

CHAPTER IV

ASSESSING THE PRACTICAL ORIENTATION OF SEN'S NOTION OF JUSTICE.

Introduction:

Is a theory of justice inadequate if it fails to formulate universal agreement and fight the injustices prevalent in the world? However theories of justice play significant role in fulfilling the interest of the individual and distributing benefits in society. They help us think through the consequences or judgements, conducive to the interest of the society, providing suitable solutions and bases for reconciliation on contested matters and guide us to lead a responsible life for the society and nation. One of the most pivotal roles they play is enlighten us with some fundamental arrangements that guides us in selecting important roadmaps to face the various challenges of present situation which we might reasonably aspire. In this sense, Amartya Sen's realization focused notion of justice is multidimensional, pluralistic and comparative because it concentrates on the vivid nature of the human ability, going beyond the institutional aspect that makes the notion and purpose of justice limited to a particular field. Moreover, Sen's notion of justice traverses beyond the idea of perfect or ideal justice emphasized by transcendental institutionalism (earlier theorists like Rawls) to ensure the perspective of social realization on issues of justice, in order to make it more practical. Besides, it should also be mentioned that Sen is not merely concerned with

articulating a viable notion of justice, but he wants to institutionalize democracy through this method towards both the national and global perspectives.

As the concept of social justice is the most controversial and as well as conflicting but we cannot ignore its practicality and therefore William Frankena has rightly pointed out the need to ensure social justice practically. Frankena appreciates Rawls that though the principle of equality is the primary medicine of achieving justice but there can be at times need to depart from complete equality on the ground of differences in ability, merit, desert and need. As he argues that the concept of social justice has to be formulated beyond the principle of equality to the principle of agreements in society where there is no possibility of interference and conflict. Frankena agrees with Sen that the categorization of social institutions as just or unjust presupposes that it surpasses human legislation and is binding on all societies.¹ T.K. Oommen has argued that the nature of the present societies after globalization has become more complex, which further increases the scope of its citizenship rights to civil, political, economic, social and cultural rights. As such societies characterized by segregation, plurality, and hierarchy cannot have a systematic yet perfect justice applicable to all.² As each society functions according to their own distributional scheme and thus differs significantly and therefore having a unique and innovative set of principles and even have a different theoretical interpretation to it. According to David Miller, there can be no single arrangement and theoretical interpretation of social justice and therefore no ideal recommendations of justice can be made. For Miller therefore a concept such as justice may consist of sociological investigation, knowledge of cultural diversity and conceptual change.³ Also in the present era of

globalization, to limit justice into a particular theoretical framework is problematic. In many countries (like the Great Britain) the traditional ideas of social justice and their applicability in terms of policy formulations has come under review, which further has raised the theoretical issues about the nature and justification of social justice.⁴ The neo- communitarians (like Walzer, Iris Marion young and Will Kymlicka) highlight the issue of identity and argues that the liberal, contractarian and utilitarian theories of justice are not enough to take within its ambit the identity politics and thus lack practical orientation. Tariq Modood believes that emphasis should also be on difference and diversity, pluralism and heterogeneity, as focusing only on economic and material inequalities does not change the discourse of domination and oppression.⁵ Carole Patemen argues that in the name of granting welfare rights to the citizens (giving the name social justice), has undermined the freedom of individuals. Thus she argues that the rights traditionally enjoyed by men and the special rights exercised only by men have persistently diminished the freedom of women.⁶ Hence in the words of Brian Barry practical relevance is necessary for a theory of social justice which is right and in order to have universal validity.⁷ Keeping in view the above arguments, Amartya Sen's notion of justice (despite his deep admiration for Rawls's work), argues that political philosophy should move beyond the Rawlsian methodological outlook which Sen calls 'transcendental institutionalism'- towards a different more practically oriented approach to justice- 'realization focused comparison'. Is Sen's call for this paradigm shift in thinking about justice warranted? As such to what extent Sen's notion of justice be practically implemented not only in this globalized world, but also in a multicultural society (like that of India) dominated by religion and

superstitious beliefs of the people. The present chapter will try to address these issues. However, before assessing the practicality in Sen's notion, the present chapter will first look into the possibility in Sen's notion of justice.

Possibility in Sen's notion of justice:

Sen's notion of justice gives very few concrete examples of how its theory translates into practice. While discussing on the distributional dilemma that arises in an imaginary situation where three children quarrelling over the use of a flute is the closest he comes to when discussing the implementation part of justice in his book, *The Idea of Justice*. The matter is about the allocation of a flute to one of three children who have distinctive attributes: one who plays the flute, one who made it, and one who has no toy.⁸ How to allocate the flute justly? What Sen here wants to point out is that there can be different yet important plurality of reasons and values, (hence a simple plurality of right answers) unlike the Utilitarians, Aristotelians and libertarians to decide which of these answers is the right one. It is the nature of justice to engage in collective reasoning processes and not to focus solely on the equal distribution of the means (to give importance to inter-personal variations) and seek partial agreements on ranking of social arrangements. Therefore it would be not be correct to assume that there is only one kind of just distributional scheme, for example a liberal scheme based on the Rawlsian principles and the rest existing measures are not ideal---is thus against the ides of pluralism that vehemently exists in the present world. Therefore in order to realise the actual freedom of the individual an alternative to these, Sen

suggests the 'capability approach' which focuses on the relationship between people's resources and what they can do with those resources.⁹

