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# ANALYSING RAWLS THEORY OF JUSTICE THROUGH AMARTYA SEN'S PERSPECTIVE

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## ABSTRACT

Nobel Laureate Amartya Sen's book "The Idea of Justice" is a groundbreaking work on the concept of justice. His book is both a continuation and a critique of John Rawls' Theory of Justice. He discusses the terms *niti* and *nyaya*, the former referring to simple norms and the latter to realisation.

*Niti* is a conceptual practice that, if fully performed, would result in the greatest degree of public benefit and justice. On the other extreme, *Nyaya* is concerned with the implementation of laws and regulations. Prof. Sen remarked, "...goal is to clarify how we might go to address concerns of strengthening justice and reducing injustice, rather than to propose resolutions of concerns about the nature of perfect justice."<sup>1</sup> Professor Sen questions Rawls' focus on the necessity of "ideal theory," which he claims is universal and applicable worldwide.

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<sup>1</sup> Amartya Sen, *The Idea of Justice* 6 (Penguin Book Ltd.,2010)

## I. Introduction

Since the term Justice was formed it has been one of the most complex legal term, consuming a great deal of scholarly research and yet remaining while remaining imprecise. Justice is a word with a lot of connotations.<sup>2</sup> Justice is regarded as a general virtue in the Bible as well, but the concept is ambiguous because all values are rejected in favour of rather vague and general standards.<sup>3</sup> Plato's view of justice placed a greater emphasis on the substantive rather than procedural aspects.<sup>4</sup>

According to utilitarian, justice is defined as the greatest good done to the greatest number of people, but the underlying flaw is that justice is not being done to those who do not make up the greatest number of people. Justice, according to Marx, is a ruse, a cover that permits capitalist exploitation.<sup>5</sup> Some people feel that justice is equality, but equality is also a hazy concept; it is a relative idea; what is equal to me may not be equal to wage labour, therefore setting criteria of justice for the other would be inappropriate.

However, when it comes to the growth & advancement of justice, this sort of comparison approach is critical, since the act of comparing allows for discussion, allowing for diverse sets of viewpoints and prevents the notion of justice from being interpreted in a unilateral and unipolar manner.

Hobbes, Locke, and Rousseau proposed the social contract theory that focused primarily on a society's institutional setup. This paradigm, dubbed "transcendental institutionalism," has two different characteristics. To begin with, it focuses on what it considers perfect justice rather than relative comparisons of justice and injustice. Second, in its pursuit of perfection, transcendental institutionalism focuses largely on perfecting institutions rather than the real societies that would eventually emerge.<sup>6</sup>

What is justice if the buck stops here? In order to comprehend it, it is critical to comprehend what injustice is and how to mitigate it. Men turn to the meaning of justice when they have personally experienced it; history is replete with such instances; even Mahatma Gandhi began

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<sup>2</sup> V.R. Krishna Iyer, *Social Justice – Sunset or Sun dawn* 28 (Eastern Book Co., Lucknow 1987).

<sup>3</sup> David L. Sills (ed.), *VIII International Encyclopaedia of the Social Sciences* (The Macmillan Co., NY, 1968).

<sup>4</sup> *Ibid.*

<sup>5</sup> Ronald Commers, "Marx's Concept of Justice and the two tradition in European Political thought" 108 *Philosophica* 33(1984).

<sup>6</sup> *Supra* note 1 at 6.

his quest for justice, for independence, when he personally experienced the humiliation, when he personally felt the brunt of injustice.

Thus, we can see that justice is an active process, a decisional process that aids in the prevention of a wrongdoing. When a person encounters injustice, he or she attempts to bring justice by rectifying the injustice or at the very least devising methods to prevent the injustice from occurring again.

This is at the heart of Professor Amartya Sen's ideas. He defies Rawlsian notions of justice. Rawls proposed a new social contract theory in which he framed the concept of justice in terms of maximisation of liberty, equality, and opportunity as the major issue, seeing 'justice' in the light of 'fairness.' The basic problem with Rawls' concept of justice, according to Sen, is that it relies on the same preconditions as earlier theories of social contract, namely, a perfect arrangement. However, such a perfect arrangement is simply impossible to achieve because the plurality of opinions will never allow any arrangement to become perfect.

