are satisfied”.<sup>240</sup> In order to measure the social development or well-being, measuring GDP would not be the ideal way as it neglects the fundamental aspects which the human being deserves in order to lead a good and a dignified life. The Capabilities Approach blankets all attributes of a person’s life such as social, political, economic and cultural integrating them with the person’s material, social and mental life. The approach gives the individual power and control over their life. The capabilities effective policies eventually lead to empowerment of an individual.

The quest for justice and opportunities between the genders has been outlined by the capabilities approach. The approach focuses on minimizing injustices which have existed in the political, social, cultural and economic front. The ten human capabilities should be available to the individual at the threshold level in order to qualify for the just and good life. Human beings have a dignity and it deserves to be respected from laws and the social institutions. This idea of human dignity revolves around an idea of equal worth between rich and poor, female and male, rural and urban. All individual deserves equal respect and this shouldn’t be abridged.

Nussbaum doesn’t eliminate the cultural diversity by presenting the capabilities approach but questions to look at the cultural practices which harm the individuals especially the women. Capabilities Approach can be utilized as tool towards equality of men and women. All individuals are possessed with capabilities, they should get the opportunities to exert on those

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<sup>239</sup> [http:// www.who.int/healthpromotion/conferences/7gchp/track1/en/](http://www.who.int/healthpromotion/conferences/7gchp/track1/en/)

<sup>240</sup> Nussbaum, *Creating Capabilities: The Human Development Approach*, p. 11

capabilities and come out as a potential being. The cultural practices harm the individuality of a woman by forbidding them to pursue their choice of life by claiming that it the cultural environment ought to be respected.



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## CONCLUSION

Theory of distributive justice has given rise to contending discourses on contemporary discussion in political philosophy with reference to John Rawls, Amartya Sen, Robert Nozick and Martha Nussbaum. Rawls has revived social contract theory not to explain the origin of the state and its sovereignty or autonomy of the individuals, but as transcendental mechanism to explain the principle of distributive justice with reference to institutions. Individuals and their actions are just insofar as they conform to the demands of just institutions. In Rawls' justice as fairness, the direct attention is on 'just institutions' rather than focusing on 'just individuals and societies' which help to create effective institutions and reduce injustices and inequality as well. Inequalities violate principle of fair equality of opportunity. How (these institutions) are specified and integrated into a social system deeply affects people's characters, desires, and plans and their future prospects as well as the kind of persons they aspire to be. I have attempted to vindicate Rawls' position on justice and bring out its shortcomings in two fold manner. First the way Rawls has criticized his own earlier position in his later work and secondly the way his successors like Sen, Martha Nussbaum and Nozick have criticized both the positions of Rawls.

John Rawls' theory attempts to establish a society of free citizens holding equal basic rights and cooperating with an egalitarian economic system. Rawls viewed his own work to resolve the tension in democratic thought between liberty and equality. He offers the members of his own society a way of understanding themselves as free and equal citizens within a fair democratic polity, and describes a hopeful vision of a just constitutional democracy. Justice as fairness aims to describe a just arrangement of the major political and social institutions of a liberal society: the political constitution, the legal system, the economy, the family, and so on. Rawls calls the arrangement of these institutions a society's *basic structure*. The basic structure is the location of justice because these institutions distribute the main benefits and burdens of social life: who will receive social recognition, who will have which basic rights, who will have opportunities to get what kind of work, what the distribution of income and wealth will be, and so on.

Robert Nozick, as a libertarian, has attempted to revitalize Kantian contention that right supersedes the idea of the good. The notion of rights is central to distributive justice in "entitlement theory" of justice. He criticises Rawls' position on State and substitutes it with 'minimal state' which overcomes the discrepancies in the distributive justice in a socialist or egalitarian liberal direction. Nozick takes his position to follow from a basic moral principle associated with Kant's 2<sup>nd</sup> Maxim, as a rational agent endowed with self-awareness, free will, and the possibility of formulating a plan of life, has an inherent dignity and cannot properly be treated as a mere *thing*, or *used* against his will as an instrument or resource in the way an inanimate object might be. Nozick proposes the minimal state which constitutes a "framework for utopia" - an overarching system within the boundaries of which any number of social, moral, and religious utopian visions may be realized. It thereby provides a way for people even of radically opposed points of view - socialists and capitalists, liberals and conservatives, atheists and religious believers, whether Jews, Christians, Muslims, Buddhists, Hindus - to make a go of implementing their conceptions of how life ought to be lived, within their *own* communities, while living side by side in peace.