As Sen argues,

Account would have to be taken not only of the primary goods the person respectively holds, but also of the relevant personal characteristics that govern the conversion of primary goods into the person's ability to promote her ends.¹⁰

As such, Sen argues that while understanding and measuring a person's capability the substantive freedom to achieve those functionings should be taken under consideration and thus should be valued and to create conditions whereby all individuals are able to increase their freedoms and enjoy equal capabilities.¹¹ It is apparent that Sen's emphasis on capabilities and not on achieved functionings is desired by the fact that by focusing on capabilities, an individual's problems, obstacles and choices are better known rather than focusing exclusively on functionings. Sen gives us concrete example by comparing between a poor person and person who has chosen to fast. Sen makes the picture more clear by evaluating that though both have the same functionings in terms of nourishment, however in terms of capability unlike the poor person who does not have the capability and access to food, the person who is fasting, has the freedom to choose whether he wants to eat or not and have complete access to food.¹² Sen thus differentiates himself from the Rawlsian theory that rather than having the goods or rights, the actual freedom to have and use those goods and rights is the matter of concern and should be given importance. Although Sen is unwilling to formulate a list of capabilities that can serve as the basis of every society

he does identify five instrumental freedoms which can set a minimum standard for every society, where people can realise and achieve their freedom and rights. These freedoms include ‘political freedoms’, which includes civil and political rights; ‘economic facilities’, which includes opportunities to utilise economic resources with the objective of production or exchange; ‘social opportunities’, which includes both public services as well as private facilities; ‘transparency guarantees’, which prevents corruption and financial irresponsibility; and ‘protective security’, which provides social security.¹³ Many of these freedoms are reflected in the United Nations Declaration of Human Rights.¹⁴ However, it should be mentioned that human rights and capabilities have clear differences (if observed closely), although have a common objective. Besides, this is a topic well beyond the scope of this chapter, Sen’s discussion on and contribution to human rights directly addresses the topic of social justice. Therefore it seems briefly to point out the relationship between the two. The capability approach gives importance to both the ‘intrinsic’ and ‘instrumental’ aspects of human rights.¹⁵ As each right carry with it the processes and opportunities that have a distinctive value, thus Sen argues that human rights are rights or certain ‘entitlements’ to some specific freedoms and therefore can be used as a framework to ‘protect and promote basic capabilities’.¹⁶ Hence in order to protect and promote the basic capabilities, to ensure freedom, Sen argues that a society should aim at two essential goals. Firstly, each individual right holder should be given the freedom to achieve certain conditions and secondly, with every right there should be a correlate duty on the part of others to assist in realising that freedom.¹⁷

Hence, for Sen, only by giving the people (for instance) right to private property, we can expect a society as socially just. Sen argues that, by ensuring people the capability to realise their actual freedom through redistributive justice or the provision of social security, can we have a just social structure. Hence, public policies and social institutions need to be formulated keeping in mind capabilities and freedoms of the individual and thus should process policies to help people realise their rights, than only we can term it as just. In fact the applicability of Sen's capability approach can be seen in the form of evolution of the "much-awaited" Human Development Report, which is published annually by the United Nations Development Programme (UNDP), since 1990, to consider development problems in both poor and affluent countries.¹⁸ Besides Sen's contribution to the field of development and welfare of the people can be seen practically through the devices and tools which acts as a measuring index in the global scenario. The Human Development Index (HDI) and the Human Poverty Index (HPI) are examples of such indicators which offer a "practical way of appraising governments and societies of their performance in matters of social justice".¹⁹ Thus it can be said that Sen's capability approach can have a greater impact in terms of investigating and analysing social justice in societies.

While working with Jean Dreze, on the discourse of political economy and how capability-view of justice can help reduce malnutrition and advance the cause of justice, Sen has given a more detailed analysis of how it works.²⁰ Dreze and Sen describing the food policy of the Indian government criticises that in the name of maintaining a standard price for the producers, the excessive food have to be brought by the government which has led to grain stocks being left to be eaten by the rats.

Assessing this serious yet unnoticed situation from a capability perspective, they illustrates that this food policy takes place in a context of widespread malnutrition, with a large proportion of children being born below average weight and women suffering from anaemia.²¹ Looking at the issue closely, it is seen that due to the disproportionate power of large-scale farmers over subsistence farmers and rural labourers such policies are being framed. As the first group is better organized politically, than the latter, hence in order to establish justice the political empowerment of the latter group is required so that they can participate in the public reasoning process and overcome the unreason of the large-scale farmers.