As a result, without such a flawless arrangement, the notion of justice as such may never come to fruition; it is thus important to first comprehend the "idea of justice" before moving on to the "concept of justice." Justice will naturally advance, unfold, and flower if the goal is to minimise injustice. The purpose of this study is to discuss these broad frameworks, as well as the Rawlsian approach to justice in light of Professor Amartya Sen's book "Idea of Justice." The article will also demonstrate how Sen's definition of justice complements John Rawls' view of justice.

## **II. John Rawls's Perspective on Justice**

The theory of justice was proposed by John Rawls, in the period when the concept of the utilitarianism or expansion of the growth, welfare and development of the society as a whole was being discussed about and in contrast to the concept of justice was least discussed and examined in the society and therefore Rawls' ideals of justice was seen as an option in contrast to the traditional utilitarian which focused on maximising happiness and wellbeing of the people in the society.

The distributive justice theory of John Rawls lays its foundation on the thought that society is a system of cooperation for the mutual benefit of individuals.

As a result, it is characterised by both conflicts between different individuals' interests and a shared identity. To determine how the benefits and burdens of social cooperation should be distributed, justice principles should be applied.

Rawls' theory of justice as fairness, which has its roots in the social contract theory, argues that it is necessary to distinguish between people's genuine judgments about justice and their subjective, self-interested views.

After we've arrived at those objective principles, we should compare them to our own judgments. When one resorts to such measurement, there will inevitably be a distinction; therefore, it is critical to modify our own judgement in such a way that a stage of equilibrium can be reached in which these two situations are similar; this is known as "reflective equilibrium."<sup>7</sup>

Rawls starts with a moral hypothesis that justice is linked to fairness, with a fair society and fair institutions, and that members of society adopt this situation in order to arrive at fundamental principles of justice. The concept of the "original position" is central to John Rawls' social contract theory of justice<sup>8</sup>.

The original position, in Rawls' words, is merely a hypothetical thought experiment designed to "draw our attention to the restraints that it seems to reasonable to enforce on arguments for justice principles, and therefore on these principles themselves."

Rawls imagines people in the hypothetical situation of being in their "original position" and imposes the "veil of ignorance" on them. This veil conceals their status (gender, ethnicity, economic standing, intelligence, and so on) as well as their perceptions of 'good living or wellbeing.'<sup>9</sup>

No one understands his social position, class, or social standing, nor his luck in the distribution of natural assets and qualities like intelligence, strength, and so on, as John Rawls expressed it. I'll even assume that the parties are oblivious of each other's ideas on what is good and what is

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<sup>7</sup> Raymond Wacks, *Understanding Jurisprudence* 222 (Oxford University Press, New York, 2<sup>Nd</sup> Edn. , 2009).

<sup>8</sup> *Id* at 223.

<sup>9</sup> *Supra* note 7 at 224.

not. Behind a veil of ignorance, the concepts of justice are decided.

This assures that no one is disadvantaged or aided in the selection of principles as a result of natural chance or social circumstances because everyone is in a similar situation and no one can design principles to benefit his or her own situation, the principles of justice are the result of a firm agreement or bargain.

So, according to Rawls, this is a unique type of agreement, a contract in which people favour a strategy that maximises the prospects of the poorest. The contract will be upheld out of mutual respect once the veil of ignorance is lifted and the people return to their original positions. Essentially, this is a form of radical egalitarian liberalism in which the emphasis is on the fact that one person should not resort to profit maximisation to the detriment of the other.

Rawls' initial viewpoint was intended to be a fair and impartial point of view to be embraced in our thinking about fundamental principles of justice, and to remove personal interest when picking the "basic principles of justice," in order to achieve generality and validity.

#### **A. Fairness Interlinked to Justice :**

According to Rawls, "*Justice is the first virtue of social institution*"<sup>10</sup> implying that a desirable society is one organised by principles of justice. Rawls states that current speculations of justice, created in the field of reasoning and philosophy, are not sufficient:

*"My controlling point is to work out A Theory of Justice that is a suitable option in contrast to these precepts which have since quite a while ago overwhelmed our philosophical practice."*

He calls his hypothesis pointed towards figuring an origination of the fundamental design of society as per social justice as fairness and equality.

