

CHAPTER II

HISTORICAL DEVELOPMENT OF THE CONCEPT OF JUSTICE.

Introduction:

The concept of justice has been a subject of debate and discussion right from the origin of organized political philosophy up to the present. In everyday life, justice is seen as an attribute of law. But if we analyse closely, we shall realize that all laws are not always just. In fact, many great political and social movements in the world that have occurred over times have focused against the unjust laws, e.g. the movement against the apartheid laws in South Africa. However, justice- specifically social justice- has come to dominate political thought over the past few decades. Moreover, the concept of justice and injustice always centres the discussion when the question of distribution of wealth or resources comes within a society or a community. As such, concepts such as rights, liberties, equalities, needs and deserts have been accommodated into justice's sphere which has increased its influence in political philosophy. It has automatically engaged and influenced the enigmatic philosophers and logicians and their argumentations about freedom, logic, principle, justice, equity, fairness, and so on in the West from Plato to Rawls and beyond, embracing a discussion of order and management of inequalities and stations in life.¹ Yet in spite of more than 2000 years of consequent political engagement in theory building the

concept still has no established meaning. Thus it has become imperative to understand the development of this concept before analysing Sen's idea, who himself has recognised this remarkable change through immense contribution of the philosophers associated with it throughout the history.² In this context, the present chapter proposes to examine the development of the concept of justice and how earlier theorists (like Rawls) gave emphasis to the institutional perspective (trying to create perfect institutions and society) while framing their theories of justice.³ This chapter while focusing on the constitutional aspect of social justice in India will also emphasize on whether there is a need for a broader conception of justice that goes beyond the institutional perspective.

Development of the Concept of Justice:

Greek notion of justice:

While tracing the development of the concept of justice from the beginning of the systematic political theory, one of the original accounts of justice is found in Plato's *Republic*. In this book, Plato tries to establish the 'true nature of justice' and then moves on to construct an ideal state that would be an incarnation of his understanding of justice. However Plato's notion of justice did not emerge in a vacuum. Besides, it was in the writings and teachings of the sophists' philosophers (teachers of the 5th Century ancient Greece), who at first articulated the concept of justice, in order to persuade the citizens to capture the office of the state to fulfil their personal interest in the name of common good. Being professional teachers in ancient Greece and trained in argument, Thrasymachus (a sophist of the 5th century B.C), who

was introduced by Plato in book 1 of *Republic* defined justice as the interest of the stronger.⁴ This sceptical and relativistic approach to justice was criticized vehemently by Plato and his teacher Socrates who defined the nature of justice. *The Republic* begins with a truly Greek scene, where Socrates in the house of Cephalous (the father of Polemarchus) provokes the sophists in a dialogue on justice.⁵ Moreover, Cephalous who also took great interest in this philosophical discussion, defining justice as speaking the truth and repaying ones debt. Complementing this, Polemarchus, jumps into the discussion advocating the familiar, traditional view that justice is all about giving people what is their due. Meaning justice is that which provides an individual the ability to do good to his friends and evil to his enemies. Socrates while listening to all the arguments commented that those were very inadequate and sceptical definition on justice, as it is difficult to identify true friends and real enemies. Besides, Socrates also rejects the authoritative model of Thrasymachus, replacing it with an equality principle. In other words the one with supreme power must cater the interest of the community rather than his own self- interest.⁶

However, in the 2nd book of Plato's *Republic*, the discussion on the concept of justice was further continued by Glaucon who was not satisfied with the argument of Socrates. Glaucon argued that justice is something conventional and contrary to nature and is thus based on law.⁷ Socrates while rejecting the claims of Glaucon argues that, though any well organised society in order to run has to be maintained by force but that maintenance will not last for long as people have to obey the authority and law willingly and laws can only force them to obey it for a time being and not forever. In this sense while understanding justice and criticising the sophist, Plato and Socrates

try to construct their own positive theory, which applies in both ways--- on the large scale, as it applies to a state, and on a smaller scale as it applies to an individual personal character. Besides, Plato was also highly disappointed with the deteriorating conditions of democracy in Athens and thus wanted to rebuild and construct an ideal society in which justice receives prominence.

Plato while defining justice, uses the Greek term '*Dikaisyne*' for the word justice, which comes very near to the word morality or righteousness. He establishes an balance between the human organism on one hand and social organism on the other. Human organism, according to Plato, contains three elements- Reason, Spirit and Appetite. An individual can be called just when each part of his or her soul performs its functions without interfering with those of other elements.⁸ Accordingly, there are also three classes in social organism- Ruling class having reason, warrior class having the spirit to defend the nation and finally the artisan class fulfilling the appetite of the community. Thus, having a proper alignment and networking between human organism and social organism, Plato asserted that there should be functional division among every social class to specialize itself in the position of life assigned to it.⁹ Hence for Plato justice works in two different parts – one in terms of the individual, and the other larger part representing social structure. The scale of specialization that exists in the larger framework is however much more visible and this distinction can be seen in the society. He further argues that, justice is a human virtue that enhances individual capacities by making him self-consistent, and justice is also a social consciousness that makes a society internally pleasant and superior.¹⁰ Thus Platonic conception of justice emphasizes on the rational division of work and

specialisation of functions in a just state, where each individual would fulfil his duty diligently and without interfering in each other's affairs. In order to calculate justice as a virtue both in the individual and the state, the structures of the government as well as that of the state should be such that each person gets the suitable job which suits his nature at best. It is a connection which joins all the political elements into one. As Plato believes, everything in the universe has its proper place and position, the possibility of conflict can never arise.

Aristotle:

After Plato it was his disciple Aristotle, who like his master believed that justice plays a prominent role in a state. Book 5 of Aristotle's great '*Nicomachean Ethics*' deals in considerable depth with the moral and political virtue of justice, where he defines justice as the ultimate among all the virtues.¹¹ Aristotle asserts that justice means giving people what they deserve. Therefore in order to decide the criteria for deserving and selecting who deserves what, we have to decide first which virtues are worthy of honour and reward.¹² Like Plato, Aristotle also accepts that democracy by its very character treats unequal as equal and oligarchy by its character treats equal as unequal, because of some inherent disparity in birth, wealth etc. Therefore he defined justice in a political society by giving people their share according to their contribution for the common good towards the betterment of the community. In order to achieve that practically, Aristotle divided justice into two types- distributive justice (dividing benefits and burdens fairly among the members of a community) and corrective justice (involving the directive for punishment on retributive, restriction or reformatory

grounds). Thus for Aristotle the concept of justice connotes two meanings: the equal and legal.¹³ However, in order to establish and implement these two principles of justice, certain norms for equality need to be determined. Keeping in view this directive, Aristotle later introduced the principle of proportionate equality, where each man would be granted responsibilities and financial benefits in proportion to his deserts.¹⁴ For instance a skilled worker should draw a higher salary than an incompetent one, even though it violates the principle of seniority. It also means that everyone will get that they deserve, but not at the expense of anyone. The concept of proportionate equality also means that if any citizen of a community has been unlawfully benefited or being troubled with more or less than it deserves, while distributing social goods, then corrective justice will come into play, for example, by a court of law. However, though Aristotle believed in proportionate equality while implementing the notion of justice, the necessity of distinguishing between the deserving and the undeserving was not taken into account. Besides, Aristotle also kept the picture unclear, in relation to how to measure merit and to what extent, who will measure it and by which process or method.