Finally while looking at the practical implementation of Sen's work it can be concluded that: first, formulation of justice should be based on the capability perspective of the individual that is an assessment of the extent to which people are able to enjoy valuable freedoms; second, the demands of justice should be based on public reasoning, discussion and scrutinizing through collective decision making process, opening voices from all the quarters and finally deciding about what should be done to enable more people to enjoy more valuable freedoms. For instance, in the above case of 'hunger amidst plenty', the most important conclusion and solution to the problem arrived at, is the freedom to be adequately nourished (measured by calorie intake, percentages of children being born with low birth weight and of women suffering from anaemia).²² The evaluation lead to the findings that a situation where more people are adequately nourished is more just. Justice than demands that this unjust state of affairs is dealt with reasoning, by making a convincing argument that it is absurd to have food stocks which are the 'equivalent of about one tonne of food for

each household below the poverty line’, in a context of prevalent child malnutrition.²³

Dreze and Sen further emphasize that the intellectuals should speak on behalf of the marginalized, as they are in a better position to analyse and advance it, make and politically empower the marginalized sections through various democratic processes so that the ‘bad’ reasoning of the most powerful who make policy decisions can be challenged and reformed.

In contrast to its political economy works with Jean Drèze, Sen’s book, *The Idea of Justice* is not much descriptive of how its argument works in practice. However, the major issues in the world today, climate change and environmental degradation receives little detailed attention. Only in few pages on the topic, Sen presents the case for sustainable development to be conceived in terms of freedoms and not needs.²⁴ The protection of environment is necessary not only for the current but also the future generations, as it offers opportunities to live a fruitful life. Sen further emphasises the close relation between capability expansion and environmental protection in the sense that greater female education leads to lower fertility rate and also basic awareness to protect the environment. Consistent with itself, Sen emphasises the significance of public reasoning for sustaining the environment:

Consider another subject, which is beginning, at long last, to receive the attention it deserves, that is, the neglect and deterioration of the natural environment. It is, as is increasingly clear, a hugely serious problem and one that is closely linked with the negative effects of human behaviour, but the problem does not arise from any desire of people today to hurt those yet to be born, or even to be deliberately callous about the future generations’ interests. And yet, through lack of reasoned engagement and action, we do still fail to take adequate care of the

environment around us and the sustainability of the requirements of good life. To prevent catastrophes caused by human negligence or callous obduracy, we need critical scrutiny, not just goodwill towards others.²⁵

Thus, according to Sen, more in-depth collective reasoning is the best route to secure greater inter- and intra-generational justice. In that context, the Copenhagen Summit in December, 2009, explains how Sen's idea of justice works in practice. Moreover, institutional structures like the, governments, international organizations, non-governmental and civil society organizations, despite having competing moral frameworks have agreed and reasoned together (similar to the Sen's flute example) on how to adjudicate the different values and state of affairs to solve cases of injustices. In the context of climate change though fundamental disagreements about a 'just' resource allocation has arisen, a partial agreement and not a binding law, about the perspective that a world with less carbon emissions is better than the current one, even though to what extent exactly carbon emissions should be reduced has not been finalised.

Despite being consistent with Sen's idea of justice – the agreements that he illustrates is based on reasoning and reached a partial agreement that leads to a better situation than the current one. However it should also be noted that these partial agreements (like the Copenhagen agreement) based on comparative judgement does not provide the conditions for future generations (or indeed this generation) to live well or, to use Sen's jargon, to live a life they have reason to value.²⁶ The next section goes on to examine some limits of Sen's notion of justice which become evident when it is confronted with the particularities of injustice.

Limits in Sen's notion of justice:

Despite Sen's invaluable contributions to the theory of social justice, his approach is not devoid of criticism. Perhaps the most debated aspect of his approach is the difficulty in translating his theory into an operationalised measurement index. As such, how Sen's capabilities can be transformed into something that is reckonable is still a question not discussed by him. Moreover, there is a tendency to measure functioning instead of capabilities. By linking the capability approach with the functioning idea which uses the basic measurement tools, Sen's notion of capability can be termed as a replica of the Basic Needs approach – and as a result not reflect his intentions.²⁷ Sen's disinclination towards formulation of a specific list of essential capabilities, with rankings has further made his idea parochial.

Martha Nussbaum is undoubtedly the most notable among feminist scholars who have engaged with, critiqued, and extended Sen's capability approach. Nussbaum notes that Sen has made a major contribution to the theories of social justice and gender justice by emphasising on capabilities while making comparisons and dealing with the issue of justice.²⁸ She agrees with Sen that the capability approach as a scaffold for examining social justice is far better than the utilitarianism, resource-focused analysis, the social contract tradition, or even some accounts of human rights. Its implementation can be seen in the recent constitutional amendments in India that guarantee women one-third representation in the local panchayats, or village councils, directing the governments to undertake measures for full and effective empowerment of this neglected sections in order to uplift them and make them capable to face the

obstacles.²⁹ However, she argues that Sen's capability approach has given a rather ambiguous picture while dealing with the aspect of social justice, as he does not provide any definite direction on which capabilities are important in our ethical judgments and our conceptions of justice. According to her, without endorsing such a list, the capability approach cannot offer reliable prescriptions on gender justice. Nussbaum also holds that Sen's treatment of freedom needs to be more specific.³⁰ Freedom, she argues, can have both good and bad dimensions and not all freedoms are of equal value. Nussbaum further proposes a list of ten capabilities which according to her are valuable normative guidance, relevant in any aspect, although she also emphasizes that the list could be modified by context.³¹