Rawls then goes on to determine the fundamental criteria of fairness that a decent society should be founded on. He emphasises the importance of justice norms for two reasons:

First, to "provide a system of allocating rights and obligations in the fundamental establishments of society"; and, second, to "define the appropriate distribution of society's

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<sup>10</sup> John Rawls, *A Theory of Justice*, 20 (Harvard University Press, Belknap Press, United States, 2<sup>nd</sup> edn., 1971)

advantages and weights."

He sees that, very much arranged social orders are uncommon because of the way that "what is simply and vile is generally in debate." He further notes that an all-around requested and complete society should be detailed such that resolves the issues of "productivity, coordination, and stability."

"Justice is the first virtue of social institution," Rawls writes in *A Theory of Justice*, implying that a decent society is one constructed according to justice principles. Existing theories of justice established in the field of philosophy, according to Rawls, are insufficient:

*"My guiding aim is to work out A Theory of Justice that is a viable alternative to these doctrines which have long dominated our philosophical tradition."*<sup>11</sup>

Justice as fairness is the name he gives to his theory, which aims to formulate a picture of society's essential structure in accordance with social justice.

Rawls sets out to identify the fundamental principles of justice that can be used to build a good society. He says that principles of justice are important for two reasons: first, to "give a manner of assigning rights and duties in society's basic institutions," and second, to "determine the fair allocation of society's benefits and obligations."

He remarks that well-ordered communities are uncommon, according to his definition, because "what is just and unjust is usually in dispute." He goes on to say that a well-ordered and completely just society must be created in a way that tackles efficiency, coordination, and stability issues.

## **B. Justice and Its Principles**

The basic principles of justice proposed by Rawls are generalised methods to achieve generalised objectives. It largely deals with the issue of wealth distribution, if individuals are presented with the question of whether they will accept the utilitarian principle of wealth distribution behind the veil of ignorance. The response will very certainly be no, since everyone who has been blinded by ignorance wants to be treated with dignity once it is lifted. He will stipulate basic liberties such as the right to life, liberty, freedom of thought and religion,

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<sup>11</sup> *Ibid.*

assembly, and so on, and these basic liberties will be demanded by a member of the minority community as well; he will not risk becoming a member of an oppressed minority who is tyrannised by the majority.

This takes us to Rawls' "first principle," or the "Liberty Principle." In his book *Political Liberalism*, Rawls includes this premise as a guarantee of the political rights' fair worth. "Citizens who are comparably gifted and motivated have nearly an equal chance of influencing government policy and obtaining positions of leadership irrespective of their income and social class,"<sup>12</sup> according to the fair worth of political liberty. As a result, members of a social group can engage in the political process in a way that is consistent with the ideal of equality.

Now for the 'second principle,' which states that "social and economic disparities should be organised in such a way that they are both

- i. Reasonably anticipated to be to everyone's advantage, and
- ii. Attached to offices and posts available to everyone under fair equality of opportunity."

According to Rawls, social and economic disparities should be structured in such a way that the least advantaged people gain the most. This is known as the "difference principle." People who are blind to reality have no idea what system they will be put in once the curtain is lifted, whether they will be healthy or unwell, wealthy or impoverished. As a result, it is preferable to have a plan in place that ensures an equitable transfer of money so that each member is protected. Alternatively, the members might choose for an alternative structure based on a qualified principle of equality (difference principle), under which only those social and economic differences that benefit or benefit the least worst off will be authorised.

Individuals should have equal access to "offices and positions" regardless of their socioeconomic background, race, or sex, according to fair equality of opportunity. Rawls is opposed to feudal aristocracy. According to Rawls, an individual should not only have the right to opportunity, but should also have an effective equal chance as someone with similar inherent abilities. If there are no discriminatory legal barriers preventing some groups in society from

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<sup>12</sup> John Rawls, *Political Liberalism* 358(Columbia University Press, New York, 1993). 155

accessing social institutions and positions, formal equality of opportunity is met.<sup>13</sup>

Rawls does not rule out the potential that these two fundamental principles would clash. To address this issue, Rawls suggests a set of "Principles of Priority." This is a lexical priority, meaning that the first must be completely met before the second may be considered. These principles are lexicographically organised, with the first principle of justice before the second and the principle of fair equality of opportunity before the principle of difference. This means that other reasons cannot trump the equality of basic liberties and rights, including the fair worth of political freedom.

