

## CHAPTER V

### REVISITING SEN'S NOTION OF JUSTICE AND GOING BEYOND IT

#### **Introduction:**

The concept of justice has been such an important matter in which nearly everybody has an opinion. Sen's critique of the Rawlsian notion of justice and providing an alternative set of ideas deriving from a range of traditional literatures proves the significance of democracy he is emphasizing. The creativity and uniqueness in Sen's account of justice can be seen by the level of contribution he has made towards the development of theoretical understanding in the area where anything new and alternative as well as having significance is really difficult to come up with. Sen's major contribution can be seen over the years, in developing a form of consequentialism that incorporates within its arena not simply well-being, but also capabilities, freedoms, responsibilities, and the fulfilment of individuals' rights through fair procedures. He especially amalgamates Western and Asian paradigms, however distinguishing himself from both the approach, as the Western tradition is treated as practically sacred and the diverse traditions from across the globe as irreducible to each other.<sup>1</sup> Rawls, in his later work, *Political Liberalism*, stressed on 'overlapping consensus' in which people decided to come to a political agreement of justice, despite diversities in their beliefs and moral perspectives that lead them to this

consensus, which was questioned further by Sen, terming it as a transcendental bent.<sup>2</sup> Sen's pursuit of justice advocating the social choice theory, though, actually builds upon this intuition of the later Rawls. As it is seen that, in a diverse and multicultural societies, certain norms and values are practised that provide solidity to political and socioeconomic relations. Sen therefore argues that the comparative method that promotes partial ranking of orderings, seeks to make these relations more just, not perfect. Besides, Sen argues that Rawls's approach is simultaneously detached from reality and yet parochial.<sup>3</sup> It should also be mentioned that despite Sen's claim to be much more focused on tangible behaviour, his call for global democratic discourse is rather unearthly in reality. Although his ideas have some resemblance with Michael Walzer's notion of a thin morality that people from different societies can agree upon despite being attached to diverse localities, however, no case studies are included by Sen to illustrate the pursuit of justice in practice, apart from a discussion of a 1940s famine in Bengal.<sup>4</sup> Sen's elaboration and providing an alternative approach in the form of Smith's impartial spectator is however ambiguous in nature and thus it is not clear if and where faith-based approaches to justice fit into Sen's model. Further it should also be argued that, Sen extracts the idea of justice from within, not aside from the plurality of the human condition. Whereas in the writings of Hannah Arendt, especially in *The Human Condition*, the contest between diverse dialogist in the public realm has a negative and complex character, Sen seeks to suggest an Aristotelian-style outlook that can transform transnational engagements of justice into reality.<sup>5</sup> Thus, Sen now needs to illustrate how to make exercise a democratic transnational civil society that can foster and reform the institutions and the behaviour of the individuals in order to

develop the capacities and capabilities of human beings, which seems to be the ultimate objective of Sen's notion of justice.

The Noble laureate Amartya Sen's notion of justice has received significant critical appreciation and discussion, not only because it provides a valuable alternative, with unmatched intellect and a comprehensive discourse on how it can be transformed into reality, but also because it involves in a debate that has lately been haunting political philosophy of the Anglo-American variety. This debate turns around the relationship between ideal vs. non-ideal theory.<sup>6</sup> While some authors have taken concrete attempts to evaluate and clarify what the distinction is all about the debate around the respective advantages of ideal vs. non-ideal theory, as well as the contradiction and points of convergence between them, further making the debate more interesting cultivating larger methodological controversies within political philosophy.<sup>7</sup> Unsurprisingly, various thinkers (associated with the discourse) use different vocabularies to draw the distinction between ideal and non-ideal theory. To name but a few, Sen himself consistently speaks of transcendental vs. comparative theory, Raymond Geuss defines what he calls the 'ethics first'-approach contrary to a realist account of political philosophy, and Joseph Carens terming abstract against contextual styles of doing theory.<sup>8</sup>

Sen's realistic approach of comparative analysis for evaluating 'comprehensive outcomes', seems logical in providing a practical alternative and guidance in matters of public discussions and deliberations in the democratic states. However, the constitutional structure of a democratic nation like our India is deeply influenced by

ideal theory. For instance, fundamental democratic ideals like: all persons are created free and equal; government gets its legitimacy from the people; the people acquire certain inalienable rights enshrined in the constitution, but only as a citizen, government loses its power when it acts against the interest of the citizens and government's refusal to surrender power signals the people's right of revolution etc, deeply indicates some ideal theory. Sen refutes that such transcendental idealizations are suitable only for the grand revolutionary's 'one-shot handbook' and 'would not be much invoked in the actual debates on justice on which we are ever engaged.'<sup>9</sup> However Sen does not provide any distinct picture as to how such liberal and democratic societies, especially the Constitution be patterned after it, would be today without these grand idealizations. The Constitution of India depicts such ideal theory. "WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into.... Justice, social, economic and political.....Equality of status and opportunity....."<sup>10</sup> The Preamble's primary objective of establishing a perfect union, based on the principles of justice, suggests that the Constitution itself envisions (even if it does not incorporate) an ideal of a "perfectly just" society and of political relations. While evaluating and assessing the various provisions of the constitution and the amendments undertaken in the subsequent times all vehemently highlights and perceives an ideal of equality of status and equal rights for all persons that originate in transcendental principles of justice.<sup>11</sup> A consequence of this argument is evidently that, though we try to develop and formulate the right kind of morality, but is always inadequate and therefore rational arguments and procedures will normally generate the most promising response to disagreement, and thus we need more of them.