The argument that we need a definite 'list of capabilities', is extended further by Ingrid Robeyns in her paper, *Sen's Capability Approach and Gender Inequality*. Like Nussbaum, Robeyns while admiring Sen's work and use of his capability approach for gender analysis, but goes on to argue that the approach also has the drawback of being 'underspecified.'³² For implementing the approach to concrete questions, some additional theoretical specifications are needed. Robeyns too proposes a process of measuring the relevant capabilities, and practically exercised it while evaluating gender inequality in affluent societies.³³ Emphasising on the importance of process she argues that certain contextual dimensions should be given importance like the, existing literature in the field, formulating a public discussion on the issue, to give the list academic as well as political legitimacy. According to her, the list should fulfil a number of criteria like, it should be an elaborated one, and also non reducible and context oriented. Moreover, according to Nussbaum, Des Gasper and Irene van

Staveren, the concept of freedom, as elaborated in Sen's book, *Development as Freedom*, has been overextended, in that all the capabilities that human beings could acquire are to be understood as freedom.³⁴ This, according to them, can lead to confusion since freedom does not have this overarching meaning in everyday dialect. They argue that like other values existing in the society, such as justice, respect, friendship, and rights, freedom should be seen as a part of it – hence the title of their paper '*Development as Freedom – and What Else?*' Indeed they think Sen has, underestimated the value of capability, by giving too much prominence to the notion of freedom, ignoring the baggage that comes with the concept.³⁵ Besides other significant concepts such as justice and caring which they see as related to freedom, but cannot be included within its domain and thus need to be examined independently. As the concept of freedom could not be read in terms of caring, community, inequality and thus would limit the notion of freedom. They stress the need for an alternative language to the discourse of freedom– one that also incorporates the importance of other values. They argue that this would provide a more pluralistic understanding of capabilities.

C.B. Macpherson in his book *Democratic Theory: Essays in Retrieval*, argues that any adequate democratic theory of the contemporary period, must serve the individual members as potentially active person, rather than only as consumers, must assert an equal effective right of the members to use and develop their human capacities.³⁶ Macpherson further argues that- "Indeed any ethical theory and therefore any justificatory political theory- whether idealist or materialist and whether liberal or not and democratic or not must start from the assumption that there are specially or

uniquely human capacities different from, or over and above, animal ones.”³⁷

Therefore he agrees that a list of human capacities is essential to any democratic theory. Macpherson believes that the concept of human capacities is in a democratic theory both quantitative as well as qualitative. In order to achieve this objective, the capacities of the individual should be fully developed in a democratic framework, than only can be conceived as a quantity. Thus Macpherson argues that a man’s capacities must be understood in relation to his collective and corresponding physical, mental and psychic apparatus under different conditions.³⁸ As democracy makes the most of men’s powers in order to utilise and develop one’s capacities, hence Macpherson emphasizes that these powers need to be calculated. As a man’s power is to be measured in terms of the absence of impediments, in relation to his capacities, his ability is subsequently measured as greater or less by the lesser or greater amount of impediments like –lack of adequate means of life, lack of access to the means of labour, lack of protection against invasion by others, scarcity of the means of labour etc.³⁹ Thus according to Macpherson any democratic theory must treat and measure an individual power in terms of (quantity) developing his capacities and measuring hindrances in using his capacities, that is impediments to the maximum attainable in principle at any given level of social productivity and knowledge.⁴⁰ In this sense, is Sen’s call for the paradigm shift in thinking about justice really imperative, as his understanding of capability perspective seems to be very much limited in its scope? Keeping the above directive, unlike Sen, Macpherson also refers to the transfer of human powers from one section to another, which adversely affects the freedom of people in a liberal democracy. However, Sen does not seem to be much concern with

any such impediments hampering the freedom of the individual, while taking about the capability approach.

This takes us to another point of criticism which concerns Sen's emphasis on the importance of public discourse and reasoning in scrutinising capabilities. Sen argues that in order for a society to decide on which freedoms and capabilities should be prioritised, there need to have public discussion. Although in principle it is very much useful as it promotes peoples participation beyond cultures thus strengthening democracy. However, the problem lies in how this can be actually translated into action (especially in a country like India), and if it is exercised how effective it will be in giving a voice to the most vulnerable is still a question.⁴¹ Besides, Sen's prescriptions to justice (or a wider range of normative concerns) should also address issues like the differences between sound and unsound public reasoning in order to function properly. Conceptions of public reasoning form a spectrum. Some demands that are formed through discussion cannot be termed as reason in a meaningful way, moreover, some discourses are vague and others are more explicit to be counted as reason. As we read them, both Habermas and the later Rawls were conscious on the concept of reason and how it is formed. Sen argues that public reasoning must take an open rather than a closed view of impartiality coming from different quarters and in fact dissenting voices are also taken into consideration.⁴² Evidently, as public reasoning speaks on behalf of the entire mankind therefore Sen accepts that it needs the support of "free, energetic and efficient media".⁴³ Yet what is to be done if the media is working contrary to it? Where as in the present scenario it is seen that, media power is driven by partisan agendas, and news are often made and paid for