Roman thinkers and the concept of justice:

When internal clash and external invasions destroyed Greek city states, Rome became centre of civilization in Europe. Unlike the Greeks, the Romans did not possess the intellectual qualities, but were highly practical and emphasised more on the legal aspect in order to inculcate loyalty towards the state, by fostering discipline and obedience among the people. Romans later established a worldwide empire and

gave to mankind a highly developed system of law and administration. However it should also be acknowledged that the Greek philosophies and writings were interpreted and distributed throughout the world by the Roman thinkers and teachers. Among the Roman political thinkers **Polibious**, **Cicero** and **Seneca** are worth consideration. Law of nature and the principle of equality providing justice to all common beings was accepted in the Roman period. As for **Cicero** (106–43BC), justice consists in perpetuating equality of opportunity to all and to refurbish and give everyone his right. Cicero dedicated a large portion of his book '*De Republica*', to the discussion of justice.¹⁵ However, it was more or less a replica of Plato's Republic. Thus the concept of justice was considerably limited in its development during the Roman period.

Medieval period and the concept of justice:

With the downfall of Roman Empire (476 A.D) was gradually seen the rise of Christianity in Europe. The period from 5th century to 14th century A.D. is considered as the age of medieval political philosophy. In this period, politics was dominated by religious fathers who emphasized on the autonomy of the Church. Among them **St. Augustine** (340–397A.D) and **St. Thomas Aquinas** (354–430A.D) are worth consideration. However, also during this period the impact of the philosophies of Plato and Aristotle were seen. St. Augustine, one of the greatest among the fathers of the church believed that justice and peace are the qualities of the city of God. Meaning, they can be realized only in a society which represents the city of God and not in a society which represents the Kingdom of Satan. St. Augustine in his book, '*The City of*

God', argues that the Roman society was truly unjust and hence supported just wars as morally acceptable and even as morally mandatory in order to establish peace and justice in the world.¹⁶ St. Augustine argues that, a just political society can only be a theocratic one, where justice lies in the hands of God, which is being implemented through the institution of church and anything outside its realm is unjust. However, though he has some sense of some moral or spiritual equality among humans, but was a supporter of the institution of slavery as a just punishment for sin. On the contrary Augustine also believes that God originally created humans as naturally free and equal. Thus his idea and depiction of justice was itself confusing and limited in its scope.

During the middle age, the only figure that has philosophical significance was St. Thomas Aquinas (1225-1274). Being a follower of Aristotle, St. Aquinas considers justice to be a preeminent among the moral virtues. St. Aquinas positioned justice as a cardinal virtue, above the other virtues like mercy, liberality and pity as he believe that each of this come under the purview of justice. He differentiates between 'commutative justice' and 'distributive justice', and defines that, commutative justice refers to the procedure in which one individual interacts with another, privately, whereas distributive justice refers to the manner in which a community acts towards a single person in the way it distributes, proportionately the common goods, such as titles, resources, rights, opportunities etc.¹⁷ However, like Augustine, Aquinas also supported just wars and believed that it was legitimate to kill anyone in the name of self- defence and was in favour of right to own private property. One major drawback of the philosophy of Aquinas was that he supported the system of slavery (so long as

no Christian is the slave of a non-Christian) and considered it just to keep women politically and economically subject to men. Thus the medieval philosophy was problematic in the sense that though they believe that justice can be achieved only in a Christian society and all human beings are creatures of loving God, but in reality supported the system of slavery. Despite advocating a peaceful world order the medieval philosophers supported the just wars in order to establish religious order and killing people in the name of self-defence. Thus the notion of justice was associated with religion and was narrow in its concept.

While evaluating the development of justice during the traditional period it can be seen that justice was recognised as a significant political and moral virtue. However the concept of justice was narrow in its scope as it focused on creating a just state, with very little emphasis on the notion of individuality, its interests and needs. In fact, Plato and Aristotle were silent on how the distribution of goods could be done in a just way. Though the idea of justice developed but its fruits were limited only to a few sections of the society, excluding the women and slaves. However with the change in time and change in the political and economic structures brought new philosophical ideas that developed the concept of justice and elaborated its scope during the modern age.

Modern age and the concept of justice:

With the rise of humanistic and scientific outlook in Europe, the Renaissance Movement that transformed the medieval Europe into modern Europe also brought the beginning of a new era also in political philosophy. Thinkers of the modern era tried to

break themselves away from the mainstream to pursue their own independent reasoning. Although the influence of great ancient philosophers like Plato and Aristotle and of great medieval thinkers such as Augustine and Aquinas persisted, there was no returning to these traditional perspectives. This vitally affected the moral and political theory, in general, and views on justice, in particular. Philosophers like **Niccollo Machiavelli** (1469-1527), who clearly articulated the autonomy and the necessity of politics, thereby keeping it outside the domain of what is morally good or evil. Machiavelli insisted that politics like art is an area which, in some measure at least, has its own distinct dimensions and perspectives.¹⁸ Machiavelli established the foundation for the later political philosophers like Hobbes, Locke, Hume, who gave a new dimension to justice by relating it with individual needs and interest.

Hobbes:

In contrast to the natural law of justice was the social contract theory of Thomas Hobbes. In his famous work, '*The Leviathan*', chapter 8, Hobbes depicts a spectacular and disturbing portrait of what human life would be like in a state of nature where, 'every man is enemy to every man', and thus are affected by pure self interest and in order to protect their lives and property, gives away their powers and inclinations in exchange for protection under a powerful sovereign through signing a social contract, which lead to the formation of a state.¹⁹ Hobbes argues that in this imaginary state of nature before the signing of the social contract there was no such conception of justice or injustice. However, as soon as people shifted from the state of nature to the state of civil society, the idea of justice emerged which was implemented

in the form of law. These laws, Hobbes argue are binding upon each and every individual calling them as artificial chains, in order to fulfil the command of the sovereign in the name of justice. In short, working according to law is justice and going against the sovereign is injustice.²⁰ However, Hobbesian conception of justice was limited in scope, reducing justice to conventional agreements that also people achieve through sacrificing all their powers and freedom. Moreover, being a naturalist, Hobbesian philosophy which stands contrary to the traditional notions, failed to solve the problem of distribution. Hobbes remains silent on how resources should be distributed, who will get what, who should be given more and who should be given less, besides providing no picture of a just distributional scheme, which became a prime concern of later philosophers.

Hume:

While rejecting the social contract theory of Hobbes, Locke and Rousseau, David Hume a radical empiricist and a determinist was cynical of the notion of justice as an objective and supreme value. However, Hume argued in his book *A Treatise on Human Nature*(1739) that the concept of 'justice' only arises when we are faced with shortage of resources and goods that are available and hence the question of distribution of these goods arises and on what basis this distribution process will be conducted. For Hume, justice is an artificial virtue and the rules with regard to property are formed in order to fulfil the interest of the individual.²¹ This concept suggests that justice is an attitude of mind pertaining not to men's action but to their personal qualities. Most importantly this statement was later modified when Hume

described justice not as a temperament of mind but as a set of principles governing men's action and men should act in relation with those principles.²² It should also be mentioned that unlike Locke (who influenced Hume a lot but the reason Locke is not discussed at length here is that he does not present a distinctive general theory of justice), Hume is not willing to define justice in terms of property.²³ Locke argues that, individuals have natural rights over life, liberty and property however, Hume asserts rights as certified by conventions and justice consists in maintaining and respecting these attributions.²⁴ For Hume justice does not mean establishing an egalitarian society, as in practicality it is not possible to foster perfect equality. As discussed earlier, the traditional definition of justice believe in giving others their due, Hume on the contrary rejected this notion as it wrongly presupposes that 'right and property' have prior objective reality independent of conventions of justice.²⁵ Hume relates justice with the protection of individual private property, though he also believes that in cases of public importance and while fulfilling the interest of the common good property rights can be abridged in those cases. In this sense justice becomes an artificial virtue, having no natural reason to perform act of justice.²⁶ Thus though Hume considered public safety to be the main basis of justice by socially constructing justice relative to individual needs and interests but finally limited it by identifying justice as an instrumental good having no fundamental value.