As, Hirsch argues that:

‘There is, it seems, no way to resolve the remaining conflict by means of moral philosophy or any other kind of argument or institutional device. This, however, has nothing to do with the distinction between ideal and non-ideal justice or between ‘transcendental’ and ‘comparative’ theories, and we must by no means take it as an argument in support of the latter. It is simply the consequence of the always-limited capacity of rational arguments and procedures to give unambiguously correct or just answers to all questions about what is good and right.’<sup>12</sup>

While evaluating Hirsch’s idea it can be argued that he is actually very close to Sen’s own standpoint regarding the role of reasoning in the pursuit of justice. Sen too proposes the rationalist doctrine that more reasoning will lead to a better world.<sup>13</sup> Besides, this is not the final course of action to foresee disagreement and the response to it. However, a more combative and alternative reading can be seen in Hirsch’s work that Sen’s flute example indeed opens up the possibility for a much more radical interpretation of disagreement; an interpretation with which Sen himself would not concur.<sup>14</sup> Could it be assumed that some kinds of conflict or cases of public controversies like the one around abortion are not secondary but rather central to the study of politics? Hirsch is not ready to draw this conclusion. However, we would like to sustain that such a radical interpretation of disagreement is specifically what we need if the objective is to divide the labor between ideal and non-ideal theory. Such a line of thought is necessary, because ideal theory can guide us in digging out the dilemmas that are shaped by the clash of incompatible values, whereas non-ideal theory can assist us to practically direct our actions in order to generate societal compromises. Keeping in view the above argument the present chapter will try to

cross-examine Sen's notion of justice and to find a midway between this ideal and non-ideal theorizing of justice. Besides, searching for reconciliation between Rawls and Sen, the present chapter also attempts to go beyond Sen, while critically engaging with his idea of justice.

### **Revisiting Sen's notion of justice:**

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, enlightens us with some fundamental arrangements that guide us in selecting important roadways to face the various challenges of present situation which we might reasonably aspire.

Sen's pursuit for a theory of justice that can guide comparative evaluations in an imperfect world seems completely reasonable. Instead of looking for a perfectly just society, the vision should be for each and every man and women to fight injustice and change the world to a less unjust place.<sup>15</sup> However to morally evaluate the policies and actions, reasoning can act as an effective tool in converting the 'more unjust' to a 'less unjust' state of affairs. The particular framework of reasoning that Sen proposes has been drawn from a series of case studies and evaluations that he has conducted, enriching and contributing to the discourse of political as well as economic

philosophy.<sup>16</sup> The critique of the most dominant approaches to justice, deviating and establishing his own notion of justice, is really appreciable. There is, however, one aspect of the critique that, in our view, demands further reflection, particularly the ‘redundancy’ argument— and, the sufficiency argument—for rejecting that approach. Sen argues that Rawls’s transcendental principles are ‘redundant’ and have no practical application to this world: they are not adequate to address the present injustices perceived in the non-ideal world.<sup>17</sup> Does this mean that Rawls’s theory of justice is nothing more than a fascinating philosophical irrelevance, having no significant contribution as such (in line with Plato’s model of an ideal state ruled by philosopher-kings)? Before addressing this question, it should be noted that, whether Sen really sees Rawls’s theory as completely redundant or irrelevant. As Sen argues that he himself is benefitted by the ‘overriding concern’ and ‘general pre-eminence’ given to liberty by Rawls’s first principle of justice, the principle of equal basic liberty.<sup>18</sup> Rawlsian precedence of liberty requires “giving personal liberty some kind of real priority” (though not the ‘extremist lexicographic form chosen by Rawls’) over general benefit considered in terms of other social values.<sup>19</sup> Sen also believes that, “there is no claim here that the capability perspective can take over the work that other parts of Rawlsian theory demand, particularly the special status of liberty and the demands of procedural fairness.”<sup>20</sup>