deliberation, under such a situation the so called free press can further corrupt the public discourse and can confuse the public, even if no voices or considerations are excluded. Further, Sen emphasizes the importance of "unobstructed discussion and scrutiny", but gives limited information on measuring this reasoning to set standards in discussion and scrutiny or about which publicly offered deliberations have normative force.⁴⁴

Moreover, Sen seems to believe too much on the institution of state as a neutral actor, with the propaganda of achieving national interest. The reality at present is that states often seek to realise the interests of the 'dominant social classes'. Consequently, if the most vulnerable are not engaged in the discussion, it is unlikely that their voices will be heard, resulting in the continuation of the status quo. Thus, it is very much important that in order for the approach to truly foster social justice in a community, it is necessary to have active participation from all strata of the community. However, evaluating the history of India it can be concluded that religion is still a very powerful force in the social and individual life of the people. As Neera Chandoke has rightly argued that communities that have suffered from multiple historical injustices is not because they are economically deprived, but also socially backward, politically insignificant in terms of the politics of 'voice'.⁴⁵ Despite framing multitude of constitutional provisions, laws, and policies, (in fact institutions are also established) to repair historical injustices, all such efforts went in vein as the ideology of discrimination continues to be there in the mindset of the people, strengthened further by the religious prescriptions making political upliftment and mobilisation difficult in independent India. Caste in India is not simply a law and order problem but a social

problem. However, the most alarming feature of Sen's work is its complete silence on the subject of caste-based discrimination in India, and the depleting conditions of the untouchables.⁴⁶ However, in his book, *The Argumentative Indian*, Sen has recognised that class in India has played a very significant role in establishing social inequality, but is not the only source of inequality.⁴⁷ Though he argues that other divisive factors like, gender, caste, region, community and so on plays a dramatic role in perpetuating inequality, but does not give any suitable remedy to solve the problem of inequality. Moreover, Dalits in India continue to be oppressed and discriminated not only in the social structure but also in the educational institutions, in public places and on the political battlefield, giving them a very little scope to earn and maintain their lives.⁴⁸ Moreover, despite constitution granting women equality and equal right to worship, it is seen that most of the temples in India have strict taboo on women worshipping gods and goddesses. It can be seen in the famous Barpeta Kirtanghar in Assam, where even Indira Gandhi was denied entry. All these reflects how little India has progressed and under such a situation, Amartya Sen's notion of justice which believes in public discourse and reasoning in fostering justice to what extent be practically implemented remains doubtful.

Onora O'Neill argues that, Sen is surely right to think that reasons do not have to come from 'insiders', and that we should give emphasis to the reasons coming from outside quarters. As discussed earlier, O'Neill also agrees that as some reasons are better than others so a distinction should be made between good and bad reasoning, as some standards should be established in order to justify the normative claims and adjudicate between the conflicting claims endorsed by the public.⁴⁹ As it is imperative

to justify such public discussions as all such public endorsements cannot be termed as reasonable. For instance there are many cases where public has acted violently or taken law in their hands through some disastrous actions further hampering the lives of the commons. Public discussion and scrutiny may under circumstances, formulate questionable judgements, or invite, even encourage, admire and conform.

Thomas Nagel has argued that, ‘the idea of global justice without a world government is a chimera.’⁵⁰ Despite several works being published worldwide on the issue of global justice, the contemporary debate on global justice is still parochial as it is largely confined to Western Intellectuals. Therefore in order to universalise the idea of global justice, it has to be recontextualised and formulated through its local conditions, besides pluralizing the uniform character of the Western intellectuals who control the discourse. Sen in his work, *The Idea of Justice*, has tried to deal with this recent parochial approach of global justice by taking Adam Smith’s impartial spectator approach, rather than Rawls’ veil of ignorance, as Rawls’ account considers only members of the polity that are being constructed.⁵¹ Sen’s subsequently elaborated the framework of global justice beyond and outside the Western tradition and thus was really appreciable and welcoming. However, he fails to take into consideration and address certain elements like the socio- political aspects of a state like India, which effects the practical orientation of social justice. Akash Singh Rathore has argued that the developed Western countries may indeed suffer from the adverse impact of globalization or neo- liberalization policies in the form of inequality, unemployment, but are free from the historical hindrances and problems which manifest injustices like, untouchability, caste system, religious bindings etc.⁵² In India for instance, a lot

of choices are made for us either by our society, our traditions or in fact even our religion. In fact the issue of right to freedom of speech (which is one important aspect of Sen's philosophy) in repressive regimes is especially relevant in India, given the current tug of war over sedition (the recent JNU issue) and whether one has the right to free speech.⁵³ Though, romanticizing the issue of Global Justice was the major drawback of institution focused approach in the Rawlsian tradition, which Sen vehemently criticized and hence de-romanticized it by giving an alternative realization-focused capability approach, based on moral considerations. However, the only problem is that Sen has continued to present his own alternative so romantically, remaining silent on the major issues of social injustices practiced in India, which has also made Sen's global notion of justice a chimera.