Kant on justice:

During the 17th and 18th century the utilitarian philosophy emerged as a dominant tradition. Although earlier British thinkers (including Hobbes and Hume)

were to some extent utilitarian, (the utilitarian perspective has been discussed in chapter III) but the movement as such usually gain prominence from the publication of Jeremy Bentham's, *Introduction to the Principles of Morals and Legislation*, in 1789. Bentham there proposes the 'principles of utility', which he also later calls the 'greatest happiness' principle as the desirable basis for individual and collective decision making. Being a firm believer in law, justice for Bentham was functioning in line with law, and the main purpose of law was to achieve greatest happiness for the greatest number.²⁷ Thus Bentham's philosophy though gave a new light to the understanding of the notion of justice but limited it to the principle of utility. However, during the period when the utilitarian tradition took shape, Immanuel Kant produced a strong and critical response to that tradition that not only remained a fertile alternative source of ideas about justice, but also helped the later philosophers to think beyond the utilitarian perspective of justice. In his *Metaphysical Elements of Justice*, which constitutes the first part of his book *Metaphysics of Morals*, Kant develops his theory of justice. Kant categorically rejected that the main purpose of justice is the promotion of human enjoyment or happiness and justice can ever serve as a foundation in achieving this objective. For Kant, the reason we should choose to do what is right has nothing to do with good consequences as it is merely because it is the right thing to do.²⁸ Thus most importantly, there is only one innate human right possessed by all persons that is the right to act freely without any interference, as long as it is compatible and does not violate the freedom of others and is within the purview of universal law.²⁹ Thus one person's right freely to act cannot extend to infringing on the freedom of others or the breach of their rights. This line of thought guides us to

Kant's ultimate universal principle of justice, which is itself a categorical imperative: 'Every action is just [right] that in itself or in its maxim is such that the freedom of the will of each can coexist together with the freedom of everyone in accordance with a universal law.'³⁰ As Kant believed that the most important thing about human beings, which should also be taken under consideration is that they are free, rational, and responsible agents. In short Kant's theory of justice gives importance to laws and freedom of the individual however places limitation on individual's external actions if necessary coercively in order to maintain the law. As Kant argues that a just society is one whose members reciprocally respect each other's rights by refraining from violations of them. Like Hume and his successors, Kant also supported and defended the right to private property.³¹ His argument was that any form of rebellion, sedition, or resistance are threat to the existence of the state and as in order to implement justice we need the state, so those forces should be tackled which seem to be a threat to justice.³² Far from supporting a minimal state, though Kant argued that a just state is one citizens enjoy freedom within the purview of law, however regarded women and servants as merely "passive citizens" unfit to vote, and his opposition to any form of rebellion or resistance or revolution against oppression, further limited the scope of justice.

J.S. Mill on justice:

Whereas Kant was the first great deontologist, J.S. Mill was a supporter of the already established tradition of utilitarianism. Mill was a great defender of individual liberty and giving equal opportunity to women as per with men. However being

influenced by the utilitarian tradition, Mill accepted that the possible disagreement between utility and justice has always been one of the strongest hindrances, that will ultimately reject the principles of utilitarianism.³³ Although Mill was personally opposed to slavery as a violation of human liberty, however if permanently enslaving a minority could produce benefit and happiness for a majority, then that sort of enslavement can be treated as necessary in order to fulfil the common good.³⁴ For Mill in order to solve the conflict between utility and justice we have to conceptually analyse both the issues and properly understand what both the concept urge to define. Mill therefore argues that justice always goes beyond the general idea of right and wrong to entail what 'some individual person can claim for himself as his moral right.'³⁵ Though such moral right of the individual has a valid claim on the society to defend him as such there would be conflict on the multiplicity of the right based claim, people would have in order to win their position. Hence, Mill argues that in such a situation only utility can reasonably resolve these conflicting claims, thus the rights claim that is valid is the one protection of which best promotes the general happiness. Meaning justice, properly understood, is a name for the most important of 'social utilities'.³⁶ Therefore there allegedly cannot be any genuine conflict between utility and justice. If any such circumstances arise, for instance the support for slavery system is necessary for the humanity, then presumably it would be just, the contrary it will be unjust if it violates the principle of utility. Thus Mill reduces justice to social utility in such a way as to rule out, by definition, any ultimate conflict between the two.

As Mill argues that:

While I dispute the pretensions of any theory which sets up an imaginary standard of justice not grounded on utility, I account the justice which is grounded on utility to be the chief part, and incomparably the most sacred and binding part, of all morality.³⁷

Besides, there seemed to be some ambiguity in Mill's thought which was never answered as on the one side, he wants to protect the liberty of all (civilized) responsible persons as rational agents (including women), but, on the other side, his commitment to utilitarianism would seem to subordinate that aspect to the greatest good for the greatest number of people, allowing for the possibility of sacrificing the interests of the few to those of the many.

Marx on justice:

Understanding the development of the concept of justice, would remain incomplete unless Marxist interpretation on the idea is not analysed. Karl Marx was an extraordinary thinker and in his writings gave importance to give a meaningful direction for human liberation from the shackles of injustice and exploitation in this world.³⁸ Moving from the Kantian perspective, in order to make it more practical, Marx materialized it, meaning he embedded it in specific historical conditions. While taking the scientific method, Marx explains how from the history itself, there has been existence of two classes, one despite being associated with the production process through labour works, has been exploited and kept away from the profit, which Marx terms as the proletariat class and names the other class as the bourgeoisie class, which are the exploiters and are the main share holders in the profit making process in the

production. While writing in collaboration with his friend Engels, Marx explains in, *The German Ideology* (written in 1845-46) that the state and its instrument of law exists only for the sake of protection of private property of the capitalist. Marx therefore argues that the emancipation of one class from the grip of the other can be done only through revolution in which workers of all the world unites and fights against the bourgeoisies in order to overthrow capitalism.³⁹

However one cannot firmly establish an answer on how a Marxian theory of justice would look like, as there were two separate camps established by the later Marxist on whether Marx had a theory of justice. Allen W. Wood in, *The Marxian Critique of Justice* claims that Marx cannot be interpreted as a theorist of justice. The main thrust of the argument is that, in Marx's view, trans historical justice does not exist. Wood believes that Marx understood exploitation and alienation as merely explanatory concepts used to explain how capitalism works, but not to denounce it. Wood claims that Marx was not a relativist and visualized justice as a process or outcome of the historical period in which one lives and on the mode of production under which one works. Unlike the earlier theorist who believed that justice is necessary for a society or an individual, Marx on the other hand associated it with the production process. Meaning any transaction is just if the current mode of production is just.⁴⁰ Though Marx criticizes capitalism for generating wide spread poverty and alienation, but Wood asserts that absence of poverty and human self-realization are non moral goods. In other words, Wood understands Marx as believing that the loss of original powers and the absence of a minimal standard of life are unwelcome but not unjust. Allen E. Buchanan, like Wood believes that Marx employs no justice theory or

principles, but criticizes Wood for claiming that Marx would not say exploitation is unjust. Unlike Wood, Buchanan interprets Marx as offering only an internal criticism of capitalism. Mostly relying on a Marx's work, '*On the Jewish Question*', Buchanan asserts without much consideration that Marx believed in a communist society of full abundance, further moving away from the circumstances of justice.⁴¹