While analysing whether the transcendental approach is sufficient to carry out the comparative exercise, Sen finds that the Rawlsian approach fails to minimize the distance of the social states from the ideal one and thus is not feasible (for the reasons explained in Chapter 3) and therefore rejects the sufficiency argument. However it

seems ambiguous why the distance from the ideal state should be taken as the relevant strategy here. As there seems to be variety of means in which the transcendental approach can be considered as suitable for the comparative exercise.<sup>21</sup> However rather than focusing on the distance between both the perspectives, the focus should be on the principles and methods undertaken as an evaluative means for the transcendental exercise, and ask whether those principles are sufficient for the comparative purpose as well.<sup>22</sup> If we receive a positive answer, then the transcendental approach can be regarded as fundamentally sufficient for the comparative exercise. Evaluating Sen's own analogy of comparing between the picture of a Picasso and a van Gogh, he is right that we do not need an ideal theory to adjudicate and present, *Mona Lisa* as the best painting in the world for the purpose of the comparison at hand, but that does not in itself wipe out the importance and position of *Mona Lisa* in this context.<sup>23</sup> If for a time being we assume to agree on deciding to set a criteria through which we can evaluate whether *Mona Lisa* is indeed the best painting in the world. The same criteria can also be applied to compare between the paintings of Picasso and a van Gogh? If this is possible, then we can come to a conclusion that the transcendental 'theory' of painting is also sufficient for the comparative purpose. Why we are focusing much on this Sen's critique is because transcendental approach to justice is relevant to comparative exercise, then it will help us to identify and formulate a set of principles of justice with which one can try to define a perfectly just society and that same set of principles can be applied or implemented for comparative evaluation to less than perfectly just situations.

Moreover, it should be also noted that Sen has illuminatingly discussed the enormous difficulties of achieving a perfectly just society, but that does not take away the importance of searching and establishing ideal principles of justice. Certain systematic procedures need to be followed while going from such ideal principles to a perfectly just society and this being one of the main drawbacks with the transcendental approach. Besides Sen argues that in contemporary societies due to plurality of values and reasoning, therefore there can be different descriptions of a perfectly just society or even with no agreed description at all. Thus Sen doubts the ‘uniqueness’ or even the ‘existence’ of a perfectly just society.<sup>24</sup> Osmani argues that there is no fundamental difference between transcendental theory and Sen’s own comparative exercise, because there is no certainty that comparative exercise will succeed in ranking alternative state of affairs and so in a way would undermine the uniqueness or existence of a perfectly just society. Besides, the non-uniqueness or the non-existence of a perfectly just society is but a special case of the persistent incompleteness of appraisal that Sen speaks of. Accepting this incompleteness if it does not disregard Sen’s comparative exercise, we cannot also disregard the Rawlsian transcendental approach either. Taking in the line with Sen, that if it is impossible to define a perfectly just society, we can still maintain the transcendental principles of justice and assess to what extent these principles be applied to the comparative framework.

However, going a step further it seems a priority to practically apply it. As there is no such radical difference between the transcendental and comparative exercise (both being the most influential approach to justice) and so if we move a level further than that distinction, at the level of principles seems to disappear. In fact, the

framework of reasoning that Sen, has applied while formulating his comparative aspect of justice can also be used by any given society to understand and evaluate the qualities of the perfectly just society it would like to achieve. If this argument is accepted, one would have to conclude that by exercising his approach particularly to the comparative exercise, Sen might have undersold his theory of justice. Further, the theory of justice that Sen has presented to the world, embracing many pluralities ignored by mainstream theory, can be broaden and elaborate its dimension by including not only the comparative exercise, but also the transcendental evaluations while redefining his idea of justice.

One of the central critiques of Sen's notion of justice is the rejection of ideal theory, or more exactly, of the ideal of a 'perfectly just society', which is associated not only with Rawls but also Kantian and other contractarian moral and political conceptions. As Freeman argues that a key feature of the social contract tradition advocated by Locke, Rousseau, and Kant is an ideal of a "well-ordered society," as Rawls calls it, in which free and equal persons accept and agree to form a liberal and/or democratic political institution, that comply generally with moral principles of justice.<sup>25</sup> Describing the well-ordered society as constituted by free and equal moral persons, this ideal society illustrates the optimal social conditions for the realization of our sense of justice. Rawls defines this well-ordered society based on the public conception of justice formulated to specifically promote the goodness of its members.<sup>26</sup> Thus it leads to the creation of a society in which every person admits and knows that others accept the similar principles of justice, and the basic social

institutions are known to satisfy these principles as, Rawls says “justice as fairness is framed to accord with this idea of society.”<sup>27</sup>

Even if we do accept Sen’s proposition (and surely it is to some degree) that it is meaningless to have the ideal principles of a well-ordered society to deal with contemporary injustices, nor to tell us what steps we should follow to improve upon, if not fully reform the prevalent injustices. However, formulating comprehensive philosophical inquiry, not inimical with our social nature rather similar to the goodness of the individual, based on principles of justice, has real significance and therefore will always be pursued. This still would not bring into question the significance of a philosophical inquiry into the principles of justice that are most suited to our social nature and similar with our good. The principles of social justice formed through an agreement by free and equal persons, respecting each other’s rights and positions, can be regarded as a significant development of democratic political philosophy. We have also discussed in the previous chapters that there is no such principles or any other alternative that can develop this sort of democratic discourse. As Sen’s claim is not, we take it, that these inquiries are idle philosophical conjectures of no real value, depending on idealization of free and equal relationships among people in order to establish the principles of justice. Rather Sen argues that these inquiries have no practical importance in determining what justice requires of us here and now. Though we accept Sen’s directive that the major objective of a theory of justice is to function as a guide to action, however, it also does not prove that Rawlsian theory of justice lacks practical orientation and thus cannot guide us in real life situations. As Valentini states, “the claim that a society is (or can be) perfectly just

says something important about both the nature of the value of justice, and how to orient our actions in the real world."<sup>28</sup>