### III. Sen's Critique On Rawls Theory of Justice

Sen's main objection to Rawls' theory is that 'transcendental institutionalism' is nothing more than a moral anecdotal evidence, an observation, on which he bases his theory and which, as a result, becomes infested with limitations.

Sen's first objection is that Rawls' "original position" creates a hypothetical situation in which it may never be able to incorporate the multidimensional, diversified, variegated, contradictory, but very genuine and cogent demands of a large plurality in practise. Sen eloquently illustrates his point with the help of an illustration of three children and a flute.<sup>14</sup>

We may not be able to meet the plurality of genuine voices airing genuine demands due to a lack of resources. Anne, Bob, and Clara are all making valid points, and these legitimate demands cannot be dismissed by making a superficial argument that is based on the pursuit of human fulfilment, the alleviation of poverty, or the right to enjoy the product of one's own labour.<sup>15</sup>

In this way, transcendental theories of justice do not rely on a comparison of two alternatives; rather, Prof . Sen wants to argue that the concept of justice should not be indifferent to the lives of people as they live them.

Sen argues that Rawls' liberty principle has an inner contradiction, as he expands on his "principles of justice." As previously stated, the liberty principle has taken precedence over the

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<sup>13</sup> Arneson , Richard, "Equality of opportunity" The Standard Encyclopedia of Philosophy (Summer 2015 edn.), Edward N. Zalta (ed.), *available at:* <http://plato.stanford.edu/archives/summer 2015/entries/equal-opportunity/>(last visited on June 5., 2021).

<sup>14</sup> *Supra* note 5 at 128.

<sup>15</sup> *Ibid.*



second principle, which concerns the equality of certain general opportunities and equity in the distribution of general-purpose resources<sup>16</sup>.

In other words, liberty is a sacred principle that people will not be willing to compromise on, even if it is related to better wealth distribution or facilitates wealth accumulation, i.e., the concept of liberty cannot be reduced to the level of a mere convenience, but when Rawls discusses the 'primary goods,' it includes things like rights, liberties, advantages, as well as the social foundations of self-respect.<sup>17</sup>

We can see that liberty has entered, but only in the form of a convenience. It is clear that the concept of liberty is being treated as both a king and a slave at the same time. Again, why is liberty given such a high priority? Aren't hunger, starvation, and medical neglect, among other things, less important than personal liberty?

It's significant to mention that in his quest to advance his principles of justice, he neglected the concepts of merit and just deserts, as well as property ownership. Inequalities that benefit the poorest of the poor are the only ones he allows. Perhaps, incentives can be given to instil a new vigour and vitality in the members, allowing them to perform their tasks more efficiently. Sen argues that the principles adopted in the original position should not necessitate the use of incentives. Rawls appears to be taking one step forward while simultaneously taking two steps back.

#### IV. The Fundamentals of Sen's Vision of Justice

Sen believes that the perfect model of justice is redundant, and that all transcendental systems of justice are infected with a fundamental flaw that does not emphasise reduction of justice and instead emphasises advancement of justice, without taking into account that the plurality of demands will not allow this perfect system of justice to stand on its own. According to Sen, the prevalence of redressable injustice is more likely to be linked to behavioural infractions than to institutional flaws. Justice is ultimately linked to how individuals live their lives, not only the form of the institutions that surround them.<sup>18</sup>

Professor Sen drew on early Indian law to explain the differences between the ideas of justice,

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<sup>16</sup> *Supra* note 2 at 15.

<sup>17</sup> *Supra* note 7 at 226.

<sup>18</sup> *Supra* note 1 at X.

the 'Niti' and the 'Nyaya.' The former, *nyaya*, is concerned with what arises and how, and in particular the lives that individuals are really able to lead<sup>19</sup>, whereas the latter, *niti*, is concerned with organisational propriety as well as behavioural correctness. In other words, it is vital to evaluate the responsibilities of institutions in terms of how much inclusiveness they represent, i.e., from a larger viewpoint of *nyaya*, which is concerned with the reality that really arises rather than simply the institutions that we have.