The first philosopher to support the strong thesis that Marx articulates a transhistorical conception of justice is G.A.Cohen. Cohen while rejecting Wood, asserts that Marx believed that the labour relationship in a capitalist system as robbery and theft. Cohen further maintains that, stealing was not considered as an act of injustice according to the capitalist.⁴² Therefore describing the capitalist's action as theft must mean that Marx believed that a transhistorical conception of justice exists. However, besides Cohen, it was Jon Elster who argued that Marx's work represent a theory of justice. Elster believed that what Marx wanted to show is that, capitalism is not just and not that justice cannot exist. While analysing Marx's writing in the '*Critique of the Gotha Programme*', Elster asserts that, Marx always thought that the capitalist tries to give an impression that all its transactions are just, but on the contrary are all unjust. Hence, Marx concludes that socialism is the first step and progress to the fully just society which is communism. Prabhat Patnaik has argued that, Marx's depiction of capitalism as producing wealth on one side and poverty on the other side could not have been better seen in any other context as it is seen under contemporary neo-liberal capitalism in India.⁴³

However it should also be mentioned that Marx believed that it would be too early to develop a detail scheme about how to institutionalise justice and arrange it when the proletarian movement was gaining prominence worldwide. At the same time, he clearly believed that logical deliberation about social institutions would be a significant aspect of any free or truly human society. In that sense, Marx to some extent gave importance whether directly or indirectly to the concept of justice which explanation and deliberation became the central question and directive of the later philosophers and social theorists.

Marx and Amartya Sen:

While considering Marx's notion of justice it can be said that only in a society where there is economic equality and non existence of private property, social justice can prevail. Rather than relating justice with the rights and liberties of the individual Marx related it with the common interest of the society, distributing the benefits and burdens within the society equally. Marx thus visualized justice in the context of revolutionary change, containing justice to merely as the dearth of exploitation and isolation in a society of freely associated producers who organise economic life according to a plan.⁴⁴ However, while comparing Marx's position with Amartya Sen it is seen that, though both the philosophers cares deeply about human condition but differs in their approach towards justice. Sen in his book, '*The Idea of Justice*', formulated the demands of justice not only in terms of principles of justice that were entirely concerned with just institutional arrangements for a society, but also emphasised on the broader outlook of social realizations, the freedoms that people can

achieve in reality, thus giving importance to the reasonable behaviour and original lives and capabilities of the citizens.⁴⁵ Unlike Marx for whom justice is more close to equality than liberty, Sen on the other hand related it with public reasoning, advancing justice through enhancing the liberties and freedoms and well-being of the masses. Sen further argues that institutions have to be chosen taking into consideration the actual behaviour patterns of the individual rather than focusing exclusively only on the nature of the society. Besides, in his writings, Marx did not give us any directive as to what sort of just or legal structures will be established once the bourgeoisies are overthrown and a classless society is established.

The modern period was thus marked by a sharp dominance of the social contract theorists and the utilitarian principles that gave their own lenses to the concept of justice. Though the philosophers gave importance to individual liberty and the institutions necessary to limit the excessive freedom of the individual for the maxim, but failed to give a clear picture of the principles necessary to define justice. As such should we put more emphasis on the rights of individuals or on the happiness of all? This famous dilemma of 'One vs. the Many', became the cornerstone of the philosophy of the modern theories of justice as from the social contract theories (that gives importance to liberties and natural rights) to the principle of utilitarianism (that gives importance to greater number of happiness) were all seen engaged in solving this equation. However, in the 20th century, this question has provoked perhaps the most influential treatise on justice to date, John Rawls, *A Theory of Justice* (1971).⁴⁶

John Rawls theory of justice:

Perhaps the most influential philosophy, which gave a far reaching impact on the adequate understanding of justice, was John Rawls' path breaking idea that justice need to be seen in terms of the demands of fairness. Advocating a Kantian Version, Rawls revived the social contract theory that had been ignored and denounced in the wake of Hume's critique and its vilification by utilitarians and pragmatists. However it should also be mentioned that utilitarianism had a great impact on Rawls's philosophy insofar as the problem of individual morality is concerned. Rawls criticized the utilitarian philosophy as it gives less emphasis on the personality of individuals, portraying every single person as one.⁴⁷ As in the words of Michael J. Sandel:

The Utilitarian background of Rawls' conception most clearly appears in his references of individual moral life. Where justice as fairness rejects utilitarianism as the basis of social, or public morality, it has no apparent argument with utilitarianism as the basis of individual, or private morality.⁴⁸

Based on the basic tenets of procedural theory, the notion of fairness is taken to be foundational and is meant to be in some sense, 'prior' to the development of the principles of justice.⁴⁹ Rawls sets out his theory of justice by asking us to imagine persons in a hypothetical initial situation which he calls "the original position", (has a similarity with the Hobbesian state of nature, however, does not have any historical or pre-historical impression) and is central to his theory of 'justice of fairness'.⁵⁰ This original position is an imagined situation, where the individuals are abstracted from their economic and social contexts and thus are unaware of who they are and what

their interest, skills, needs and so on are. Having no vision of what constitutes the good life, in that state of devised ignorance the principles of justice will be chosen unanimously that would uphold ideas consistent with the basic idea of distributive justice.⁵¹ Hence under such a purely hypothetical situation, Rawls believes that people would rationally choose two basic principles of justice for the society:

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

Second: Social and economic inequalities are to be arranged so that they are both (a) attached to offices and positions open to all under conditions of fair equality of opportunity and (b) to the greatest benefit of the least advantaged members of society.⁵²

Rawls hopes that in the original position man can go for no other principle than these two principles of justice. Thus in order to distribute the benefits and burdens of the society, these two principles of justice (among many alternatives present in the original position) will help the people, and to pursue a conception of the good.⁵³

In Rawls's later works, particularly in *Political Liberalism* (1993), based on his Dewey Lectures at Columbia University, Rawls further elaborated the concept of fairness and its practicality. Rawls while writing this book, has in mind the criticism given by Michael Walzer (Walzer's notion of justice is discussed in this chapter) and so in the way he corrects the theory of justice by introducing 'justness', in a politically diverse society, where people can subscribe to deeply opposed though reasonable comprehensive doctrines. Meaning, citizens share a reasonable political conception of

justice, which gives them a foundation on which important public matters can be discussed and come to a reasonable agreement though not in all cases but we hope in most cases of constitutional essentials and matters of basic justice.⁵⁴ Thus Rawls asserts that the principles of justice would be the unanimous choice that would come out from the political conception of justice as fairness and would determine the basic social institutions that should govern the society they are, we imagine of creating it. However, it should also be mentioned that if individuals living in the society if gives importance to common interest rather than their own interest, than only Rawls believes that actual justice in society can prevail and just principles be uphold.