One important dimension in Sen's notion of justice is his rejection of the nature of closed society in formulating public reasoning which was under taken in Rawls's domestic original position. Sen on the contrary wanted to give voice and recognition, outside the purview of contract. But can we really draw a separate between the scope of public reason and the principles of justice as Sen suggests? In other words, while designing principles of justice for instance, we should also take into account members of societies A, B, C, rather than the voices of only one that is society X. However, it should also be noted that the design of principles of justice should take into its consideration the voice of everyone to whom they apply and this was the rationale behind Rawls's closed impartiality, where every citizen would get the chance to raise their voice. Valentini argues that there seems to be a fundamental problem with the open public reasoning approach that Sen advocates in *setting the boundaries* of public reason.<sup>29</sup> In the Rawlsian architecture, these boundaries are set by the idea of reasonableness. As there seems to be a definite problem while terming every reason as rational as well as admissible within the deliberative process. Only those reasons should be included under the processes which are at a par with the idea of citizens as free and equal and of society being a fair system of cooperation. Sen has not formulated such a criteria to evaluate the appropriateness in the deliberative process, as to which reason should be included and which to be left out. On the contrary for Rawls, a commitment to the fundamental moral equality of persons is a necessary prerequisite for participating in the deliberative process. Sen, on the other

hand, seems to reject this idea as he believes that would go against the principle of democracy.

We should also acknowledge Sen's view that the academic political philosophy seems to busy in formulating and emphasizing on theoretical dimension, rather than looking at its practicality in the service of a degree of implausible theoretical completeness. However, it also cannot be ignored that distinction he draws between transcendental justice and assessing injustice here and now is overdrawn.<sup>30</sup> As it is argued that some of our comparative judgments take into consideration the notion of 'perfect justice.' Perhaps one main allegation that Sen launches against Rawls (terming him as an institutionalist) is that Rawls is concerned only with establishing perfectly just institutions and not with the overall social realizations. In Sen's words, transcendental institutionalism focuses primarily on getting the institutions right, and it is not directly associated with the actual behaviours of the individuals in the society that would ultimately emerge.<sup>31</sup> This description of the Rawlsian paradigm is slightly misleading as his principles do not single out one set of perfect institutions. Rawls is an institutionalist to the extent that his principles of justice are meant to apply to the basic structure of society (i.e., to its most fundamental institutions), rather than to individual behaviour.<sup>32</sup> However such an institutional design as Rawls argues also depends on the variety of societal factors, like the nature of the society, character of its citizens, their positions in the society, so on and so forth, while formulating just principles.

The problem we face or the injustices that exist in the present world is much more complicated and so a perfect theory of justice dealing with issues like poverty, malnutrition, avoidable mortality, certain evil practices exercised in the name of religion etc., is not enough. Debra Satz while analysing Sen's capability approach, considers the question of gender inequality and finds that there is a great deal of disagreement not only on how to characterize this inequality but also whether there is anything that is unjust about it.<sup>33</sup> Satz argues that, we will receive different suggestions and results for improving the unequal social position of the women depending on the variety of our evaluation pattern and understanding of the phenomena and also on the social situations on which we are actually standing. For instance, suggestions for improvement like, if women are being paid for the work they do in the home to uplift their respective position. Should a society provide additional incentives for men to involve in the domestic process, or should a woman be given more preference to become a part of the democratic process like providing reservation. Thus we get different answers to these questions. As there are differences in the relationships between men and women in different societies and also considerations like what it would actually mean for men and women to have equal opportunities should also be given emphasized. Moreover, some people think that gender justice requires giving women equal opportunities to men, few argue that in order to abolish gender hierarchy and provide equal opportunity requires restructuring the social institutions. Further some thinks that the obstacles in establishing equality should be removed first and can be done through legal procedures. Thus it is seen that while taking a specific concept like improving the conditions of women, certain ideal

positions are already drawn in the minds of the people to achieve the equality of opportunity between men and women.

Thus in order to solve this complex problem exemplified through the question of improving the status of women, does press us to move to a higher level of abstraction. However, if we do want to move this higher level, the problem will be such, that people would obviously disagree with one another, though might reach an agreement but would be based on options and thus has the chance of rejection. And, importantly, an individual might, through a process of reflective equilibrium, clarify what he/she thinks. In fact Debra Satz too points out that, when such a situation arises a person can never figure out which ranking to select or which superior position to move, among the various alternatives available for him, without working out his own conception of what 'perfect justice' entails.<sup>34</sup> There are times when we need a Mona Lisa to guide our judgments about Picasso and Dali. Finally, as Silveria argues that an approach focused on ranking the available alternatives through a comparative method is at risk of ignoring unrepresented possible choices.<sup>35</sup>

