

Justice



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Introduction

Three boys Alex, Shariq, and Arnav are playing in a ground. Ravi came with four ice-creams, he has to distribute the ice cream between all of them. Alex says that each person should get an ice-cream. Shariq says that he should get two ice-creams because he likes ice-cream. Arnav says that he did not take an ice-cream when ice cream they had it the last time, so he should get maximum number of ice cream this time. Ravi wants to distribute three ice cream between Alex, Shariq and Arnav and wants to return the remaining one to the shopkeeper as he is not entitled to eat those ice-cream because he is a field-boy. In the above example, the boys are trying to reach at a fair process of distribution of things among them. We can also say that these boys are trying to prevail Justice among themselves. As we all know, all human actions, practices and situations are constituted by concepts. Justice as a concept is among one of them. No matter what method they adopt for the process of distribution, it should be just. Then the question comes, 'what is Justice?' In this chapter we will discuss the concept of justice as an important concept of normative political theory. Then we will try to draw a chronological graph of the development of this concept in the practicing of political philosophy. Then we shall learn about different types of justice. In that we shall also talk about procedural justice. We will analyse substantive justice followed by the idea of distributive justice. We will end the chapter with discussion of the concept of global justice.

Justice in everyday life is understood as an attribute of law. We as students of political philosophy will have to understand the concept of justice beyond this simplified implication as execution of law. I would like to explain this with an example. Same sex marriage is banned and marked as illegal social practice in large parts of the world. There are movements going on in very large parts of world against this law on the name of respect and dignity for people with different sexual orientation. Thus it is not necessary that each law will be just. Justice as a concept is necessary to secure the freedom of people in society and at the same time it must maintain equality in true sense. Thus, the concept of justice is dependent on both freedom and equality. Second, the common understanding which shapes this concept is impartiality. In this understanding, equal treatment to all will be seen as prime agenda of justice. Impartiality and fairness are understood as two important aspects of justice. Further in this chapter, we will try to understand how these concepts change their meaning in different understandings of justice.

Evolution of the concept-

The earliest traces of justice we found in the writing of Plato's Republic. In this book, the Sophist Thrasymachus challenges the conventional understanding of justice. Justice, he claims, is the interest of whichever person and party is in power. All rulers make laws in their advantage and it is these laws that are called justice. Justice as a concept does not pay heed to the rest of the society. Plato has huge disagreements with this minimal understanding of law and in rest of his book (Republic), Plato is trying to falsify this claim about justice. Plato (McMillan, 2009) defines justice in terms of individual and society and he states that justice will be same for both the state and the individual. He thinks that it will be easier if we begin our search of justice by examining broader visualisation of the just state and then see if our finding is justifiable and applicable to the individual. Plato locates the origin of all states in economic needs. That need would be fulfilled in the best manner if everybody will act according to the virtue that one possesses, or everybody perform the job for which they are most suited. This will provide

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leisure to each and every individual and they will be able to live their life more peacefully and in a civilized manner. With time, the state will be divided into three classes, corresponding to three natural types: the producer, who produce and fulfil all the economic needs of the state, the Auxiliaries who used to protect the state, and the Philosopher – Ruler, who rule the state as he is the bearer of knowledge and vision about the common good of society. Class virtue, as Plato defines, will be transferred to next generation on hereditary basis and if they will not follow the rule they will be classified according to their respective virtue by the state. According to Plato, justice in the state consists in each member fulfilling the class function to which he is naturally fitted. Thus for Plato ideal state would be the perfect embodiment of justice. Aristotle also believes in idea of the just state. Only a just state can provide the condition in which every human being can flourish in all their capacities, especially the capacity to act justly. Aristotle believed in the concept of proportional equality though in his description of the ideal constitution he states that all constitutions which aim at the common good are preferable to those which look only to some sectional interest. At this juncture he specified that common good must be based upon distributive justice. Aristotle and Plato both ignored the question of women in their assumption of just society. The concept of justice is linked to the establishment of the ideal state in Greek Philosophy. In Modernity too, this relationship is maintained, as creating just conditions became a major purpose of state. At this point, a question that comes in our mind is, 'why do we need Justice?'

In the example above, there are four ice-creams to be distributed among three people. Even though there is no scarcity of resources, we still need a proper justification for the distribution of ice-creams. If there were three ice-creams, we would not have been struggling with this question. Thus from above example we understand that justice is basically a distributive concept. The same analogy we should apply to the state. In modernity, largest parts of world in one way or another is struggling with the question of resources. In this situation, politics of the state revolve around the question of distribution of resources. This is why justice is needed. We need justice for the just distribution of goods and services. We need justice for the allocation of resources so that the state can protect the rights of each and every individual of society. Then the question becomes what would be the criteria for using justice as a distributive concept. There are three basic criteria for the distribution of goods and resources in society. It is very important to understand these three words and why we are using these as a criterion for justice.

These criteria are desert, merit and need. Desert means to deserve; it means people should be rewarded or punished on the basis of what they deserve. For example, how many marks one scored in an examination will depend upon the amount of effort and labour one has invested in its preparation. You shall fail in the examination if you will waste your preparation time in activities other than studies.

The second criterion for distribution of resources is merit. According to this, if someone has the capabilities and the merit to score good marks in the examination but he met with an accident on his way to the examination hall and could not write a paper in examination, should he be passed on the basis of merit or not? Thus criterion of merit shifts attention from the individual to the society unlike the concept of desert which is based completely on the individual. The criterion of desert takes into account only individual concerns while the criterion of merit gives prime importance to idea of merit which based upon social considerations. Let us understand this with the following illustration.

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A maid working in a household and taking care of two children of the family is getting less wages than a tutor who is teaching only for an hour. A film star is paid millions than the spot-boy in the same film unit, though the spot-boy gives more time and labour than the star, because in our society, the act of teaching, is considered more meritorious than the amount of labour that a maid invests in upbringing a child. The third criterion for distribution of things among people is need. According to this criterion, resources should be distributed among people on the basis of their need whether they deserve it or not. This distribution gives more importance to a person's need than his merit and capabilities. We can make this clear with the help of an example. A maid [who takes care of the whole household] in my home is a single earning member of her big family gets rs3000 after a month of hard labour and she takes care of her two kids with that money, though A teacher who teaches two small kids of family gets rs5000 for eight our teaching in a month. Teacher is a single child of a big landlord family and she is doing this work because she wants to keep herself busy and for some extra money. In both these cases, according to the criterion of need, the maid should get more salary than the teacher. Thus here distribution of things is based on fulfilment of need rather than maintenance of equality. This example also shows that need and merit are two different thing and in different condition we will have to behave differently. We will have to give more priorities to need than merit.