Sen by limiting his notion of justice to comparative judgements about individual lives, fails to give due attention to the structural nature that effects the human life. While formulating the notion of justice, the character of the structures like, whether they are 'just' or 'good', whether they provide the environment for people to live a decent life, should be taken into consideration, in order to have effective implementation. Injustice is not only related to the freedom, resources or rights that people enjoy or achieve whether it is more or less in quantity and quality but also about the structures being corrupted and deviated from the good they serve.⁵⁴ As injustice is structural, therefore any structure that define the relation between individuals, to the extent any person is able to achieve any particular objective or fulfil its self interest, should also be evaluated and scrutinised within the very structure that define such relation. For instance, it was nearly impossible for a white person living

in South African, following apartheid system to have relations with black people, as it was against the system of racialism practised under the system. Hannah Arendt while identifying three fundamental kinds of structure (cultural, economic and political) argues that if any of this structure becomes unjust or perverted, the life of the common people will be severely affected.⁵⁵ Structural injustice carries with it a sense of dismal; hampering the mental state of an individual, with a risk of isolation. As common people might not be able to perceive such injustices (for example, it was very difficult for the people within the untouchability system to define untouchability as unjust). Therefore, in order to have a full scale implementation of the idea of justice, a prior judgement of the nature of structures, whether they are 'just' or 'good', whether they provide the conditions for people to live flourishing human lives, should be studied and analysed. Thus a reasoning approach to justice (which Sen emphasises) will remain incomplete if the questions of the good life and the extent to which structures have relation with the aim of the good life are not taken under consideration.⁵⁶ Moreover, the present alarming event of environmental degradation and human misery calls, Sen's notion of justice towards a more structural and all-inclusive destination, as freedom and reasoning are certainly excellent starting points to formulate an idea or approach to justice, however the journey does not end here and hence needs to continue.

The idea of social justice thus has to be associated not only in formulating just institution and society but also with the human nature and the capacity of the individual to fight against injustices, while giving importance to structural positions, to transform the world into a secure and agreeable place. Keeping in view the above

perception, in India the notion of social justice has been enshrined in the Constitution of India through various provisions (the constitutional provisions to social justice in India has been discussed in Chapter II) with the aim of destroying the hierarchical social order of socio economic privileges. However in the recent times, with the onslaught of Globalization in India, a complete blind eye has been given to this notion of social justice. As it is seen that the economic liberalization has benefitted persons like the Ambani's and Tata's, that control almost half of India's total wealth. According to one recent survey, India is the 12th most inequitable economy in the world, with 45% of wealth being controlled by the millionaires.⁵⁷ As Amitabh Kundu rightly pointed out that despite constitutional provisions and legislations on delivering the principles of social justice by the state apparatus, the ground reality is in the state of dismal after globalization.⁵⁸ Kundu acknowledges that due to modernization and globalization, the social values and customs as well as the market structure which was nationalised and subsidised, have come under tremendous pressure to privatize and focus on profit making thus hampering the socio-economic relation failing to uplift the marginalised groups. The cases of farmers' suicide and growing caste based atrocities against Dalits are some serious instances of this issue. Besides only by incorporating certain constitutional provisions (like reservations) for the marginalised groups, and in practicality robbing 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 Special Economic Zones (SEZs), uprooting them from their customary way of life and pursuing the culture liberalization of criminalization, definitely is not the journey towards a social justice.⁵⁹ As Sen talks

about the human resource, but the reality is that India is placed in the 130th position in the Human Development Index among 188 countries measured globally.⁶⁰ Under such a situation, as the academic community started putting the realities of this economic reform for an extensive discourse in order to examine its impacts, it has also become imperative to analyse Sen's notion of justice in this era of globalization.

Assessing Sen's notion of justice in the era of Globalization:

Globalization has become a catchphrase in the major financial and commercial centres of the world; its implications for India can be seen in the recent years. In common understanding, the term globalization means interconnectedness and free transfer of capital, goods and services across national boundaries, to speed up trade and communication in order to have a better network worldwide, integrating economy, finance and services from local and national to international and independent world. However, removing barriers of integration, giving emphasis to the notion of free market, privatization, competition, and monetarism, gaining prominence in the 1980's, the basic character of the ongoing globalization is coercive, exploitative and domination- oriented. The fact is that the main goal of this process of globalization is to facilitate the Transnational Corporations (TNCs) to capture the domestic markets of the developing countries and to systematically erase the small and medium indigenous business centre through methods like collaborations, mergers and takeover.⁶¹ These borderless entities, which mostly belong to the rich countries of Europe and America, function through this TNCs and MNCs, mostly in the areas like oil , tyre, chemical, foodstuffs, electrical engineering, and electronic industry and so on. They are so big

that even the national governments do not have any meaningful control and thus can be termed as sovereign capitalist entities.⁶²