Nozick has also revived interest in the notion of rights as being central to political theory, and it did so in the service of another idea that had been long neglected within academic political thought, namely libertarianism. Libertarianism is a political philosophy holding that the role of the state in society ought to be severely limited, confined essentially to police protection, national defense, and the administration of courts of law, with all other tasks commonly performed by modern governments - education, social insurance, welfare, and so forth - taken over by religious bodies, charities, and other private institutions operating in a free market. Many libertarians appeal, in defending their position, to economic and sociological considerations - the benefits of market competition, the inherent mechanisms inclining state bureaucracies toward incompetence and inefficiency, the poor record of governmental attempts to deal with specific problems like poverty and pollution, and so forth. Nozick endorses such arguments, but his main defense of libertarianism is a *moral* one, his view being that whatever its practical benefits, the strongest reason to advocate a libertarian society is simply that such advocacy follows from a serious respect for individual rights.

Nozick has taken his position to follow from a basic moral principle associated with Immanuel Kant's second maxim of Categorical Imperative: "Act so that you treat humanity, whether in your own person or in that of another, always as an end and never as a means only."<sup>241</sup>The idea here is that a human being, as a rational agent endowed with self-awareness, free will, and the possibility of formulating a plan of life, has an inherent dignity and cannot properly be treated as a mere *thing*, or *used* against his will as an instrument or resource in the way an inanimate object might be.

Nozick contends that they have certain *rights*, in particular (and here again following Locke) rights to their lives, liberty, and the fruits of their labor. To own something, after all, just is to have a right to it, or, more accurately, to possess the bundle of rights - rights to possess something, to dispose of it, to determine what may be done with it, etc. - that constitute ownership; and thus to own oneself is to have such rights to the various elements that make up one's self. These rights function as *side-constraints* on the actions of others; they set limits on how others may, morally speaking, treat a person. So, for example, since you own yourself, and thus have a right to yourself, others are constrained morally not to kill or maim you (since this would involve destroying or damaging your property), or to kidnap you or forcibly remove one of your bodily organs for transplantation in someone else (since this would involve stealing your property). They are also constrained not to force you against your will to work for another's purposes, even if those purposes are good ones. For if you own yourself, it follows that you have a right to determine whether and how you will use your self-owned body and its powers, e.g. either to work or to refrain from working.

Most critics of the libertarian minimal state don't complain that it allows for too much government; they say that it allows for far too little. In particular, they claim that a more-than-minimal state is necessary in order to fulfill the requirements of distributive justice. The state, it is held (by, for instance, Rawls and his followers), simply must engage in redistributive taxation in order to ensure that a fair distribution of wealth and income obtains in the society it governs. Nozick's answer to this objection constitutes his "entitlement theory" of justice.

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<sup>241</sup> Kant. *Groundwork for the Metaphysics of Morals*. p.92.

Nozick indicates that it seems to imply that there is some central authority who "distributes" to individuals shares of wealth and income that pre-exist the distribution, as if they had appeared like "manna from heaven." Of course this is not really the way such shares come into existence, or come to be "distributed," at all; in fact they come to be, and come to be held by the individuals who hold them, only through the scattered efforts and transactions of these innumerable individuals themselves, and these individuals' efforts and transactions give them a moral claim over these shares. Talk about the "distribution of wealth" covers this up, and unjustifiably biases most discussions of distributive justice in a socialist or egalitarian liberal direction.<sup>242</sup>

A more adequate theory of justice would in Nozick's view enumerate three principles of justice in holdings. The first would be a principle of justice in *acquisition*, that is, the appropriation of natural resources that no one has ever owned before. The best-known such principle, some version of which Nozick seems to endorse, is the one enshrined in Locke's theory of property, according to which a person (being a self-owner) owns his labor, and by "mixing his labor" with a previously unowned part of the natural world (e.g. by whittling a stick found in a forest into a spear) thereby comes to own it. The second principle would be a principle of justice in *transfer*, governing the manner in which one might justly come to own something previously owned by another. Here Nozick endorses the principle that a transfer of holdings is just if and only if it is voluntary, a principle that would seem to follow from respect for a person's right to use the fruits of the exercise of his self-owned talents, abilities, and labor as he sees fit. The final principle would be a principle of justice in *rectification*, governing the proper means of setting right past injustices in acquisition and transfer.