Therefore the fair and just distribution of resources is purpose of justice. Secondly, different ways of making people's life more just (tautological) and free is the aim of justice. These different ways of creating a just society has been theorised in political theory as different considerations of justice. Procedural justice and social justice are the two theoretical dimensions of justice. In the next section we will dwell on these specific theories of justice.

Procedural Justice:

The procedural theory of justice is based upon the just and fair process of fulfilment of the demands of justice. According to this theory, procedures are more important than the final outcome. This theory of justice is based on an understanding that justice requires a meticulous following of rules. The procedural understanding of justice depends on individual behaviour. It has nothing to do with the society. The idea of procedural justice was propounded by Robert Nozick in *Anarchy State and Utopia*. His argument revolves around his theory of individual entitlement. This theory states that each and every individual is responsible for his or entitlement. This also means that the state would have no authority to interfere in the matter of individual entitlements. The formation of a just and a perfect society is not the purpose of this theory of justice. Nozick understands justice in terms of the permissible use of force. So justice here is not concerned with any moral obligations. Its only concerns a moral restriction on the use of force. Nozick claims that if the original situation is just, the situation that results from that agreement will also be just. Justice, Nozick claims, is procedural in nature; if someone start with a just situation and applies just steps, the result must be just. Nozick substantiates his argument with an example.

Nozick asks us to imagine a hypothetical situation in which resources are distributed in accordance with our preferred pattern. Wit Chamberlain a famous star football player signs a contract with his team according to which he gets 25 cents of each ticket sold of his game. At the end of season, Wit has earned an extra 250,000 dollars and because the original condition was just, the procedure justly followed, so the outcome will be just. Given that, individuals surely have the right to involve into the contractual agreements. Thus, Nozick fully supported the right of transfer as well as right to acquire resources with the help of an initial agreement. With this example Nozick also resists the formation of any patterned theory of justice. The example illustrates two other things as well. First, the state

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has to play a minimum role in all these individual contracts. It will not violate anyone's right. The individual in Nozick case is free, autonomous and right based. Peter Vallentyne¹ has a problem with Nozick's argument. If Wit initial earning situation is greater than that of others, he must give a high tax on his earning, which would equalise an opportunity for earning. Second Nozick supports the larger earnings of Wit on the basis of a right to acquire money through transfer but Vallentyne argues that any act of transfer of money should come under the domain of proper taxation rule. Through his theory of entitlement Nozick opposes the Rawls's idea of redistribution and distribution of things. Through this theory of entitlement, Nozick argues that people are entitled to their natural assets and the benefits flow from them in some sense of entitlement antecedent of social institutions. Thus with this theory, Nozick is equalising the concept of entitlement with the Rawlsian understanding of desert of assets. In the same book he makes a distinction between historical and End-state principle of justice and his theory of justice. The historical principle holds that an individual's past action determine what he or she should be entitled to; and since actions are different entitlement will also be different. At the same time, the end-state principle suggests that there would be a set of goals to which the distribution pattern should confirm.

Thus Nozick explains that any acquisitions and exchanges of property are just if the process of acquisition is fair and voluntary. According to him, the market would do the best possible reallocation of resources. Thus, he restricts the role of state in resource allocation or in any sort of resource distribution. Peter Vallentyne says that Nozick's theory of justice is basically a libertarian theory of justice as it protects the individual right and autonomy on the basis of fair procedure. At the same time he was against any kind of redistribution.

Krishna Menon through an example clarifies the inherent problem in Nozick theory of justice. She cites an example of Andhra Pradesh cotton farmers. She argues that according to Nozick argument only the inefficiency and lack of labour of the farmers are responsible for the starvation and suicides of cotton farmers. Neither the state nor any of its institutions has any role to play in this. We could understand this with different example as male and female worker in industry are getting same salary and same vacation in offices though we all agree with the fact that women gives more hard labour and physical labour both as they do dual working. They take care of both household and offices. But they get equal salary with compare to male counterpart. Though in different kind of work like on construction site, or in farming women labourer earn less labour cost than their male counterpart. According to Nozick's argument state has no role to play in all these discriminatory practices going on in society.

Nozick initiated the procedural theory of justice, but as Peter Vallentyne said Nozick's theory was actually a libertarian theory of justice and it was accused of giving excessive priority to market and of minimalizing the role of the state. It also prioritises individual right and liberty over justice. Though it has located the concept of justice in fair procedures but very soon it has been criticised by the same stand point on the basis of which liberalism has been criticised in past, that

Peter Vallentyne chapter: Robert Nozick Anarchy state and utopia in the book central works of philosophy volume 5- the twentieth century: Quine and After edited by John sand, 2006, Acumen Publishing limited , pp90-92.
Michael .J.Sandel [1998] liberalism and the limit of justice, New York: Cambridge University Press, pp100-101.