In India, though being a democratic state instead of following a consensual approach or out of compulsion, this globalization and liberalization was imposed from the top, like a palace coup. Since 1991, in the name of the structural adjustment programmes manifested by the so called monetary control institutions (the IMF and World Bank), India has sincerely tried to implement it. However, in reality the principles like, export orientation, import liberalization, privatization, and foreign private investments and so on, have categorically attempted to take away the net resources from India to the West.⁶³ Despite the advertisement that globalization has brought about as remarkable change in the part of improving the living standards of the people, by causing growth in terms of GDP and per capita income, it has also made poverty to grow on a faster rate than one could predict in 1991⁶⁴. Sen is one of the foremost thinkers to highlight this issue in a number of his writings and public addresses. What he wants to convey to the world is that although globalization has spread knowledge and lifted the average living standards, it has also unnecessarily harmed the world's poorest.⁶⁵ There has been thus a misdiagnosis of globalization in the way it is being advertised as a positive virtue, on the contrary has destroyed the local cultures and customs hampering the values of the society.

Amartya Sen in his article, '*Global Inequality and Human Security*', has argued that globalization is not a new phenomenon. It has past offered opportunities and from which the whole world could benefit, and it continues to do so. However,

Sen also believes that the distribution of resources and rewards are not thoroughly fair.⁶⁶ So under such circumstance, the market economy itself would generate different prices, terms of trades, income distributions and more generally diverse overall outcomes.⁶⁷ Therefore, Sen believes that the market structure can be modified in order to remove inequality and poverty and accordingly other public arrangements for social security can also be adjusted and can vice versa influence the market outcomes. However, it is seen that the market economy is controlled by big private enterprises with the sole motive of making profits. Therefore, if we leave in the hands of market economy (as Sen has argued) to generate different prices, terms of trade and distributional patterns, to what extent it would be beneficial for the poor and providing social security to the commons, will remain a question. According to Sen, 'Global economic relations can flourish with appropriate domestic policies, for example, through the expansion of basic education, health care, land reforms and facilities for credit including micro-credit.'⁶⁸ However, Sen fails to take into account how the private firms influence the framing of the domestic policies. Besides, in this era of globalization private companies have entered in each and every fields (like the education, health care, facilities for credit etc.), which has made the notion of public responsibility a myth. It was expected that equitable distribution and social justice will be secured as progress in the economy will eventually benefit all members of society, but the opposite happened. In reality, it was seen that the economic growth in India was not the growth of the majority, the deprived and the destitute, rather was the growth of the few, the Indian capitalists or billionaires and the international companies. Besides, without any state controlled institutions to monitor the different

ownership and distributional aspects of the market the outcomes from such an arrangements may increase the level of poverty and inequality in the societal structure.

Amartya Sen further believes that in order to achieve the expansion of basic freedoms of the individual, which is a constitutive part of development, we need the power and protection of many different institutions provided by democratic practice, civil and human rights, a free and open media, facilities for basic education and healthcare etc.⁶⁹ However, Sen thinks that the fruits of globalization (market economy) depends on economic, social and political institutions that operate nationally and globally. Hence there is an urgent need to re examine and strengthen the global institutions in order to make globalization a fairer agreement.⁷⁰ Sen has mentioned that the five permanent (also known as P5) members of the Security Council of the UNO were together responsible for 81% of world arms export during 1996-2006.⁷¹ Though Sen has argued that agreements need to be generated internationally, in order to tackle urgent issues related to education, health, curbing arms trade, drugs trafficking etc., but has failed to recognize how it can be practically solved. It is seen that the institutional arrangements like the IMF (International Monetary Fund), World Bank etc., that deals with the distributional aspects internationally, has been under the influence and support of big industrially developed nations which have made the fruits of globalization unfair, even dictating the national policies of many developing and poor countries. Sen believes that the role of the critical voices that the protest movements provide plays a very productive part in making the deal of globalization a fair one.⁷² In September 2000, the Millennium Declaration was adopted by 189 countries, with the objective of eradication of extreme poverty and hunger by 2015,

through global partnership, but in practise has till now not being achieved. Besides, no such consensus and globally binding laws have ever being framed to solve the global problems like, climate change, terrorism, problem of immigrants etc. According to John Mandle, despite the widespread poverty and malnutrition visible in various parts of the world, there is hardly any doubt that economic development, encouraged by the policy of neo-liberalization, has succeeded in removing poverty to a degree unprecedented in human history.⁷³

Sen's emphasis on understanding and uplifting the lives of the people and focusing on the fairness of global arrangements, (rejecting the questions like whether poor are getting poorer or rich are getting richer) fails to address a simple question-how to strengthen democratic process at the global level. As Joseph E. Stiglitz has rightly argued that, the international organizations like IMF, WTO, that controls the global trade and economy of the states are not transparent.⁷⁴ He further argues that as the institutions are not democratic besides, provides no freedom of information act, so the pace of globalization should be controlled in order to give societies time to adopt.