This central idea of justice as fairness, which is illuminatingly defended by Rawls, is a major perspective that gives us significant direction and understanding, taking us beyond the previous philosophical arguments on the subject of justice. By focusing on rules and procedures for fairness under the first part of the second principle, Rawls provided a considerable enhancement of the literature on inequality in the social sciences. Rawls fierce commitment to the principle of inequality has concentrated beyond disparities in social status or economic outcomes, while focusing on disparities in the processes of operation, to promote integration and better utilization of talents and a more equitable distribution, highlighting the disparities on grounds of their race or colour or gender. However despite Rawls path breaking analysis on justice there were certain major shortcomings in his principles that also need to be addressed. The principles of justice, in the Rawlsian formulation identifies the priority of liberty (the first principle) giving precedence to maximal liberty for each person subject to similar liberty for all, compared with other considerations,

including those of economic or social equity. Besides, equal personal liberty is given priority over the demands of the second principle which relates to the equality of certain general opportunities and equality in the distribution of general purpose resources. Thus it is seen that liberty is being reduced to being a basic component that compliments other facilities, as there is something very special about the place of personal liberty in human lives. Moreover in the difference principle, Rawls gives emphasis only on the opportunities that people have through the primary goods that were available for them and not on the capabilities of an individual on how to convert that primary goods into good living.⁵⁵ For example, a disabled person can do far less with the same level of income and other primary goods that can an able-bodied person. Thus there is a strong need to move from primary goods to actual assessment of freedoms and capabilities of the people.

Amartya Sen in his book, *'The Idea of Justice'*, has discussed certain difficulties in the Rawlsian approach to justice, which need fresh investigation. In the Rawlsian theory of justice as fairness, the central theme focuses exclusively on 'just institutions', rather than 'just societies' that will definitely depend on both effective institutions and on actual behavioural patterns.⁵⁶ Sen further argues through a unanimous agreement, even if we do admit that the choice of basic social institutions, there will still be problem on how the chosen institutions would function in a world in which everyone's actual behaviour may not be as compatible with the identified reasonable behaviour. As Rawls supposes that the principle of justice that are chosen unanimously are adequate enough in order to formulate a political conception of justice agreeable to all. However such an acceptance may be a distant reality from the

original patterns of behaviour that appears in any actual society with those institutions. Therefore Sen argues that the institutions have to be chosen taking into consideration the actual behaviour patterns of the individual rather than focusing exclusively only on the nature of the society.

The Rawlsian theory of justice that revived the social contract tradition (influenced by the Kantian idea of reasoning) deals into consideration a basic question as to what sort of social contract would be accepted by everyone unanimously in the original position? However as Sen argues that Rawlsian approach to justice through the use of this social contract tradition involves the members of a given polity and thus is limited in participation.⁵⁷ However in the contemporary world what happens in any country and how its institutions operate always have some impact in fact sometimes huge consequences on other states. For instance we can take the case of recent terrorist uprisings in Iraq and Syria (in the form of ISIS) which has influenced not only its neighbouring states but also other continents. Besides, globally sensitive questions like the unequal position of women, or the issue of climate change, or the violation of human rights, calls for more global examination and scrutiny as those problems are faced not only by one nation but have its impacts beyond national borders. Hence the fairness exercise in the Rawlsian analysis needs to be elaborated and reformulated in order to solve this problem of parochialism. G.A.Cohen despite being deeply influenced by the Rawlsian approach, however argues that, 'justice cannot be a matter only of the state –legislated structure in which people act but is also a matter of the acts they choose within that structure, the personal choices of their daily lives.'⁵⁸ Rather than endangering other values of an individual, Cohen believes that we first

have to identify the allocation of goods that would be perfectly just and then decide to what extent institutions like the state can effectively implement it. Liberalist like, Friedrich A. Hayek though has praised Rawls for his prioritizing of the principle of liberty but argues that the second principle that focuses on inequality by giving importance to economic equality to perpetuate justice, such an attempt would be coercive and destructive for a free society. However, despite being criticised and discussed vehemently, Rawls analysis of fairness, justice, institutions and behaviours has enhanced our understanding of justice very profoundly and has played and is still playing a hugely constructive part in the development of the theory of justice. The Rawlsian idea of justice had a huge impact on the later contemporary philosophers like, Ronald Dworkin, Thomas Nagel, Robert Nozick, Thomas Pogge, Thomas Scanlon Michael Walzer and many others whose analyses of the problems of justice have clear indication of Rawls's paradigm of justice and therefore among them Robert Nozick and Michael Walzer's analyses of justice has been discussed in this chapter.

Robert Nozick (a colleague of Rawls at Harvard) was one of the first and remains one of the most famous critics of Rawls's liberal theory of justice. Also being a libertarian like Rawls was a defender of individual liberty, advocating a minimal state in order to promote socio- economic equality. Whereas in Rawls theory, justice is seen as particular pattern of social arrangements acting through certain well established principles and a fair manner, however justice for Nozick was such in which individuals have rights and that those rights be respected at all costs and in all circumstances. In *Anarchy, State, and Utopia* (1974), especially in its famous chapter on 'Distributive Justice' (while praising Rawls's theory of justice as the most

significant work in political and moral philosophy since that of Mill), Nozick argues for what he calls an 'entitlement conception of justice' in terms of his three principles of just holdings.⁵⁹ Firstly, any individual who justly acquires any property is rightly entitled to keep and use it. Secondly, any individual who acquires any property through just transfer of it is rightly entitled to keep and use it. However, if anyone acquires property or any other goods through some unfair manner or unjustly for example, by theft or fraud or force are considered thus as illegitimate holdings. So, the third principle of justice is necessary in order to rectify this unjust past acquisitions. In short Nozick's libertarian entitlement theory of justice constitutes these three principles of just holdings—the principle of acquisition of holdings, the principle of transfer of holdings, and the principle of rectification of the violations of the first two principles.⁶⁰ Thus a citizen should be entitled to use their own property as long as they fall within the radius of these three principles and so long as they are entitled to it. Nozick further argues that if the Rawlsian principle of justice (specially the difference principle) while distributing the resources, does not fit his entitlement principles and forces an individual to give up his holdings to which he is actually entitled, and to give it someone else, such an act will thus be considered as unjust.⁶¹ However this entitlement conception of justice was largely individualistic, ignoring the social norms and behaviour associated with any individual. Besides limiting the functions of the state to mere protection of individual property or a night watchman state, Nozick's notion of justice seems more as a theory of property and rights, rather than a theory of justice.

Michael Walzer:

Rather than searching for an ideal society based on a single theory of justice, a complete different perspective was seen in the writings of the Communitarians that went beyond the human relationships on rights and contracts. Unlike the models developed by Mill, Rawls and Nozick, Communitarians regarded the principles of justice as pluralistic, drawing from as many different conceptions of the good as there are different moral communities.⁶² Rather than having a single and uniform principle of justice for the distribution of social goods, Walzer argues that there are different spheres of justice based on several principles constructed by human societies.⁶³ Just as Ronald Dworkin articulated his idea of equality as a corrective measure in response to Rawls, Walzer too concentrates on equality (by dividing equality into simple and complex equality) in order to give his notion of justice. While simple equality works with the absence of monopolies over social goods, the concept of complex equality posits that inequalities in the several spheres of society should not invade one another. Meaning, what a larger conception of justice requires is not that citizen's rule and is ruled in turn, but that they rule in one sphere and are ruled in another.⁶⁴ Besides, notions of justice do not gets its meaning in isolation from the societal structure, rather are derived from standards developed internally, as a political community evolves. In the words of Walzer:

The establishment of an egalitarian society will not be the end of the struggle for equality. All that one can hope for is that the struggle might get a little easier as men and women learn to live with the autonomy of distributions and to recognize that different outcomes for different spheres make a just society.⁶⁵

Thus it can be seen from the above discussion that the idea of social justice has a long intellectual tradition in western political theory, beginning from the Greeks, to the enlightenment to the present, and is associated with rights, liberty, institutions, happiness and societies in order to carry out a proper distributional system and a meaningful way to eliminate injustice.⁶⁶ As such, by the mid-twentieth century, the concept of social justice became a permanent feature in the constitutional doctrines having deep impact on the ideologies and programmes of almost all the leftist and centrist political parties around the world. Social justice facilitate the state mechanism to provide life with dignity and freedom, entrusting a decent standard of living, protection and promotion of interests of marginalised sections and a society free from exploitation, inequality and discrimination. This constitutional dimension to social justice has also been given prominence in the Constitution of India, promising justice- socially, economically and politically to each and every individual. As such the fore fathers of the Indian Constitution also gave emphasis to this doctrine of ‘social justice’, fostering diverse principles essential for the orderly growth and development of personality of every citizen. Hence, it has become imperative to discuss the concept of social justice which was enshrined in the Indian constitution and became the cornerstone of our democracy.