Moreover, it should also be noticed that Amartya Sen's criticisms of perfect justice as finding difficulty in figuring out what to do in complex non ideal cases has been the central point of the beginning of Sen's idea and the departure of Rawls's theory. However, in *A Theory of Justice*, Rawls does not begin by trying to provide a particular solution for the very intense injustices that motivate Sen.<sup>36</sup> Rather he simply denotes such injustices as wrong. For instance slavery is wrong; likewise extreme poverty and avoidable deprivation is wrong and thus should be removed in order to

perpetuate justice. It seems like Rawls never believed that a separate theory of justice should be designed to measure these practices and categorizing it as right and wrong or in Sen's view just and unjust. Rawls formulates his theory by taking such wrongness, injustices practised in the society as the starting point and later goes on to develop his principles of justice. In this sense Rawlsian theory cannot be discarded only as a theory formulating ideal justice. Thus, Rawls's ideal theory was never originated to play an extensive independent role in dealing exclusively with these practices, and so Sen's charge that ideal theories of justice are 'redundant' at least in this context, misses the mark.<sup>37</sup>

Amartya Sen's understanding of justice is a valuable critique of Rawls's theory of justice to the effect that though Rawls' conception of justice is widely accepted as the most celebrated theory in political philosophy, had however, little impact on political practice because of its focus on ideal institutions. Sen's elaboration on the notion of justice takes into consideration the plural demands of justice coming from diverse aspects and the need to fight for a less unjust world. In view of the above analysis O.A.Oyeshile, a noted African scholar, in his article, *Sen's Realization-Focused Notion of Justice and the Burden of Democratic Governance in African Societies*, has argued that, for the success of democratic governance in Africa would require, apart from establishing just institutions, a sense of community, democratic spirit, accountable leadership and responsible citizenship whose rights implies duties.<sup>38</sup> He argues that, all these have been lacking in the African continent and has therefore made democratic governance there difficult. In many African countries the individual interest is given prominence rather than the interest of the commons. He

further argues that in order to represent and implement the plural demands of justice, we also need enduring structures, institutions and rules that will sustain the plural demands of justice.<sup>39</sup> Hence he concludes that the, realization focused notion of justice cannot even function in Africa without the existence of just democratic structures and rules.

This same line of thought can also be seen in the writings of Kelechi Kalu, a noted African Scholar, who identifies the dearth of public leadership and cites an example from Nigeria and opines thus:

‘The central problem in Nigeria has been the lack of public leadership nurtured by the core values of an indigenous elite across the national landscape—political, civil society, cultural, religious, educational and in many instances, family. The absence of public leadership is directly related to the absence of national dialogue on what Nigerian identity should be about and how the different nationalities that were brought together by colonialism should live together productively.’<sup>40</sup>

In Africa and most non-western nations, on the other hand, the institutions and structures, though existing formally, are not fully functional. In most instances, individuals are bigger than institutions, as these are used to fulfil the vested interest of the dictatorial leaders who controls and formulates its rules and procedures for functioning. Therefore, in order to sustain the plural demands of justice, which form the foundational of Sen’s realization-focused notion of justice also need the enhancement of democratic governance in Africa (like, a sense of community, democratic spirit, accountable leadership and responsible citizenship whose rights

implies duties), which has been lacking vehemently, ultimately making Sen's notion of justice impractical.

**Beyond Sen's notion of justice:**

While looking at both the approaches of justice (Rawls and Sen) in terms of idealization of persons, public discussions, a well ordered society, identifying the role of justice, however none of these idealizations makes genuine difference both the paradigms, in the context of what justice requires here and now, in the present situation. As justice for Sen, requires the realization of individual capacities and differences that are or would be acceptable to ideally defined impartial deliberators, which are formulated and discussed publicly and such outcomes are implemented. For Rawls too, what justice here and now requires of us is formulating certain principles of justice chosen under a hypothetical situation of free and equal individuals creating an ideally just society. Unlike, Sen the individuals in the Rawlsian situation are ideal, who determines the principles of justice face a problem of applicability in the present situation. This is the difference between both the paradigms (Sen and Rawls). But there seems no huge difference about the scope or applicability but rather of the situations and evaluations, while formulating principles of justice, determined by persons under their respective conditions. Thus the focus of any relevant account of justice in political philosophy should not be on the question of redundancy or providing an alternative, but rather should be on offering a conception of justice that is reasonable and true in assessing issues of justice in the present scenario.

Keeping in view the above discussion, post Rawlsians like Sebastiano Maffettone, believe that there can be reconciliation between the two paradigms of justice, by taking the notion of urgency or importance as a criteria. Maffettone argues that the notion of urgency advocated by Thomas Scanlon can act as an attractive bridge between the views of Rawls and Sen.<sup>41</sup> Urgency implies a criterion through which we can objectively discriminate among strong preferences.<sup>42</sup> This can be seen when we compare between two sets of value- like health and amusement. We definitely will give importance to the first one (that is health), likewise we can hypothesize and determine various levels representing separate levels of well-being. Further, Rawls while adopting the social contract method proposes an objective criterion to discriminate among the preferences of different people and thus can be related to the principles of relative urgency to broaden its dimension in order to have a realistic approach to justice.