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it is individualistic in nature, and state has no role to play in matter of justice. John Rawls in his book Theory of Justice, defended the idea of justice as fair procedures and following of rules. The most common criticism posed to procedural theory of justice is, that despite the meticulous following of rule, unjust condition might be created. Rawls responded that under some controlled conditions rational human beings would choose principle that would be compatible with idea of distributive justice. As we learnt from the very first example of this chapter, justice is all about reallocation or just distribution of resources, thus Rawls in his Theory of Justice added the distributive aspect in procedural theory of justice. In Nozick's theory of procedural justice and particularly in his entitlement theory idea of equality was completely absent; Rawls added the equality dimension to this by bringing it into the realm of distribution and redistribution. We can understand the difference and similarity between Rawls and Nozick on the basis of their preferences. Both Nozick and Rawls disagree with 'utilitarianism²' and 'intuitionism'. They reject utilitarianism on the ground that it denies the distinction between persons. Both support the right based ethics and the distinctiveness of individual more deeply. Both theorists emphasize what Rawls calls the plurality and distinctiveness of person and Nozick calls the fact of our separate existence. Both assume self as an end not only as means. But they differ on the issue of idea of possession, and the issue of natural liberty³ and the question of liberal equality that I will explain later. Nozick is a liberal conservative while Rawls is recognised as welfare state liberal. Secondly, as Anthony Simon Laden writes, Rawls provided an appropriate moral basis for a democratic society through his theory of justice. Rawls agrees that a society based on a theory of justice would be more stable. Thus Rawls added a social dimension to the concept of justice in his theory. That's why his theory of justice is also known as a theory of social justice, within which prevails democratic equality and denies the concept of natural liberty and liberal equality⁴.

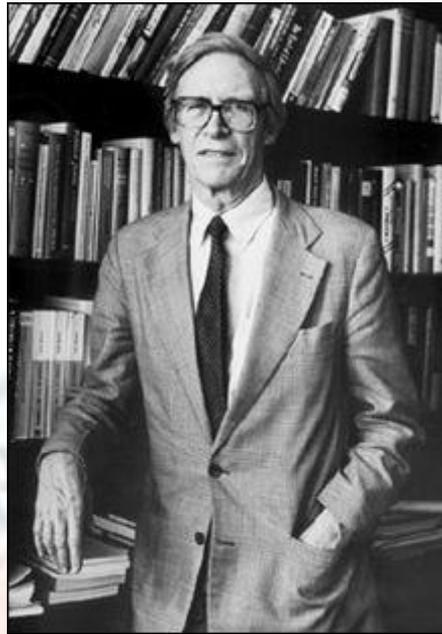
²Explain utilitarianism in short

³ Natural liberty means an efficient market economy in which free market will give equal opportunity of all and places will open for those who have natural talent. So this liberty is based on idea of formal equality.

⁴Liberal equality means providing equal opportunities on the basis of natural distribution of abilities and talents.

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Justice as fairness – John Rawls



Source : http://en.wikipedia.org/wiki/File:John_Rawls.jpg

As Amartya Sen writes, Rawls theory of justice was based on a demand of fairness. The notion of fairness is fundamental in Rawls theory and it comes prior to the Rawls theory of justice. Then the general question arises that what is "fairness"? Fairness in its Rawlsian understanding refers to avoid bias in our evaluations, consider the concerns of others, and we should not be influenced by our vested interest, or our priorities or any kind of ambiguities. To support his concept of fairness as justice, he prepares the ground with two fundamental concepts - the 'original position' and idea of 'veil of ignorance'. Rawls assumes a hypothetical situation in which those who are a part of his theory of justice will be unaware of their social and economical status. Rawls coined the term for this as "veil of ignorance". Under the veil of ignorance individuals are unaware of their particular interest, what would benefit them, their likes and dislikes, their particular skills and need and their wishes and desires. Rawls argues that only under veil of ignorance people will not take their personal interest into consideration. They will not take a biased decision. Rawls further says that under veil of ignorance people will be in 'original position'. Original position is again a hypothetical situation. It is an imagined situation of primordial equality, where people who choose a theory of justice will be completely unaware of their personal identities and influences. In the original position people are under veil of ignorance but they hypothetically are part of an agreement according to which they will follow principle of justice. In original position concept of veil of ignorance situates individual in similar position before agreement. Michael Sandel⁵ argues that in original position person may be bound to each other as a matter of natural duty or as of obligation. The bounding of people to the hypothetical agreement in Rawlsian understanding would be of obligation. In the original position the obligation requires both background morality as well as the consent of people. This obligation also requires the principle of fidelity and just institutional arrangement. These people in the original position would have an elementary knowledge of economics, psychology, and have a sense of justice. As Krishna Menon puts it, these people would be self interested but not egoist. In the original

⁵ Pp110-111. limit of justice

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position they don't know about what constitute 'good' but they all are interested in maximisation of primary good. Now the important question arises about the primary good. What constitutes the concept of primary goods for Rawls?

Primary goods for Rawls include Right, Liberty, opportunity, Income and Wealth, and The Social bases of Self Respect. And in original position they will not get influenced by the position of others. Rawls assumes that understanding of these primary good will enable people to pursue their own conception of good when the veil of ignorance would be removed. Within all this, in original position while parties to the hypothetical agreement are ignorant of their particular ends, they are all assumed to be motivated by certain desire of primary goods. Principle which constitutes the idea of good Rawls calls them as thin theory of good (here I want to clarify the point that Rawlsian understanding is based upon deontological liberalism. A central aspiration of Rawls deontological liberalism is to derive a set of regulative principles that do not presuppose any particular conception of the good, nor depend on any particular theory of human motivation. Conceptions of the good are diverse and a well order society is that where people are free to choose their various ends and purpose. So in thin theory of good, good are chosen rather than given). The thin theory of good is different from the full theory of good in the sense that it does not provide a basis for judgement among various ends and interests. So while the veil of ignorance provides that the parties deliberate in conditions of fairness and unanimity, the account of primary goods generate the minimal motivations to make possible a determinate solution. Together the two assumptions assure that parties act only upon those interests that are common interest which will promote the social co-operations. Within all this background situation and context I would like to introduce Rawls two principle of Theory of Justice.

First principle: "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all".

Second Principle: "Social and economic inequalities are to be arranged so that they are both a) to the greatest benefit of the least advantaged

b) Attached to offices and position open to all under condition of fair equality of opportunity to all.

Now we will have to take care of order of these principles, so that while taking into account any social situation, we would be able to protect our basic liberty. These principles provide Rawls with a tool to establish the point that "justice" is part of the basic structure of society. Michael Sandel argues that the Rawlsian principles of justice includes principles of two sorts. First, the 'principle is principle for institutions' which apply to the basic structure of society and the second principle, is a 'principle for individuals' which establishes duties and obligations of persons with respect to intuitions and towards each other. The former principle defines what makes an institution or a social practice just and the latter, defines the terms on which individuals are bound to abide by them.