The Constitutional Dimension of Social Justice in India:

Social justice can be generally defined as a state of affairs in which benefits and burdens in a society are distributed in accordance with certain set of principles, procedures and norms keeping in regard the rights, liberties, entitlements of the

individuals and groups in the society. In India justice became a valuable instrument, to alleviate the sufferings of the poor, weak, Dalits, tribal's and deprived sections of the society. The sphere of social justice became more distinct when a distinction was drawn between the social sphere and the economic sphere. This also helped the economist and convinced them to adopt certain measures not only to describe phenomena but also to propose criteria for the allocation of the fruits of human activity. The constitution of India is webbed to the concept of social justice. It gives directive to the state to abolish the hierarchical social order of socio economic privileges in order to establish a society based on justice and equality and promising each and everyone their respective rights and positions in society. In order to ensure social justice the forefathers of the Indian constitution has incorporated two important provisions- Fundamental Rights and Directive Principles of State Policy, giving the Supreme Court power to interpret.⁶⁷

Ambedkar and Sen:

Dr. B.R. Ambedkar the chief architect of Indian Constitution, believed in social justice for the oppressed and marginalised sections of Indian society. For that, he aimed at removing all kinds of inequalities based on race, caste, sex, power, position and wealth, focusing on establishing a society based on equality, liberty and fraternity.⁶⁸ Ambedkar always believed in the individual as an end in himself therefore wanted to abolish the Hindu social order that does not give opportunity for the development and growth of individual personality. He further said that the unequal social position and the inherited group based degradation and deprivation done to a

section of people manifested through untouchability and slavery has not only diminished their capacity as human but has also made justice a mockery.⁶⁹ This seems quite similar to Amartya Sen's notion of justice, who also believed in giving importance to the actual capability and freedom of the individual and its ability to convert income into good living, while formulating principles of justice. Sen also focused on the various cases of injustice practised in India (like untouchability, oppression on women), and like Ambedkar argued that we cannot attain justice by making an equal distribution of primary goods or benefiting the least advantage sections by giving them some special privileges, we have to go beyond it as justice cannot be indifferent to the lives that people can actually live.⁷⁰ Besides, in order to achieve it both Ambedkar and Sen believed in a positive role of the state in the economy, however, they did not favour an economy wholly directed by the State in the name of equality. Thus Ambedkar's analysis of justice has a relation with Sen in the sense that they both believed justice as a human endeavour and concern.

As such, Dr. Ambedkar one of the pioneer of the Indian constitution, having an elaborated conception of social justice, incorporated within its domain the provision of Fundamental Rights, with the intention of providing not only security and quality of citizenship but also protecting the rights and liberties of the people in order to have justice and security. This can be seen in, Article 14 of the Indian Constitution, which provides for equality before law and equal protection of laws and Article 15 prohibits discrimination on grounds of religion, race, caste, region and so on.⁷¹ However, Dr. Ambedkar's enormous achievement was to obtain the consent of the members of the Constituent Assembly in incorporating Article 17 which abolishes untouchability and

Article 23 which prohibits the practice of bonded labour. Moreover Article 16 and 16(4) are directed to provide equality of opportunity and socio-economic equality, particularly for the SC and ST without offending the core principles of equity and justice.⁷² Further Article 335, elaborates the provision for reservation in educational institutions and in respect of employment in public institutions for the weaker sections of the people and shall protect them from social injustices and all forms of exploitation.⁷³

In Part IV of the Indian Constitution certain directives are given to the state which are discussed and elaborated broadly with the objective of providing social justice to each and every corner of the society. As such, Article 38 states that “the state shall strive to promote....the social order in which justice- social, economic and political –shall inform all the institutions of the national life”...⁷⁴ Article 39 aims to secure the citizens “adequate means of livelihood”, the “redistribution of material resources of the community for the common hood” in such a manner that it prevents “the concentration of wealth and means of production” in the hands of a few.⁷⁵

The most explicit statement about social justice is found in Article 46. It adumbrates: “The state shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the SCs, STs, and shall protect them from all forms of social injustice and all forms of exploitation”.⁷⁶

The makers of the Constitution of India believed that Indian judiciary, especially the Apex Court being the final interpreter of the constitution and an instrument of social revolution, hence several decisions are given keeping in view the

major constitutional objective of social and economic democracy. However this cannot be achieved without removing inequalities in income and status. In this sense to provide socio-economic justice in order to reduce inequalities in income and in opportunities the Supreme Court went on diligently instructing that, article 38, 39 and 46 mandate states, as its economic policy.⁷⁷ The Indian judiciary on many instances has played an activist and interventionist role upholding the constitutional provisions, however, in many instances has also failed to scrutinize and examine the various policy initiatives of the government and economic reforms undertaken in the name of national policy, economic policy, or executive policy.

With the adaptation of globalization in India commonly understood as economic liberalization and integration on a global scale, a complete blind eye has been given on this question of 'social justice'. The long cherished constitutional goals like justice, equality and social responsibility, has been dropped and new goals like privatization, efficiency, marketability and competitiveness were given importance under the banner of the New Economic Policy (NEP) leaving marginal sections with some false promises.⁷⁸ The process of Liberalization, Privatization and Globalization (LPG), has not only brought a change in the policy perspective of the Indian State, but has also produced a change in the constitutional structure. As Amitabh Kundu rightly pointed out that though the constitution of India gives undue importance on implementing the principles of social justice within the state apparatus, on the contrary a complete opposite side has been seen after globalization. Kundu acknowledges that leaving the marginalised sections without any safety nets, the societal values and norms were thrown away by the state to fulfil the vested interest of the market in the

name of modernization and globalization.⁷⁹ The frequent cases of farmers' suicide and growing caste based atrocities against Dalits are living examples of this fact. Besides only by incorporating certain constitutional provisions (like reservations) for the marginalised groups, and in practicality looting the Dalits and tribals of their basic source of living (the precious land) by the government in the name of development and selling poor farmers' land to corporate houses in the name of establishing Special Economic Zones (SEZs), destroying their traditional way of life, rampaging their culture and customs, can never be termed as progress towards social justice.⁸⁰

In the recent times though India has achieved the high growth rate in terms of GDP to around 8 percent, but the majority of the Indian population do not have any access to education, health care, housing and other basic requirements to lead a decent life. With the speedy growth in industries ample with the so called modern technologies has benefitted the productions of few companies such as Tata Motors, Reliance, Bajaj Auto, but on the contrary majority of the workforce in the country has considerably been left out, depriving the millions of Indians from their right to work and livelihood violating further the fundamental rights of the citizens. Under such a situation, in this new era of globalization, the constitutional journey towards achieving equality and social justice might become a distant dream for the people of India.