The minimal state might seem, even to those sympathetic to the arguments for it, to make for a rather austere vision of political life. But Nozick insists that we ought to see it as "inspiring, as well as right."<sup>243</sup> Indeed, the minimal state constitutes in his view a kind of *utopia*. For, among all models of political order, it alone makes possible the attempt to realize *every* person's and group's vision of the good society. It is often thought that libertarianism entails that everyone

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<sup>242</sup> Nozick. *Anarchy, State and Utopia*. p. 25.

<sup>243</sup> *Ibid*.

must live according to a laissez faire capitalist ethos, but this is not so; it requires only that, whatever ethos one is committed to, one not impose it by force on anyone else without his consent. If some individuals or groups want to live according to socialist or egalitarian principles, they are free to do so as far as Nozick is concerned; indeed, they may even establish a community, of whatever size, within the boundaries of the minimal state, and require that everyone who comes to live within it must agree to have a portion of his wealth redistributed. All they are forbidden from doing is *forcing* people to join or contribute to the establishment of such a community who do not want to do so.

The minimal state thus constitutes a "framework for utopia" - an overarching system within the boundaries of which any number of social, moral, and religious utopian visions may be realized. It thereby provides a way for people even of radically opposed points of view - socialists and capitalists, liberals and conservatives, atheists and religious believers, whether Jews, Christians, Muslims, Buddhists, Hindus - to make a go of implementing their conceptions of how life ought to be lived, within their *own* communities, while living side by side in peace. This gives us, in Nozick's view, a further reason to endorse it.

There are contending claims between Amartya Sen and Martha Nussbaum on capability theory to improve people's well-being, development and freedom. Justice as welfare through capability approach tackles these issues by highlighting human beings having dignity and with their ability to pursue their own ends. But they have divergent views on the concept of capability to promote human welfare. For Sen, capability is a comprehensive moral doctrine whereas for Nussbaum, it is the basic entitlements, since it simply specifies some necessary conditions for a decently just society, say, gender discrimination, in the form of a set of fundamental entitlements of all citizens. Sen criticizes the original position, i.e. 'veil of ignorance' of Rawls' theory of justice. Sen has also criticized the utilitarianism of Bentham and Mill on the ground that act utilitarianism and rule utilitarianism along with hedonistic calculus cannot help us much either in minimizing injustices or enhancing happiness. Instead of transcendental institutionalism, Sen proposes *realization – focused comparison* which is primarily interested in removing the manifest injustice from the world and hence he goes to 'retreat of justice.' Sen proposes that the place of impartiality in the evaluation of social justice and social arrangements is central to the

understanding of justice. Sen argues that Kant and Rawls have developed perfect justice to concentrate primarily on getting the institutions right with transcendental institutionalism, and it is not directly focused on the actual societies that would ultimately emerge. He has distinguished between *niti* and *nyaya*<sup>244</sup>, both concepts give the vision of justice but the notion of *nyaya* underlies relative justice in terms of individual's suffering.

Sen contends that the excessive emphasis on liberty in Rawls' theory of justice is problematic in itself. Sen argues that hunger, starvation, medical neglect and other such issues should be given more importance than personal liberty as an important aspect of justice. Second, in the difference principle, Rawls judges the opportunities that people have through the means they possess. It means those who have access to primary goods can easily access the opportunities. Sen problematizes this straight connection between available means and opportunities. He gives an example of disabled person. A differently abled (disabled) person can do far less with the same level of primary goods and income than the able-bodied human being. A single woman needs more support and care in taking care of her family than any male person to take care of his family. Thus Sen strongly argues that an access to only primary goods and will not enhance the capabilities of people so that they can get access to the available opportunities.