Anthony Simon Laden specifies two different implications of the two principles. The first principle in the form of protection of basic liberty actually maintains a form of equality and it must have a basic egalitarian implications. Constitutions of different political communities would be implicated in this principle. Let's try and understand this through an example. Imagine, in upcoming Lok Sabha elections from a particular seat of Delhi, so many candidates filed their nominations. According to simple understanding of first principle, government will secure every qualified candidate their basic right to participate in election. They are free to do this, by protecting the basic right of participation government will secure the basic liberty of all. But in the process of election campaign, the district magistrate of that particular area provides greater facility to the rich 'Dabang' candidate and

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ignores the security of weaker candidates. This will create the condition of formal equality but at the same time by giving extra facilities to the rich and Dabang participant, it will affect the accessibility as well as the freedom of new and weak candidates. Thus, the first principle will be strongly implicated if government will provide equal and more protection to those who are weak, then the rich 'dabang' candidate though it will impact the notion of formal equality. In his later version of Theory of Justice, Rawls prepared a list of basic liberties, protected by his first principle. These list includes political liberty (right to vote and to hold public office) and freedom of speech and assembly, liberty of conscience and freedom of thought, freedom of the person from psychological oppression and physical assault and dismemberment means to protect the integrity of person and finally the right to hold personal property and freedom from arbitrary arrest as defined by the concept of rule of law.

The Second principle, as Anthony Simon Laden suggests, consists of three parts: fair equality of opportunity, a just saving principle and the requirement that social and economic inequalities be to the advantage of least well of. The last principle of Rawls is known as 'difference principle'.

In the following section we will discuss the real life implication of Rawls's second principle of Theory of justice. Fair equality of opportunity is different from formal equality of opportunity which is the basic idea of 'liberalism'. Here we would try to understand this with the help of some example.

In liberal societies, opportunities are based on our talents. The concept of 'careers open to talents' is famous. It means opportunities are there in the society, and those who are talented will grab the opportunities on the basis of their talent. It facilitates the condition of formal equality. Rawls intervenes at this point and argues that the notion of 'talent' is contextual. Those who belong to upper class section of society, they must have greater accesses to quality education and that ways they will acquire greater talent in comparison to those students who belong to lower class section of society. Thus in a society where there is a great deal of economic inequality, mere formal equality of opportunity will probably result in those with privileged backgrounds occupying most of the power and privilege in the society. Rawls's fair equality of opportunity overcomes the perpetuation of privilege, by requiring that those who are at the same label of talent and have the same willingness to use them should have the same prospects of success regardless of their initial place in social system. Fair equality of opportunity thus rejects the advantages of the class from one to next generation. Thus fair equality of opportunity requires some background condition. This we can understand with some examples.

There are two vacancies in an office for the post of senior assistant. Shahid whose mother is an engineer and father is a bank officer, who lives in a metro city, is appearing for this examination. Another boy Ravi is also appearing for this exam but his father and mother both are unemployed and he lives in backyard of the metro city. Qualifying condition in examination is equal for both of them. This situation allows formal equality but according to the Rawlsian understanding, it is a denial of fair opportunity to Ravi as he doesn't have any access to good and quality education required for this examination. Now for fair equality of opportunity Rawls demands some background condition. This background condition includes establishment of public education, public health, so that without any difference to class and caste and religion and gender, each and every individual must have access to these things. This will provide them fair access to the available opportunities.

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Now I will move to the second part of second principle. The second part of second principle requires a just level of savings. No generation is allowed to unfairly use up assets so as to leave future generations at an unfair disadvantage, but at the same time no generation is required to unduly sacrifice to its own wellbeing in providing for next generations. Since we don't deserve to be born into particular generation and our birth is mere accident, we cannot rely on a situation where we will have to justify having an unfair level of resources.

The most important part of Rawls's second principle of justice is the difference principle. It mandates that beyond achieving fair equality of opportunity, a just society must be organised so that any social and economical inequalities are to the greatest benefit of the least advantaged. Inequality is only permissible if it will benefit the least advantaged. The difference principle addresses the problem of inequalities due to talents, not by trying to equalise expectation across talent level directly, but by requiring that whatever benefit accrue to the more talented do so in a manner that maximally benefits the least advantaged. Rawls describes the resultant form social equality as democratic equality, which is different from liberal equality. Thus Rawls is considered as liberal egalitarian than libertarian.

Rawls calls the moral idea behind the difference principle is "reciprocity". Reciprocity demands that we only exact from a scheme of social cooperation which we can reasonably expect that others would agree to. The principle of reciprocity lies between the principle of altruism where everyone sacrifices for the good of others and principle of total egoism, where everyone uses whatever means they have at their disposal to get the best deal possible for themselves.

Krishna Menon in her essay 'Justice' substantiates Rawls's principle by giving its analogous example within Indian Context. Rawls extreme commitment to the idea of equality and the point that any departure from this principle can only be in the interest of justice is not new for Indian political conditions. Menon argues that in post independent condition there was a great need of balance between the deep commitment to the idea of equality, liberty, and fraternity and the existing condition of deeply rooted social and economic inequality – for example, the inequalities of caste. This needed some deep imaginative, creative, political thinking. B.R. Ambedkar as the chairperson of the Drafting Committee of the Indian Constitution responded by providing an insightful solution to the problem of social inequality and democracy. Ambedkar steered the constitution in the direction of justice and equality. He assured that any systematic departure from norms of equality would have to be made in the pursuit of justice. These departures were justified on the grounds that it would guarantee against the persistence of discrimination and that it will promote social integration as well as equitable distribution. He also argued that some sort of historical reparation must be done for those who faced centuries of deprivation and discrimination in the past, for example those from the lower castes. Ambedkar argued strongly that political democracy could not be established in the background of social inequality. It is for this reason that he introduced a number of provisions and programmes in the Indian constitution. Article 16 of Indian constitution which banned the practice of untouchability is one of them. Apart from this, he also brought policies around reservation of seats in legislative bodies, administration and educational institutions. Menon pronounces these provisions as compensatory discrimination. Three major groups have benefitted from this. Those are schedule castes, schedule tribes and other backward classes. Three specific preferences have been provided to these groups by constitutional programmes:

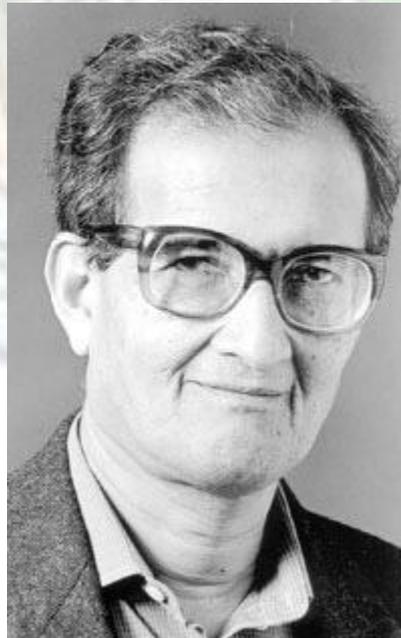
- 1) Reservation to facilitate an access to a resourceful position.
- 2) Provision of loans and land allotment services, scholarships, grants, health care and legal aid and so on and so forth.
- 3) Special schemes to prevent the victimization of socially backward classes.

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Thus Ambedkar was suggesting that socially and economically backward people of India like Dalits and backward classes had been denied their rights and Indian constitution could not escape its responsibilities towards them. Thus, according to Menon, these provisions of Indian constitution create an analogy with Rawls difference principle.

Amartya Sen in his book 'The Idea of Justice' summarises the merits of Rawlsian theories of justice within some points. Rawlsian ideas on justice took a huge departure from the Benthamite utilitarian theory. Though Rawls's effort of establishing impartiality as a major component of idea of justice through his conception of original position had been criticised but still Rawls's theory of justice has contributed greatly in establishment of notion of fairness as a constitutive element of justice. Rawls gave immense importance to practical reason as a source of objectivity. Thus for justice to be established in the society, Rawls gives prime importance to rationality which he complements with the understanding of reasonableness. Rawls argues that human beings have moral power that will enrich their capacity of justice. Rawls also gives priority to liberty. Rawls included liberty in the list of primary goods. Rawls emphasises on liberty not only as a shared concept in the list of primary goods but for its independent importance too. Liberty in form of freedom of speech works as a basic necessity for the practice of public reasoning. Amartya Sen found that Rawls made inequality at the level of structures as a major concern of justice. Rather than concentrating too much in the idea of social and economic inequalities he emphasises the point that justice could only be maintained in the society by digressing the discrimination on the basis of colour, race and gender. Thus Sen concludes that Rawls gives more importance to personal freedom as a major concern of his understanding of justice. Human freedom according to Rawls provides people opportunities to do whatever they want to do. Sen has criticised this notion through his idea of justice as substantive freedom.

Amartya Sen's Critique of Rawls' Theory of Justice.



http://en.wikipedia.org/wiki/Amartya_Sen

Sen argues that the excessive emphasis on liberty in Rawls's theory of justice is problematic in itself. Sen argues that hunger, starvation, medical neglect and

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

The third most important criticism Sen proposes is in the difference between niti-centred and nyaya-centred approach. The former idea, that of niti relates to organisational properties as well as behaviour correctness, whereas the latter, nyaya, is concerned with what emerges and how, and in particular the lives that people are actually able to lead. Sen argues that Rawls' theory of justice is closer to niti-centred approach. In the Rawlsian system of justice as fairness, direct attention is bestowed exclusively on 'just-institutions' rather than focusing on 'just societies' that may try to rely on both effective institutions and actual behavioural features. So the Rawlsian understanding of justness would not be able to bring substantive changes in society. Sen thus blames the Rawlsian theory of merely presenting 'the political conception of justice' by creating a base only for just institutions and ignoring the inescapable relevance of actual behaviour of people and as well as the actual social realisation of those principles. The fourth criticism Sen presents of the contractualist approach of Rawls theory of justice. Rawls develops his approach as a contrast to utilitarian understanding of justice but Amartya Sen has issues with it. For Sen, the "Theory of justice" provides transcendental solutions and more conscious of the demands of institutions and rules. It completely ignores the fact that what kind of role these theories are playing in the social realisation and formulations of these principles, whether these theories are concerned with the voices of those who are not the part of contract.

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

Malala Yousafzai's case is recent example of these kinds of issues. Facts and value regarding women's unequal position, French government's rulings regarding the use of Hijab in France, the idea of capital punishment, these are the issues that need to be discussed globally, with broader context of structural injustices than as a matter of local and particular beliefs and concerns. After this quick review of Amartya Sen's critique of Rawlsian principle of justice now we would

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discuss in detail Amartya Sen's idea of substantive justice and its relationship with freedom and capabilities.

Substantive Justice:

Rawlsian understanding of justice gives importance to freedom. Liberty is included in list of primary goods. As we all know primary goods in Rawls Principle are all-purpose means such as income and wealth, power and prerogatives of offices, the social bases of self-respect. Thus they are the means of valuable ends of humane lives. In this way, 'primary goods' also become the basic criterion of distributive aspect of Rawls theory of justice. Amartya Sen disagrees with Rawls here and argues that freedom as means would not bring substantial changes in human lives. He rather believes in understanding of justice as substantive freedom. Freedom is important for two reasons. Freedom gives us more opportunities to fulfil our objectives, our life goals. This aspect of freedom is concerned with our ability to achieve what we value, no matter what the process. And the second aspect of freedom is linked with freedom of choice. It means we are not forced to choose; that we are doing something willingly and by taking into account all other choices and options. Thus the opportunity aspect and process aspect are two different aspects of freedom. Sen argues that any idea of justice must include both. It means justice could only be established by creating just condition in which we have both freedom of opportunity and freedom of choice to grab those opportunities. Rawls also includes Opportunity and equality as important aspect in his principle of justice but there is a slight difference between Rawlsian understanding of opportunity and Sen's description of opportunity. Sen argues that Rawlsian understanding of justice is only concerned about the 'culmination outcome' it means what a person ends up with. In this particularly narrow understanding of opportunity the other existing options and freedom of choice becomes unimportant. Let me explain this with an example.