Moreover, Scanlon asserts that urgency helps us to comparatively assess benefits and burdens from the point of view of political morality.<sup>43</sup> Besides this notion of urgency can also be related to Sen's idea of *nyaya*, which focuses on comparisons among different lives in various situations.

Thus conceived, this doctrine is required to satisfy the following three propositions:

- i) It must represent a kind of consensus among those to whom justification is addressed.
- ii) It must allow for the fact that individuals have different tastes and interests.

iii) It must be result oriented.

In order to formulate this doctrine advocated by Scanlon, subjective criteria like giving importance to the model of preference satisfaction should not be taken into account. Thus it requires an objective criterion that is coherent with our objective idea of moral judgement.<sup>44</sup> Urgency thus can be measured by the position of high and low scales in which we locate our concerns. Maffettone believes that once we begin to formulate the desirability of the benefits and the in-desirability of the burdens at stake, we can create a 'hierarchy of relative urgency'.<sup>45</sup>

Thus we can investigate further on this possibility of reconciliation between the paradigms of Rawls and Sen that have been discussed above. We should also give importance to the context under which the theories of justice originated, like the Rawlsian theory is inevitably tied to its USA origins. In a country like the USA, protecting liberty at any cost and means is perhaps the most significant goal unlike the situation of India and African, where liberty is at times sacrificed for food or survival. However this does not signify that Rawlsian justice can be applied only in ideal conditions. Samuel Freeman argues that Rawls's ideal theory of justice apply directly to the non-ideal conditions, and therefore searching for an alternative approach and set of principles is a mistake.<sup>46</sup> Freeman however, proposes two roadmaps where Rawlsian ideal principles of justice with the aim of establishing perfect society apply also to the non-ideal conditions. For that, first we have to identify manifest cases of injustices and its impact and evaluate the degree to which a society departs from the idea of justice. Moreover in order to reform the unjust conditions and law, a framework should be

made and work according to it. Except under unfavourable conditions where the general conception applies, there is no suggestion in Rawls's works that principles other than the two principles of justice are to directly apply to non-ideal conditions to fulfil either of these roles. Instead, as he asserts, "While the principles of justice belong to the theory of an ideal state of affairs, they are generally relevant" to non-ideal conditions.<sup>47</sup> This also implies that whenever we change the context of Rawlsian paradigm to implement it in other parts of the globe or to a particular region, we should be cautious in redefining the relation between persons and institutions. Can we also argue that this is what Sen also recommends? However, it also does not signify that we have to transform political theory according to the changing situation or context, but rather to take history and tradition more seriously.

While going beyond Sen's notion of justice, Dhiren Bhagawati in his article, *Beyond A Deontological Theory of Freedom*, while analysing the Rawlsian distributional principles, suggested certain adjustments within the existing arrangements of a liberal democracy without seeking a drastic alteration to it.<sup>48</sup> While discussing the Rawlsian two principles of distribution leading to a just basic structure, Bhagawati argues that the degree of hierarchy applied in the principles of justice was entrenched by Rawls for safeguarding the supreme concern of the liberal theory, the righteousness of a person and his/her rights. Hence in order to make the benefit of these arrangements more meaningful to the largest section of the society, he proposed a rearrangement of the Rawlsian principles. Though Bhagawati acknowledges the fact that such a rearrangement would violate the very spirit of Rawls' liberal philosophy,

but then only it will practically benefit the least advantaged sections of people in the society and add some value to their imagination and desire of a better society.

Bhagawati's proposed rearrangement of the Rawlsian principle will place social and economic inequalities subject to the greatest benefit of the least advantaged members of society first, and they being attached to offices and positions open to all under conditions of fair equality of opportunity secondly.<sup>49</sup> Moreover, the righteousness of a person and his/her liberty will be assured so far they are attuned with the first two conditions in the rearranged order. Besides in this rearranged order, to the extent the civil liberties are consistent with such arrangement, at the micro level will remain largely unaffected.

Bhagawati further believes that such a rearrangement in Rawlsian principles, making it upside down, will definitely help to preserve the liberal democratic values in a country like our India, where disparity in relation to economy, society, institution, and structure is growing enormously in the last few decades.<sup>50</sup> He has further suggested certain measures to reduce the disparity of wealth among the people, in order to have a fair equality of opportunity. As without such adjustments, liberal democracy as it is developing now and will develop in the near future will not be able to ensure freedom and capability to each and every individual. Insisting on the need to robustly pursue and effectively follow these principles in state policies, Bhagawati further proposes that these adjustments may seek alterations of priorities in the constitutional structure within the limits of the basic principle.<sup>51</sup>