The aim of social justice is a society free of domination. This is a distant dream in the name of establishing equitable social order, where there are no rich and poor, no more masters and no more slaves, no more discrimination and exploitation in the name of caste, class and colour. It is not a hope for the elimination of differences. Only when no one controls the instrument of domination politically and economically, then only men and women can be one another's equal. However, it is seen that the means of domination are constituted differently in different societies, in the form of birth and

blood, landed wealth, assets, education, religion, state and non state actors exercising power- all these have been important instrument that have enable one set of people to dominate over others. Thus in order to abolish these forces of domination, the instruments and resources in the form of social goods need to be eliminated to establish the ladder of equity. Thus rather than dreaming of an equitable order based on the principles of justice and freedom, we have to first understand this sort of domination in social goods and eliminate it. We can take into consideration here the words of Walzer, who rightly pointed out that:

Men and women do indeed have rights beyond life and liberty, but these do not follow from our common humanity; they follow from shared conceptions of social goods; they are local and particular in character.⁷⁵

Conclusion:

It is and should be the objective of each and every justice oriented theory to move towards a world of shared responsibilities and shared benefits of a 'fair globalization', and to an ethics of 'global justice', and it is only possible, by actually serving the interests of all of the world's people specially the marginalised and deprived ones. The time has come to overcome and fight these challenges inherited from centuries of conflicts, divisions and enmities, and remove the obstacles with an atmosphere of freedom, respecting each other's rights, people living a decent standard of life and not suffering for the basic resources of survival. Formulating an alternative approach to justice, differentiating it from the traditional notions, Sen's idea of justice has been heralded as a theory of justice 'for an imperfect world', as 'dedicated to the

reduction of injustices on earth practically rather than to the creation of ideally just castles in the air'.⁷⁶ But despite the dual ambition of practically implementing political philosophy to the actual lives of the people, with the intention of limiting the gap between the institutions and people's realisation through the instrument of public reasoning and of centering justice to the heart of development thinking, Sen's notion of justice however, in practice does not do much in the real world, beyond generic references to famines, gender injustice or malnutrition. As an individual in Indian society plays his/her social role according to his/her social standing, as such it is seen that the distributive justice (being the dynamic force behind social justice) fails to achieve the desired objective within the prevailing caste hierarchies, deeply entrenched caste relations and religious affiliations practised in various parts of India. Besides, the state in this current era of globalization has abandoned its distributive functions and has transferred its power to the capitalists, making social justice dismal, despite legislating welfare laws and adjudicating measures to deliver social justice. In this changed world, the concept of social justice at a new dimension needs to be explored. The question therefore, is as to how to formulate the principles of social justice. Even after 70 years of getting independence, are the provisions of Indian constitution appropriate and able to create the ladder of equity and deliver social justice? In fact the caste system is getting itself adopted with new changing society. The problem for us is now to find out whether the new world has forced to revisit and redefine Sen's notion of social justice in order to make it practically more feasible.

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21. Amartya Sen, *The Argumentative Indian*, Penguin Books, New Delhi, 2005, pp. 212-215.

22. Sen does not specify the valuable freedoms that helps to evaluate the capability space, and left it to reasoning processes to determine what 'valuable' freedoms are (see Ingrid Robeyns, "Sen's Capability Approach and Gender Inequality: Selecting Relevant Capabilities", *Feminist Economics*, (2003) Vol.9, No. 2/3, pp-61-92).
23. Jean Dreze and Amartya Sen (compiled), *India: Development and Participation*, Oxford University Press, New Delhi, 2002, pp. 336-38.
24. Amartya Sen, *The Idea of Justice*, Penguin Books Ltd., New Delhi, 2009, pp. 248-250.
25. *Ibid*, pp. 48-49.
26. Gautam Dutta, "Reaching a Climate Agreement: Beyond the Copenhagen Accord", *Economic and Political Weekly*, (April, 2010) Vol.45, No.17.
27. The Basic Needs approach can be understand as the minimum entitlements necessary for an individual for survival like food, shelter and clothing. Sen does not endorse such a list of his capabilities as he believes that such a list would reduce the domain of public reasoning and democratic deliberation.
28. Martha Nussbaum in her article, "Capabilities as Fundamental Entitlements: Sen and Social Justice", discusses Sen's writings on the capability approach and her own development of those ideas, outlining in the process both the usefulness of the approach for examining gender and social justice, and some of the limitations of its current version, see *Feminist Economics*, (2003) Vol. 9, No. 2/3, pp.33-59.

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30. *Ibid*, p. 44.
31. *Ibid*, pp.41-43.
32. Bina Agarwal, Jane Humphries and Ingrid Robeyns, “Exploring The Challenges of Amartya Sen’s Work an Ideas: An Introduction”, *Feminist Economics*, (2003) Vol. 9, No. 2/3, pp. 3-12.
33. *Ibid*, p.6.
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