On one fine Sunday I decided that I will not work at all, since I had been working continuously the last two weeks. I decided that today I will spend a day staying at home. I woke up on the Sunday morning with a noise in the street. It seems that something serious has happened last night. People were discussing about the death of a woman who has been raped and found murdered in a street. A sense of fear was there in each and every corner of the city. I just felt helpless and went to sleep and thus that Sunday I spent my whole day in shock. Though I did the same as I thought earlier I would do. I spend a day in home by doing nothing but if that incident had not happened I would spend a day by celebrating with my friends at home or I might have baked something for my family. The outcome was the same in both scenarios. I spend my day at home but in the latter situation I had no choice. My capabilities had been reduced by the circumstances though opportunities were there. Thus, the opportunities aspect of justice is very much linked with capabilities aspect of justice and that's how Amartya Sen links idea of justice with capabilities. Thus Sen argues we need to access freedom in terms of the kind of capabilities a person has to enjoy or grab the available choices.

The Capability Approach:

Sen emphasises that any substantive theory of freedom should be understood on the basis of what kind individual advantages a person has in that society, and on what basis we will assess those advantages. The utility-based approach, pioneered by Jeremy Bentham, concentrates on individual happiness and pleasure as the best ways of assessing how advantageous a person is with compared to others. Resource-based approach assesses individual's advantages in terms of

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wealth and income and his overall resources. Sen argues in favour of a capabilities approach.

In contrast with resource based and utility based approach, the capability approach assesses individual advantages by a person's capability to do things he or she has reason to value or in terms of a person is really capable of grabbing the available opportunities. Thus the capability approach focuses on the freedom that a person actually has to this or be that – things he or she may value doing or being. With this the idea of freedom also respects our being free to determine what we want, what we value, and ultimately what we decide to choose. Thus the concept of capability is linked closely with the opportunity aspect of freedom, seen in terms of 'comprehensive' opportunities, and not just focusing what happens at 'culmination'.

Sen further asks that in the assessment of social disparities or in matter of social justice, we should focus upon inequality of capabilities. So if we really want to erase disparities and inequalities in society we would have to concentrate on the overall development of human capabilities. The second important issue, according to Sen, in a capabilities approach of justice is that we should understand 'capabilities' in terms of plurality of different feature of our lives. Capabilities could be interpreted differently. It could be interpreted in terms of being well nourishment or avoiding pre-mature mortality to taking part in the life of the community. The capability that we are concerned with is our ability to achieve various combinations of functioning that we can compare and judge each other in terms of what we have reason to value.

The capability approach concentrates on human life, not just on income and wealth. It focuses upon actual opportunities of living. Here it presents a contrast with the Rawlsian idea of justice which focuses on means of attainment in terms of primary goods rather than actual opportunities of living. Sen uses an example of poverty to explain this point. According to Sen, poverty does not simply mean low income or lack of resources. It refers to how different people have different opportunities to convert those resources and that income into good and worthy lives. Thus, the relationship between resources and poverty is deeply contingent and varies according to characteristics of people and the kind of environment they live. There are four important sources of variation on which Sen Stresses upon. I would like to discuss those very briefly.

The first variation is there in terms of "Personal Heterogeneities". People differ in terms of their physical abilities on the basis of age, gender, disability, proneness to illness, making their needs different and diverse. For example, a differently able person needs more resources and income than the abled person on an everyday basis. Indeed some severely differently able person wouldn't be able to live a comfortable daily life even with immense amounts of wealth.

The second variation he locates in terms of "Diversities in the Physical Environment". He says that a huge amount of income wouldn't result in a good life without taking into account its environmental possibilities. Mere income will not give us a free and healthy life. We will have to take into account environmental conditions, about flood, hurricanes, global warming, pollution, etc.

Thirdly he discusses in terms of 'Social Climate'. We could only convert personal resources into good life in good and healthy social climate. Social conditions like public healthcare and epidemiology, public educational arrangements, absence of crime and violence, all impact the quality of life. For example, in some specific parts of South Asia, the social climate of that society does not permit women to access education and other ways of personal development. So no matter how much income they have, women are not allowed to get education and by extension any glimpse of substantive freedom.

And the last variation, Sen discusses in terms of differences in 'Relational Perspectives' – the established pattern of behaviour in a different community demand different incomes. For example, marriage in upper caste Hindu

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communities is linked with grandness and social status so it demands more income while amongst people who are the followers of Arya Samaj it is not the case. So the need of income varies according to the changing needs of a particular society.

Sen wants us to understand poverty in terms of capability deprivation. To address poverty demands distribution of income and wealth as well as facilities and opportunities. So the idea of justice demands healthy and better life and opportunities for differently abled people, for all those who are forced to live in deprivation, for various people on the margins. Thus capability approach helps us in distribution and development of opportunities rather than income, thereby providing us substantive justice.

Communitarian Critique:

Rawlsian theory of justice has been criticised from different perspectives, and the communitarian critique is one of the most prominent critiques of Rawls' theory of justice. It is basically an attack on the universal aspect of Rawlsian idea of justice. In the above passages we discussed two basic concepts on which Rawls establishes his ideas of justice – "Original Position" and "Veil of Ignorance". Original position is a hypothetical condition which assumes that all participants of a contract will be in a similar position. There would be primordial equality between all of them and that they will not be influenced by their personal identities and beliefs and influences. This gives a universal dimension to Rawlsian position. Communitarians criticise this aspect of Rawlsian theory. Communitarians argue that in the original position, Rawls assumptions are based upon completely abstracted individuals. Abstracted individuals are those who are put outside their social, political and cultural context. Communitarians argue that any abstract individual can't make choices, and people in Rawls' theory are signing a contract.