Keeping in view the above directive, while trying to recast the liberal theory to dispel justice and ensure freedom to each and every individual in the society, a further reconciliation between the principles of Rawls and Sen can be made by incorporating Sen's capability approach in the Rawlsian second principle in order to make justice more achievable and practical. While thinking of justice in a traditional society like India, where religion overtakes people's consciousness, conservative forces construct an narrow and negative ideology based on religion, to check radical ideas seeking progressive changes from reaching the mind of the people; the capability of the people should be measured and given emphasized while formulating principles of justice. Hence a further proposal of rearrangement of Rawlsian principle will place social and economic inequalities subject to the greatest benefit to the least advantaged members of the society first; they being attached to offices and positions open to all under conditions of fair equality of opportunity second and measuring the capability aspect of the individuals while arranging the social and economic inequalities. While adding this capability condition to the Rawlsian second principle will help us to understand to what extent people are really capable enough to convert their resources into good living. It will also help us to understand the problems or obstacles in the way of conversion and will enable us to make necessary adjustments within the existing arrangements of liberal democracy, to ensure people justice while removing injustices. As Silveria argues that, 'a society only treats its members as equal moral persons when the basic structure satisfies its requirements, providing everyone with a minimum necessary level of moral power--- that is, the bases of equality (and equal opportunity) and the social bases of self- respect'.<sup>52</sup> Therefore in the Rawlsian theory of justice, one

of the major question, that has relation with is, who the individual person in a society – is- thus here Sen’s capability perspective can be helpful in looking at the individual’s actual freedom and the opportunity aspect.<sup>53</sup> As for Rawls if individuals associated with the economic process are free and equal, than only the result that comes out from the distribution course be termed as just and fair. So precisely, because of this particular comprehension of distributive justice, the capability aspect can act as a necessary tool or element in understanding certain necessary equitable conditions of the actions of individuals and associations. However, to what extent, it can be really implemented and made functional, while making necessary adjustments within the liberal principles have to further studied and scrutinized.

**Conclusion:**

Sen himself said in his recent work, *The Country of First Boys*, that, ‘Justice, it has been argued, should not only be done, it must also be seen to be done.’<sup>54</sup> Thus the most basic thought that lies behind all these discussions is that the productive work in ethics or politics must be practical in its objective and therefore should bring into attention the interest of the agents involved in the working process, rather than the interest of those who are appreciating and making false promises and comments (being mere audience) that has already been done. Besides if agents are under the veil of their preferences or their traditional norms ad values (which they more or less are committed to) than the practical task of justice will be a distant dream. Thus a realistic view of the agents in relation to their capacities and capabilities is the need of the hour to have an empirical assessment of the paths in which they are vulnerable to others,

further evaluating the existing institutions which may be either resilient or fragile.<sup>55</sup>

This is the main context within which the building of more vigorous and reliable institutions which can secure justice even for the relatively weak must be undertaken. Walzer too imagines a political community that includes every citizen within its purview. He further argues that:

The appropriate arrangements in our own society are those, I think, of a decentralized democratic socialism; a strong welfare state run, in part at least, by local and amateur officials, a constrained market; an open and demystified civil service; independent public schools; the sharing of hard work and free time; the protection of religious and familial life; a system of public honouring and dishonouring free from all considerations of rank or class; workers control of companies and factories; a politics of parties, movements, meetings and public debate. But institutions of this sort are of little use unless they are inhabited by men and women who feel at home within them and are prepared to defend them.<sup>56</sup>

However, many of our judgments are in conflict with one another. While Amartya Sen highlights that a good theory of justice must be 'action-guiding', political theorists like G. A. Cohen, on the other hand, proposes that a theoretical investigation to political and moral questions has significant orientation and thus should be to extent possible independent from its practical (and especially immediate) importance.<sup>57</sup> Thus, there is pressure, both theoretical and practical, to resolve such conflicts. The idea of a perfectly just society acts as a driving force (ideal) in bringing our ideas into equilibrium. We should seek to establish equilibrium between the notion of our current beliefs and commitments in order to construct a stable and coherent system. However in order to achieve this vision, we have to sacrifice some of our beliefs, redefine our goals and modify our commitments and for that we need some points of pressure.

Thus to practically implement our views on justice towards the desired conclusion it is correct to think in the line of Sen that there is unlikely to be unanimous agreement on a single theory of perfect justice.

Thus it can be concluded that the drive for a 'perfect theory' actually manifest from within our everyday comparative and evaluative thinking about what we should do while adjudicating the complex cases, making further the line of distinction between comparative assessment and ideal theorizing thin, thus going against Sen's prescribed direction. Although we cannot totally ignore Sen's argument that the work done in the domain of political philosophy is practically disconnected from current struggles and aspirations. However we also cannot conclude and term all such work as unnecessary or redundant. In fact Sen's own approach lacks in-depth discussion of any significant cases, except generic references or certain issues where agreement on delivering justice, or 'removal of manifest injustice' could be plausibly expected, such as on the removal of illiteracy, women's exploitation, malnutrition, racism, etc. However, in order to remove such cases of injustices, we do not need a theory, as earlier theories has also emphasized on eradication of such evil practises. Thus we have to set the limits to what extent possible between theory and practise and make the discourse of social justice really feasible and achievable for all.<sup>58</sup>

What is called for in such situations is 'oriented' (i.e., non-arbitrary) political judgment, which is different from the established procedures and exchanges and thus need to be formulated. However, it should already be clarified that this is not a political judgement. An acknowledgment of the tragic aspect inherent in many

politically salient conditions does not ignore the importance of developing a tentative consensus on what should be done. Critics will also argue that (those having a rationalist framework) the faculty of judgment is too weak to construct such a consensus. However, if we look deeply into the real politics it seems the conflict between unavoidable values and the use of political judgment, neither of them can be easily rejected. Thus while revisiting Sen's notion of justice and analysing such dimensions of politics, it can be concluded that the debate between ideal vs. Non-ideal theory of justice providing a sound basis for a productive dialogue, is necessary for the betterment of politics and developing a meaningful theory and understanding of justice.