The third most important criticism Sen proposes is in the difference between *niti*-centered and *nyaya*-centered approach. The former idea, that of *niti* relates to organizational properties as well as behavior correctness, whereas the latter, *nyaya*, is concerned with what emerges and how, and in particular the lives that people are actually able to lead. Sen argues that Rawls' theory of justice is closer to *niti*-centred approach. In the Rawlsian system of justice as fairness, direct attention is bestowed exclusively on 'just- institutions' rather than focusing on 'just societies' that may try to rely on both effective institutions and actual behavioral features. So the Rawlsian understanding of justness would not be able to bring substantive changes in society. Sen thus blames the Rawlsian theory of merely presenting 'the political conception of justice' by creating a base only for just institutions and ignoring the inescapable relevance of actual behavior of people and as well as the actual social realization of those principles.

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<sup>244</sup>Sen, Amartya. *The Idea of Justice*. p.20.



The fourth criticism Sen presents of the contractarian approach of Rawls theory of justice. Rawls develops his approach as a contrast to utilitarian understanding of justice but Amartya Sen has issues with it. Sen debates that John Rawls provides transcendental solutions and more conscious of the demands of institutions and rules. It completely ignores the fact that what kind of role these theories are playing in the social realization and formulations of these principles, whether these theories are concerned with the voices of those who are not the part of contract.

Fifthly, Sen critiques Rawls theories of justice in terms of its lack of global perspectives. Rawlsian theories of justice take into account people but this group of people is limited only to a polity which restricts it within the limits of nation states. Thomas Pogge has attempted to expand this Rawlsian understanding of justice to the point where it would handle the global aspects of justice. Sen argues that in the era of globalization, things are related. For example, US led attack on Iraq has impacted the whole world. It has completely changed the relationship between two major religions in this world. It has also impacted the world's point of view on terrorism. The issue of sovereignty of individual nation in international arena also became an important aspect of idea of justice after this incident. There is a different aspect of this global concern. Each country and each society may have some parochial beliefs. These beliefs and ideal of particular society could influence the concern of justice negatively and become a reason for some political and ethical judgments. When we examine those ethical and political judgments globally then they seems unjust according to values of other countries and different societies.

Martha Nussbaum further develops the capability approach, not as a procedural justice but as an outcome-oriented approach that gives impartial account of justice as welfare. Nussbaum's account of justice seems to reconcile the account of both Rawls and Sen. What Sen objected in Rawls' theory gets affirmed by Nussbaum i.e. Sen criticized Rawls for focusing his attention on institutional choices, and bringing forth the theory of justice which is arrangement focused rather than realization focused. But Rawls' arrangement focused approach to justice proceeds in two-fold ways, namely; (i) public criterion, which stipulates that the conception of justice must be public and the necessary information to make a claim of injustice must be verifiable by all, and easily accessible. (ii) A public standard of interpersonal comparisons as otherwise the obtained principles of justice among the citizens with diverse conception of the

good life will not prove stable. These two points of public criterion and public standard seems to be affirmed by Nussbaum in her account on capability approach to justice. Nussbaum's account is a principled account of, a set of, ten fundamental human capabilities which are held to be essential to a good human life and government in all nations should guarantee to their citizens. The main demarcation of Nussbaum's account from Sen is that it provides a principles, though partial and minimal account of social justice. I have attempted to bring out the close relationship between the institutional and constitutional design in Martha Nussbaum with the quest for justice and equality of opportunities between genders. I have addressed the questions concerning minimizing injustice in terms of discrimination, particularly gender discrimination in the cultural practices of different peoples on the one hand and legal, political, social and economic status of women on the other. The discrimination and the deprived situation of women are due to the cultural traditions and practices that mould their lives. I have tried to interrogate the conflict between cultural practices and women's rights. The question arises – are we going to minimize women's injustice and bring gender equality under the purview of human rights or let the culture or tradition decide their lives? With feminist perspective, Martha Nussbaum attempts to establish an inclusive society which not only incorporates the basic philosophical visions of Kant, Rawls and Sen, but also transcends it.