Michael Walzer in his book 'Spheres of Justice' and Michael. J. Sandel in his book 'Liberalism and the Limits of Justice' give the counterargument to Rawls' hypothetical individualistic aspects. Walzer asks that since the Rawlsian veil of ignorance assumes individual out of their social context then how can those decisions be applied to real life situations in actual social contexts? People in real life take decisions on the basis of what they understand to be good. The idea of good, according to Walzer, could not be shaped on the basis of individual account. It is always shaped by the community and their beliefs and cultural and social practices. Thus any idea of good would be communal in character. Individuals are basically embedded in community. For example, a caste-based society defines justice on the basis of discrimination. In a caste based society, purity and pollution are decided by birth. Birth becomes the decisive factor in determination of access to water, land and resources. Thus Walzer argues that distribution of goods in a society is dependent upon the specific meaning those goods have, which are socially constructed and embedded in the community, its practices and its institutions. Therefore, any abstract ideal of justice is not possible. It could only be explained and understood within the framework of community. A just society would be that where no social good serves or can serve as a means of domination. Thus Walzer argues that rather than conceptualising a 'theory of justice' on the basis of a Universalist conception of personhood, we will have to think in terms of a pluralist conception of good for the imagination of a just society. For Walzer, distributive justice is about an art of differentiation rather than a science of integration. He states that human society is a distributive community and justice is a human construction. Thus any singular understanding of justice is not possible. He argues that principles of justice themselves are pluralist in form and that any theory of distribution should be based upon a

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diverse understanding of social goods, which is based upon diverse social and cultural particulars.

Michael J. Sandel, in his book 'Liberalism and the Limits of Justice,' argues that liberalism as a political system establishes the primacy of justice, fairness and individual rights. It works on the principle of deontological ethics. Deontological ethics means an ideal which assumes that society is composed of a plurality of persons, each with her own aim and ambition, interest and conception of good and that such a society is best arranged when it is confirmed to conception of right than the conception of the good or any ideal of social welfare. Thus in liberalism and basically in Rawls' theory, the moral category of 'right' comes prior to the conception of 'good'. Rights and good are independent of each other. This is why Sandel argues in favour of the limits of justice rather than primacy of justice. The idea of the priority of the right over the good is based upon the fact that the self is prior to the end, which is the basic ideological assumption liberalism follows. Sandel mentions that his disagreement with Rawls does not lie under the ambit of liberalism-communitarian debate but in something else. Let's look at this in detail.

A number of political philosophers writing in the 1980s disputed the notion that justice can be detached from the consideration of the good. Alasdair MacIntyre, Charles Taylor, Michael Walzer and Michael J. Sandel himself are sometime interpreted as a communitarian critique of liberalism. Sandel in this book proposes that by communitarian critique it implies that right should be based on the values and preferences of community rather than on individual preferences. Sandel shows here his difference from rest of the authors. He argues that the real question is not about whether the right should be respected on the basis of community or it should rely only upon individual preferences but whether rights can be identified and justified in a way that does not presuppose any particular conception of good. For him, the real problem in Rawls' later writings on justice is not about the relative claims of the individual and the community on the question of right but whether the claims of 'justice' really lie upon the relationship between the right and the good.

Those who dispute the priority of the right argue that justice is relative to the good. Philosophically our reflection about justice cannot reasonably be detached from our reflection about the nature of a good life and the highest human ends. Politically, our deliberation about justice and right cannot proceed without reference to the conception of good that find expression in the many cultures and traditions within which these deliberations take place. Sandel argues that the debate about the priority of right is basically dependent upon competing conceptions of the person, of how we should understand our relation to our ends. The whole communitarian critique is based upon this theorisation of person on which Rawlsian theory of justice lies.

In A Theory of Justice, Rawls links the priority of right to a voluntarist or basically a Kantian conception of person. According to this conception, we are not simply defined according to the utilitarian definition through which we are the sum of our desires, nor are we defined as those who believe in the purpose and end given to us by nature according to Aristotle. Rather, we are free and independent selves, unbound by any kind of moral ties. In A Theory of Justice, the priority of the self to the end and idea of an unencumbered self, support the priority of right over good. Sandel quotes Rawls as follows: "A moral person is a subject with ends he has chosen, and his fundamental preference is for conditions that enable him to frame a mode of life that expresses his nature as a free and rational human being as fully as circumstances permit."

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Rawls, therefore, fixes the case for free and independent selves, individuals free from any moral ties which assure that the right of justice will outweigh any other more particular claim. Here is where the basic communitarian critique of *A Theory of Justice* lies. Communitarians refuse to accept a theory based on the assumption of an unencumbered self, unencumbered by any moral ties and commitments. They argue that self is always embedded in society, and every society has its own moral and political obligations. For example, the obligation of solidarity, obligations of religious duties and to fulfil these obligations, we might sometimes leave what we may otherwise choose behind. We may not be able to fulfil those obligations if we understand ourselves as free and independent individual.

Rawls in his book 'Political Liberalism' tries to defend his point and the priority of the right from this communitarian critique. In a way he gives an answer to all those critique (communitarian or utilitarian) by shifting to an earlier position. In this book Rawls denies the fact that the priority of right could not be established without any understanding of theory of person. In his earlier book *A Theory of Justice*, he had taken the support of Kantian theory of person (unencumbered self), but in this book he argues that Liberalism as he conceives it does not depend on that conception of person after all. The priority of the right over the good does not presuppose any particular conception of the person. He defends his position by a completely new revelation in this book, where he presents an argument for "political liberalism". He argues that there is a difference between the concept of political liberalism and comprehensive liberalism. Rawls clarifies that Kantian conception of theory of person is based on the ideology of comprehensive liberalism. Comprehensive liberalism believes in certain moral ideals as autonomy, individuality, or self-reliance. Kant and John Stuart Mills are the most prominent example of that. Rawls argues that his understanding of liberalism is different from the philosophical or metaphysical needs. He wants to explain liberalism for political purposes. He argues that the priority of right over the good has nothing to do with Kantian Ideals. It is just an outcome of a need of democratic societies where people always disagree about the good.

Here Rawls argues that political liberalism is just an effort to give an account of "political conception of Justice". He denies the communitarian's claim that we can explain justice by adhering to certain moral and religious obligation. He finds these demand most unrealistic. Rather he argues that Justice could not be explained philosophically, and political liberalism tries to establish justice on the basis of 'overlapping consensus'. This means that different people can be persuaded to endorse liberal political arrangements without relying on their personal religious and moral preferences. Sandel points out that Communitarians criticises Rawls on this point and question him that why should an individual will leave his moral and religious preferences and accept the Rawlsian understanding of justice and that acceptance also demands a certain theorisation of person. It means that in the original position when we were agreed to sign this contract, we would have a certain idea of a just society. Why must we set aside, our moral and religious convictions, our conception of the good life? Why should not the principle of justice that govern the basic structure of society be based upon our understanding of highest human end?