## Notes and References:

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3. Amartya Sen, *The Idea of Justice*, Penguin Books Ltd., New Delhi, p.9.
4. Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* Basic Books, New York, 1983.
5. 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 (see Hannah Arendt, *The Human Condition*, University of Chicago Press, Chicago, 1<sup>st</sup> edition, 1958).
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10. P.M.Bakshi, *The Constitution of India*, Universal Law Publishing Co., New Delhi, 2010, p.1.
11. See in Chapter II, The Constitutional dimension of Social Justice in India.
12. W. Hirsch, "Ideal Justice and Rational Dissent: A Critique of Amartya Sen's The Idea of Justice", *Analyse & Kritik*, (2011) Vol.33, No.2, pp. 371-386.
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16. *Ibid*, pp.605.
17. Amartya Sen, *The Idea of Justice*, Penguin Books Ltd., New Delhi, 2009, p.15.
18. *Ibid*, pp.63.
19. *Ibid*, pp. 299.
20. *Ibid*, pp.63.

21. Marcos Paulo de Lucca-Silveria, "The Subject of Social Justice: A Defence of the Basic Structure of Society", *Brazilian Political Science Review*, (2016) Vol.10, No.2, pp.1-26.
22. S. R. Osmani, "Theory of Justice for an Imperfect World: Exploring Amartya Sen's Idea of Justice", *Journal of Human Development and Capabilities*, (2010) Vol.11, No. 4, p.606.
23. Amartya Sen, *The Idea of Justice*, Penguin Books Ltd., New Delhi, 2009, p.16.
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25. Samuel Freeman, "Ideal Theory and The Justice of Institutions vs. Comprehensive Outcomes", *Rutgers Law Journal*, (2012) Vol.43, No.2, pp.169-209.
26. See Rawls Theory of Justice in Chapter III.
27. John Rawls, *A Theory of Justice*, Harvard University Press, Cambridge, Massachusetts, Revised edition, 1999, pp.397.
28. Laura Valentini, "A Paradigm Shift in Theorizing about Justice? A Critique of Sen", *Economics and Philosophy*, (2011) Vol.27, p. 305.
29. *Ibid*, pp.11-12.
30. Sen's distinction between transcendental justice and comparative justice is importantly different from the distinction sometimes drawn between ideal and non-ideal theories of justice (see, D. Satz, "Amartya Sen's The Idea of Justice:

- What Approach, Which Capabilities?" *Rutgers Law Journal*, (2012) Vol. 43, No. 2, pp.277-293).
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  32. Laura Valentini, "A Paradigm Shift in Theorizing about Justice? A Critique of Sen", *Economics and Philosophy*, (2011) Vol.27, p. 305.
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42. *Ibid*, pp. 129-130, Thomas Scanlon describes rather than defines urgency in terms of comparability among goods and satisfactions connected with them.
43. *Ibid*, p.129.
44. Of course, it is important to point out on what basis we can discriminate among preferences of different persons and 'Urgency', is one of those required bases.
45. Sebastiano Maffettone, "Sen's Idea of Justice versus Rawls' Theory of Justice", *Indian Journal of Human Development*, (2011) Vol. 5, No. 1, p. 130.
46. Samuel Freeman, "Ideal Theory and The Justice of Institutions vs. Comprehensive Outcomes", *Rutgers Law Journal*, (2012) Vol.43, No.2, pp. 185-186.
47. *Ibid*, pp.186-187.
48. Dhiren Bhagawati, "Beyond A Deontological Theory of Freedom", *Journal of Politics*, (2015) Vol. XVI, pp.50-54.
49. *Ibid*, p.51.
50. *Ibid*, p. 52-53.
51. *Ibid*, p. 54.
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54. Amartya Sen, *The Country of First Boys*, Oxford University Press, New Delhi, 2015, pp. 115-126.
55. Onora O'Neill, *Towards Justice and Virtue: Bounds of Justice*, Cambridge University Press, New York, 2004, pp. 7-8.
56. Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality*, Basic Books, New York, 1983, p. 318.
57. G.A.Cohen, "Facts and Principles", *Philosophy and Public Affairs*, (2003) Vol.31, No.3, pp.211-245.
58. In such a situation, politicians unfortunately cannot make better choices by appealing to the force of reason alone and it is difficult to assume that rational arguments and procedures alone can assure us when taking a stance towards the issues where disagreements arise.