Conclusion:

No other question has been discussed so passionately, and no other question has been the subject of so much rigorous thinking by the most illustrious thinkers from Plato to Rawls; and yet this question is unanswered as it ever was. When the concept

of justice as such developed during the traditional period the focus was on creating a just state and society, without giving much emphasis on the individual needs and interests. However in the modern age there was a shift in the emphasis from a just state to a just individual in order to create a just society. The philosophers gave importance on individual liberty and the constraints needed in enjoying their freedom, besides state given the responsibility to create conditions for the individual to enjoy their rights. Though the theories on justice (social contract theory, utilitarianism), which have provided different but respectively important insights into the demands of a 'just society', share the common aim of identifying just rules and institutions, even though their identification of these arrangements come in very different forms. In fact the social contracts that were primarily discussed by the philosophers, dealt exclusively with the choice of institutions. Thus the modern theories of justice focused on establishing perfectly just institutions. However, it should also be realised that the nature of the society that would result from any given set of institutions will also depend on non-institutional features, such as actual behaviours of people, capabilities and limitations. As Amartya Sen has rightly argued that, justice cannot be indifferent to the lives that people can actually live, hence the importance of human lives, experiences and realizations cannot be replaced by institutions, laws and rules that operate in any given state.⁸¹ Institutions and rules are of course very important in influencing what happens, and they are very much a part and parcel of the actual world as well, but when we talk about peoples' realization, than it goes beyond the strict organizational principles and includes the lives that people actually live. As in this line of thought, Sen while defining inequality as a relative term argues that, inequality can,

therefore, be viewed not merely as a measure of dispersion but also as a measure of the distinction between the actual distribution of income on the one hand and distribution according to needs and desert, on the other hand.⁸² As such the actual freedom and capability turn out to be quite central to the analyses of justice in the world, and these will have to be examined and scrutinized. Hence a question has arisen- Is there a need for a considerable departure in the prevailing theories of justice? Though the constitutional philosophy stands for the upliftment of the marginalized and weaker sections of the society, by empowering them, on the contrary a different picture is seen in the so called reform era. Now the World Bank gives guidelines, which has become fundamental in the governance of the country, and not the Directive Principles of State Policy. Under such a situation, has it become crucial to search for a new notion of social justice in this changed era of globalization? Though we cannot ignore the fact, that we are immensely benefitted from the ideas and concepts that developed during the traditional and modern period, which played a constructive part in the development of the theory of justice, but we cannot make this mode of thinking (for example the Rawlsian mode of thinking on justice also argued by Sen) on justice into an intellectual standstill. To sum up, we have to search for a broader perspective on justice, keeping in view the earlier theories of justice, which richness has benefitted us immensely and guided us to have a better understanding of the concept of justice.

Notes and References:

1. Amartya Sen, *The Idea of Justice*, Penguin Books Ltd., New Delhi, 2009, p. xvi.
2. James Foster and Amartya Sen (compiled), *On Economic Inequality*, Oxford University Press, New Delhi, Expanded Edition, 1997, pp.1-2.
3. Amartya Sen, *The Idea of Justice*, Penguin Books Ltd., New Delhi, 2009, p. 8.
4. Plato, *The Republic*, London: Penguin Books Ltd., 1987, p. 19.
5. *Ibid*, pp. 13-16.
6. The philosophies of Sophists were severely criticized by Plato and his teacher Socrates, who by giving their arguments tried to reformulate the concept of justice (see Nickolas Pappas, *Plato and the Republic*, Rout ledge, London, 2nd Edition, 2003).
7. Plato, *The Republic*, London: Penguin Books Ltd., 1987, pp.46-47.
8. Ashok. K. Upadhyay, *John Rawls: Concept of Justice*, Rawat Publications, New Delhi, 1999, p. 17.
9. *Ibid*, p. 47.
10. Wayne P. Pomerleau, *Twelve Great Philosophers*, Ardsley House, New York, 1997.
11. Delba Winthrop, "Aristotle and Theories of Justice", *The American Political Science Review*, (Dec., 1978), Vol. 72, No. 4, pp. 1201-1202.
12. Michael J. Sandel, *Justice: What's the Right Thing to Do?*, Penguin Books Ltd., New York, 2009.

13. Delba Winthrop, "Aristotle and Theories of Justice", *The American Political Science Review*, (Dec., 1978), Vol. 72, No. 4, pp. 1203-1204.
14. One of the significant aspects of Aristotle's doctrine is that it illustrates the demands of social justice in both directives: the principle of proportionate equality being superior to democrats' conception of mere numerical equality. Similarly, the idea of special privilege which his doctrine introduces is more agreeable than the oligarchs' conception that either wealth or noble birth by itself deserves the highest rewards (see W. Von. Leyden, *Aristotle on Equality and Justice: His political Argument*, The Macmillan Press Ltd., London, 1985, pp. 1-25).
15. Roman philosophy was an imitation of the philosophies of Plato and Aristotle and so was limited in its perspective (see W. A. Dunning, *A History of Political Theories: Ancient and Modern*, Macmillan & Co., Ltd., New York, 1902).
16. Despite Augustine's believe in love and peaceful world order was not a pacifist and supported just wars as morally permissible in order to establish just peace (see George H. Sabine, *A History of Political Theory*, Oxford and IBH Publishing Co., Calcutta, 1961).
17. Aquinas considers justice to be a preeminent among the moral virtues but also was in favour of the right to own private property (see Wayne P. Pomerleau, *Twelve Great Philosophers*, Ardsley House, New York, 1997).

18. George H. Sabine, *A History of Political Theory*, Oxford and IBH Publishing Co., Calcutta, 1961.
19. Mulford Q. Sibley, *Political Ideas and Ideologies: A History of Political Thought*, Harper and Row Publishers, New York, 1970, pp. 347-348.
20. Ashok. K. Upadhyay, *John Rawls: Concept of Justice*, Rawat Publications, New Delhi, 1999, p. 21.
21. James Moore, "Hume's Theory of Justice and Property", *Political Studies*, (1976), Vol. 24, pp.111-112.
22. Hume sees all values, including that of justice, as derived from our passions rather than (as Plato, Aristotle, Augustine, and Aquinas thought) from reason (see David Miller, *Social Justice*, Clarendon Press, Oxford, 1976, pp. 158-159).
23. John Dunn in his article, "Justice and Interpretations of Locke's Political Theory", argues that justice for Locke was the right distribution of goods among human beings, which maintains the property or ownership of proprietors or owners. Justice accordingly is a dependent function of ownership, see *Political Studies*, (1968) Vol. 16, No. 1, pp. 77-78.
24. Ashok. K. Upadhyay, *John Rawls: Concept of Justice*, Rawat Publications, New Delhi, 1999, pp. 24-25.
25. *Ibid*, pp.25-26.
26. David Miller, *Social Justice*, Clarendon Press, Oxford, 1976, pp. 158-159.