Sen illustrates the distinction between *niti* and *nyaya* with an example. In the sixteenth century, Ferdinand I, the Roman Emperor, declared: 'Fiat justitia, et pereat mundus,' which might be translated as 'Let justice be done, even though the world perishes.' This is an example of a highly austere type of *niti* that promotes bringing disaster, but without thinking how justice would be served if the entire world perishes. A realization-focused approach, according to Professor Sen, makes it simpler to comprehend the need of preventing evident injustice in the world rather than pursuing the perfectly right. He<sup>20</sup> went on to say that the anti-slavery movement in the eighteenth and nineteenth centuries failed because they were working on the assumption that abolishing slavery would result in a completely equitable society. Slavery's eradication became a priority as a result of intolerable injustice.<sup>21</sup> Even though *niti's* arrangement-centered perspective is frequently interpreted in ways that make the presence of appropriate institutions sufficient to meet the demands of justice, *nyaya's* broader perspective would indicate the need to investigate what social realisations are actually generated through that institutional base.<sup>22</sup> Divergent points of view can be included and accommodated using such a framework. Sen also envisions a set of rules for modern-day justice that avoids parochialism and addresses the critical issues of global injustice.

Sen recognises that institutions play an important role in sharpening our ability to scrutinise the values and priorities that we can consider, particularly through public debates, and democracy is one such institution that is assessed in terms of public reasoning; an institution of democracy should be judged on the touchstone of the extent to which we can scrutinise the values and priorities that we can consider, not just about the formal existence of the institution, but about how different voices from various sections are able to put forth their voices and have their voices actually heard, because a democratic institution that fails to provide representation

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<sup>19</sup> *Supra* note 1 at XV.

<sup>20</sup> *Supra* note 1 at 21.

<sup>21</sup> *Ibid*

<sup>22</sup> *Supra* note 1 at 82.

to the people, fails to provide the much-needed opportunity to put forth their voice, is insipid.

## V. Conclusion

Sen's work, although criticising the concept of perfect justice and advocating for the elimination of injustice, is debatable. The pursuit of perfect justice aspires to an unattainable level of perfection, but many conceivable situations of injustice are far more difficult.<sup>23</sup> When we examine the complex issue of gender disparity, we may come to differing conclusions on what is truly unjust, as our perceptions of what constitutes gender injustice may differ.

Today, society is debating whether males should be given incentives along the lines of women because a man's work also includes child raising and household care, and whether there should be a concept of paternity leave. Some believe that legislative barriers must be removed in order to ensure equal opportunities for men and women.

These are challenging questions to answer since both men and women may believe that they are being treated unfairly. The idea is that there are occasions when a person cannot determine what constitutes a step to a superior, more fair stance without first considering and articulating her own definition of "perfect" justice. There are moments when a Mona Lisa is required to ground our assessments of Picasso and Dali.<sup>24</sup>

A vision of a just society presents a kind of vision, a noble quest that a society should aspire to achieve; it is not required that the vision become reality, but it must at least lead to the fulfilment of some of the vision's precepts.

Karl Marx's theory was also about a perfect society in which labourers were no longer the oppressed class; however, the theory was dismissed as hypothetical and unworkable, and while it did not lead to the establishment of the system that Marx envisioned, it did pave the way for economic reforms and legislation such as the Workmen's Compensation Act and other labour laws. Injustice is lessened as a result of a vision for an ideal society.

However, both Rawls and Amartya Sen are on the same track, and they believe that

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<sup>23</sup> Debra Satz, "Amartya Sen's The Idea Of Justice : What Approach , Which Capabilities" 43 *Rutgers Law Journal* 277(2012 ).

<sup>24</sup> *Id* at 281.

utilitarianism, or a system that exclusively promotes the welfare of the majority or the happiness of the greatest number, is incorrect. Sen's analogy of traditional Hindu jurisprudence involving the Matsyanyaya, or judgments of the fishes, in which huge fish devoured small fish, is similar to the utilitarian concept that prevails now, although it is not without flaws.

It's difficult to say whether Rawls' "Concept of Justice" or Sen's "Idea of Justice" is superior, and this isn't an appropriate topic to debate. However, it is possible to argue that Sen's "Idea of Justice" complements and advances Rawls' "Concept of Justice." As a result, Sen's work should be viewed as a fulfilment of Rawls' concept rather than an alternative viewpoint.