Nussbaum contends for a feminist interpretation of justice, using what she calls a “capabilities approach” that connects with “the tradition of Kantian liberalism,” tapping into their “notions of dignity and liberty,” as a foundation for discussing the demands of justice regarding women's equality and women's human rights. The feminism she embraces has five key dimensions: (1) an internationalism, such that it is not limited to any one particular culture; (2) a humanism, such as affirms a basic equal worth in all human beings and promotes justice for all; (3) a commitment to liberalism as the perspective that best protects and promotes the “basic human capacities for choice and reasoning” that render all humans as having an equal worth; (4) a sensitivity to the cultural shaping of our preferences and desires; and (5) a concern for sympathetic understanding between the sexes. She expresses an appreciation for the primary goods at the core of Rawls's theory, while asserting that his analysis does not go far enough.

She offers her own list of ten “central human functional capabilities” that must be respected by a just society: (1) life of a normal, natural duration; (2) bodily health and integrity, including adequate nourishment and shelter; (3) bodily integrity regarding, for example, freedom of movement and security against assault; (4) freedom to exercise one’s senses, imagination, and thought as one pleases, which includes freedom of expression; (5) freedom to form emotional attachments to persons and things, which includes freedom of association; (6) the development and exercise of practical reason, the capacity to form one’s own conception of the good and to try to plan one’s own life, which includes the protection of freedom of conscience; (7) freedom of affiliation on equal terms with others, which involves provisions of nondiscrimination; (8) concern for and possible relationships with animals, plants, and the world of nature; (9) the freedom to play, to seek amusement, and to enjoy recreational activities; and (10) some control over one’s own political environment, including the right to vote, and one’s material environment, including the rights to seek meaningful work and to hold property. All of these capabilities are essential to our functioning as flourishing human beings and should be assured for all citizens of a just society. But, historically, women have been and still are short-changed with respect to them and should be guaranteed their protection in the name of justice.<sup>245</sup>

In the realm of justice, I have explored the moral and social aspects from the above mentioned work looking at the original position in Rawls, how Sen develops it through the capability approach. There is an attempt to tackle the issues of minimizing injustices by highlighting that human being has a dignity with their ability to pursue their own ends. Sen’s idea of minimizing injustice is a dynamic departure in the debate on justice which concentrates on the wellbeing of each and every individual. I have looked to see justice through freedom and public enlightenment where people are able to recognize the autonomy and dignity of the other individual and consider everyone as an end and never as a means. Later, I took into consideration how Martha Nussbaum developed the capability approach and discusses the injustices with the empirical understanding centering the gender injustice. The feminism she embraces has five key dimensions: (1) an internationalism, such that it is not limited to any one particular culture; (2) a humanism, such as affirms a basic equal worth in all human beings and promotes justice for all; (3) a commitment to liberalism as the perspective that best protects and promotes the “basic

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<sup>245</sup> Nussbaum. *Sex and Social Justice*. p. 41.

human capacities for choice and reasoning” that render all humans as having an equal worth; (4) a sensitivity to the cultural shaping of our preferences and desires; and (5) a concern for sympathetic understanding between the sexes.

Justice is a complex and a pluralistic notion with several dimensions. A just society is produced through just state (institutions) and social arrangements and the right behavior of the citizen. In order to bring out the just society we have must include the concept of values in order to bring out the right behavior of the individuals.

A just society is a society which respects the autonomy and the dignity of its citizens. The process to achieve the just society must adhere to these principles:

- 1) Rationality: An understanding of the complexity of the ethical theories in order to make moral assessments that have arisen in the history.
- 2) Morality: It can be used to bring cooperation among individuals with freedom within the moral categorical imperatives. A concept of morality should exist among the individuals so that they can work together while respecting their autonomy and dignity.
- 3) Fairness: The concept of fairness should be there in order to build trust, so that there is no impartiality which will result in injustice.
- 4) Equality: Everyone should be treated equal before the law, and the public policy should be measured on how it affects everyone regardless of their sex, religion, race, etc.

In concise, I can say that distributive justice have played an important role in framing the political philosophy. I have taken the concepts like fairness, welfare, entitlement and have envisioned the shortcomings in these theories. These contending theories of distributive justice have deficiency in its fullness and cannot be enforced fully. Having examined the concepts fairness, welfare and entitled I have come to the conclusion that they are not inclusive theoretically.

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