27. According to Bentham a just society is which ensures the greatest happiness to the maxim, an action is just which produces maximum pleasure to maximum number, and a just state is which is able to create a situation through law (see George H. Sabine, *A History of Political Theory*, Oxford and IBH Publishing Co., Calcutta, 1961, pp. 680-708).
28. Michael J. Sandel, *Liberalism and the Limits of Justice*, Cambridge University Press, New York, 2nd Edition, 1998, p.9.
29. *Ibid*, pp. 5.
30. David Johnston, *A Brief History of Justice*, John Wiley & Sons Ltd., 1st Edition, 2011, p. 154.
31. *Ibid*, pp. 155-156.
32. *Ibid*, pp. 161-162.
33. John Stuart Mill, *On Liberty and Utilitarianism*, Bentham Classics, New York, 2008.
34. *Ibid*, pp. 159-185.
35. *Ibid*, pp. 217.
36. J.S. Mill explores the connection between justice and utility in the fifth chapter of “Utilitarianism.” Critics of utilitarianism argued that judging actions only in terms of their consequences would not allow for a universal concept of justice. Mill counters this with his proposal that justice does not stem from convenience and that the notion of justice is guided by a higher mental reasoning (see Wendy Donner, “Mill’s Utilitarianism,” in John Skorupski

- (ed.), *The Cambridge Companion to Mill*, Cambridge University Press, New York, 1998).
37. John Stuart Mill, *On Liberty and Utilitarianism*, Bentham Classics, New York, 2008, p. 229.
38. Ashok. K. Upadhyay, *John Rawls: Concept of Justice*, Rawat Publications, New Delhi, 1999, p. 39.
39. *Ibid*, pp.40-42.
40. Allen Wood, “The Marxian Critique of Justice”, *Philosophy and Public Affairs*, (1972) Vol.1, No.3, pp.244-282.
41. Buchanan argues that considerations of justice and rights play no part in Marx’s treatment of capitalist and socialist society, in his condemnation of the former and his anticipation of the later (see Allen E. Buchanan, “Exploitation, Alienation and Injustice”, *Canadian Journal of philosophy*, 1979, Vol.9, No.1, pp.121-139).
42. G.A. Cohen, *History, Labour and Freedom: Themes from Marx*, Oxford University Press, New York, 1988.
43. Prabhat Patnaik, “Globalization and Social Progress”, *Social Scientist*, (January-February 2011) Vol. 39, No. 1/2, pp. 47-59.
44. Karl Marx, “Critique of the Gotha Program”, in David McLellan (ed.), *Karl Marx: Selected Writings*, Oxford University Press, Oxford, 1977, pp. 564–70.
45. Amartya Sen, “Justice: Means versus Freedom”, *Philosophy and Public Affairs*, (1990), Vol.24, No.3, pp. 111-121.

46. I should note here that the impact of Rawls's thinking can be seen in other contemporary works of justice, for example, those of Ronald Dworkin, Thomas Nagel, Robert Nozick (Nozick's ideas has been discussed in this chapter), Thomas Pogge, Thomas Scanlon and many others, whose analyses of the problems of justice has clearly been strongly influenced by the Rawlsian theory.
47. Ashok. K. Upadhyay, *John Rawls: Concept of Justice*, Rawat Publications, New Delhi, 1999, p. 55.
48. Michael. J. Sandel (ed.), *Liberalism and its Critics*, Basil Blackwell, Oxford, 1984, p.160.
49. Rawls burst into prominence in 1958 with the publication of his game-changing paper, "Justice as Fairness." This foundational idea of fairness can be defined as impartiality, avoiding biasness in our evaluations, taking note of the interests and concerns of others as well and in particular the need to avoid being influenced by our respective vested interests, or by our personal priorities and prejudices (see Amartya Sen, *The Idea of Justice*, Penguin Books Ltd., New Delhi, pp.52-53).
50. John Rawls, *A Theory of Justice*, Harvard University Press, Cambridge, Massachusetts, Revised Edition, 1999, p.10.
51. *Ibid*, pp. 11-12, According to Rawls as justice being the first virtue of social institutions so if the institutions are just, than justice in society would prevail.

However as the problem of distributing the benefits produced through cooperation, among the people arises (as people have different interest), hence Rawls argues that a set of principles for this purpose is needed in order to choose among the various social arrangements which will determine this division of advantage.

52. *Ibid*, pp. 52-53.

53. *Ibid*, pp. 54-56.

54. Rawls argues that people may differ in their religious beliefs and general views of what constitutes a good life, but they are led by the deliberations to agree, in Rawls's account, on how to take note of those diversities among the members and to arrive at one set of principles of justice fair to the entire group (see John Rawls, *Political Liberalism*, Columbia University Press, New York, Expanded Edition, 2005).

55. Sen argues that the conversion of primary goods into the capability to do various things that a person may value doing can vary enormously as people have different qualities and characteristics (see Amartya Sen, *The Idea of Justice*, Penguin Books Ltd., New Delhi, pp. 65-66).

56. *Ibid*, p. 67.

57. John Rawls, *A Theory of Justice*, Harvard University Press, Cambridge, Massachusetts, Revised Edition, 1999, pp.7.

58. G.A.Cohen, "If You're an Egalitarian, How Come You're So Rich?", *The Journal of Ethics*, (2000), Vol.4, No.1/2, pp.1-26.

59. Tom. L. Beauchamp and James. F. Childress (compiled), *Principles of Biomedical Ethics*, Oxford University Press, New York, 5th edition, 2001, pp. 225-239.
60. Nozick's assumption is that individual's rights are with the individual because he is an individual, no state had ever given these rights to him and so no state through any arrangement can ever take them away from him. Thus justice for Nozick, lies in not disrupting individual's entitlements and anything that disrupts them is unjust (see Robert Nozick, *Anarchy, State and Utopia*, Basil Blackwell, Oxford, 1974).
61. Tom. L. Beauchamp and James. F. Childress (compiled), *Principles of Biomedical Ethics*, Oxford University Press, New York, 5th edition, 2001, p. 232.
62. *Ibid*, p.232.
63. Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality*, Basic Books, New York, 1983,
64. *Ibid*, p.321.
65. *Ibid*, p. 320.
66. Vidhu Verma, *Non-Discrimination and Equality in India: Contesting Boundaries of Social Justice*, Routledge, New York, 2012.
67. D.D.Basu, *The Constitution of India*, Wadhwa's Legal Classic, New Delhi, 19th Edition, 2006, pp. 24-25.

68. Vivek Kumar, “Babasaheb Ambedkar: Conceptualization and Operationalization of Social Justice”, in P.G. Jogdand, Prasant P. Bansode and N.G. Meshram (ed.), *Globalization and Social Justice*, Rawat Publications, New Delhi, 2008, p.107.
69. *Ibid*, p.108.
70. Amartya Sen, *The Idea of Justice*, Penguin Books Ltd., New Delhi, pp. 66-69.
71. D.D.Basu, *The Constitution of India*, Wadhwa’s Legal Classic, New Delhi, 19th Edition, 2006, p 86.
72. *Ibid*, pp.93-94.
73. P.M.Bakshi, *The Constitution of India*, Universal Law Publishing Co., New Delhi, 2010, p.280.
74. D.D.Basu, *The Constitution of India*, Wadhwa’s Legal Classic, New Delhi, 19th Edition, 2006, p.145.
75. *Ibid*, p. 150.
76. P.M.Bakshi, *The Constitution of India*, Universal Law Publishing Co., New Delhi, 2010, p. 90.
77. Suresh Mane, “Constitutional Dimensions of Social Justice in the Era of Globalization”, in P.G.Jogdand, Prashant P. Bansode and N.G. Meshram (ed.), *Globalization and Social Justice*, Rawat Publications, New Delhi, 2008, p.226.
78. *Ibid*, p. 216.

79. P.G.Jogdand and Prashant P. Bansode, "Introduction", in P.G.Jogdand, Prashant P. Bansode and N.G. Meshram (ed.), *Globalization and Social Justice*, Rawat Publications, New Delhi, 2008, pp.9-10.
80. *Ibid*, p.224.
81. Amartya Sen, *The Idea Of Justice*, Penguin Books Ltd., New Delhi, 2009.
82. James Foster and Amartya Sen (compiled), *On Economic Inequality*, Oxford University Press, New Delhi, Expanded Edition, 1997, pp.77-78.