Rawls answers all these questions with his theory of "The Political Conception of the Person". Rawls argues that in original position, participants are political person that is slightly different from the Kantian understanding of person. In very simple words, Rawls creates a divide between the personal and the political. The political conception of person is just like the Kantian Theory of person. It is just like a person who doesn't have any moral or religious preferences. The only difference with the Kantian Conception is where it limits this theory of person only

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to the political spaces. It means it separates people into citizens and/or persons. Rawls further argues that as a political entity, as a citizen, we carry a public identity. Thus our public identity as citizen is not claimed and defined by the ends we espouse at any given point of time. Our public identity is not affected by any conceptions of the good. In our personal identity we may regard our moral and religious attachments and loyalties. In personal domain we could borrow an idea of encumbered self but in political domain, we must bracket our encumbrances and regard our public selves from any particular loyalties and conceptions of the good. Rawls establishes his theory of the political person on the principle that we are self-authenticating sources of valid claims. The claims we make as citizens carry weight whatever they are simply by virtue of our making them. These claim may reflects high moral or religious ideals, or notion of patriotism or common good but these claims could not reflect the personal and private interests and preferences. From a political point of view, these claims are founded on the duties and obligation of citizenship. The importance of those claims has nothing to do with the moral importance of the good they affirm.

At this point Sandel's criticism becomes important. His critique of Rawls is more than the regular communitarian critique. He criticises the separation of private and public aspect of a person in Rawlsian understanding of political conception of person. At this point he asks some fundamental questions of Rawls like:

- 1) Why should we understand political conception of person in the first place?
- 2) Why should our political identities not express the moral, religious and communal convictions which we affirm in our personal lives?
- 3) Why in deliberating about justice should we keep aside our personal moral preferences?

Rawls answers these questions in terms of the difference between traditional and modern societies. In traditional societies people used to shape their political views and opinion on the basis of public and religious morality and ideals. In modern democratic society, there is a plurality of moral and religious views. We have now multicultural societies with a plurality of views about the just society. Thus Rawls insists that the divide between political and personal identities is implicit in the public political culture of democratic societies. He further insists that in democratic societies, principle of justice could gain the support of an overlapping consensus. By "overlapping consensus" he means that people may have different moral and religious obligation but for the principle of justice they would arrive at a consensus as an important political value. It is certainly not like a compromise between different conflicting views but it is like formation of consensus as most important political value. Rawls argues that in a pluralist society governed by liberal institutions people acquire certain virtues like the virtue of political co-operation, virtue of tolerance, virtue of reasonableness, and the sense of fairness. Rawls further argues that these virtues shape the political conception of justice and they constitute the notion of public good. Thus for political purposes alone does Rawls affirm liberal virtues as public good and separates people's moral lives from the ambit of these political virtue.

Sandel assesses these responses to his communitarian critique. He takes the communitarian critique a step further to assess this concept of political liberalism. Sandel pits three objections to the Rawlsian idea of political conception of justice":

First, he debates that despite giving prime importance to political values, it is not always reasonable to set aside the moral and religious views for political purposes. Whether it is reasonable to bracket moral and religious controversies for the sake of political agreement partly depends on which of the contending moral and religious doctrines is true.

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Second, within the idea of political liberalism, the priority of right over good has been supported on the basis of the fact that in modern democratic society despite of moral and religious differences it is characterised by the "fact of reasonable pluralism" about the good. Sandel questions this assumption and asks how could this idea of having reasonable pluralism about morality and religion exit by escaping itself from the question of justice. It seems impractical.

Third, Rawlsian idea of public reason is based on the divide between political and constitutional questions and moral and religious values and beliefs. Sandel asks if these kinds of divide would not impact negatively the process of public deliberation.

Now, let's summarise Sandel's basic problem with the Rawlsian defence of his communitarian critique in the book Political Liberalism. "Political Liberalism" represents the fact that Rawls is actually presenting the political conception of justice.

- ⇒ Sandel argues that the divide between political and personal identities on the basis of which Rawls justifies the bracketing of our moral and religious values is impractical. Rawls says that we can secure social co-operation on the basis of mutual respect, of which Sandel questions how could we think of mutual respect in condition of conflict between our moral and religious beliefs?
- ⇒ Secondly, Rawls argues that the political value address to political subject and the social value address to social subject justifies his divide between personal and political identities. Sandel again question this argument and ask that if justice is only a matter of divide between subject matter and whether in that case no conflict between political and moral and religious value have ever arisen? Whether it is not a question of reality?
Sandel justifies his disagreement with the help of the following example.

Political liberals argue that the right of abortion is the basic right of women as they are the free and equal citizen of state and they have the right to make decisions about their body. Sandel argues that this point is not as simple as it seems. Now if we think according to moral beliefs of the Catholic Church which assumes that human life begins at the level of concepts and it believes in the moral status of foetuses; in that case also whether political liberalism would give priority to women rights over anything else then the question arise why should these rights prevail even at the cost of 1.5 million life of the foetuses? Sandel does not suggest that we should dismantle the right of on the basis of moral and theological position but he simply asks that any question of political right should not ignore the value of moral and religious beliefs. The case of right to abortion cannot be neutral to the moral and religious positions. In this way, the question of right will have to engage with religious and moral goods. The priority of right cannot violate the consideration of good.

Though we can understand the reverse of Sandel's argument with help of recent example were a dominance of religious beliefs in law has led to the death of pregnant Indian Woman Savita Halappanavar in Ireland. Ireland is a Catholic country and it denied the right of abortion to Savita who had a miscarriage in 7th month of her pregnancy. Her request for an abortion was refused. This led to her death on 28th October 2012. Here we see that religious beliefs dominated over human lives and justice was denied to a woman because of this. Thus any idea of justice has to engage with both moral-religious and political questions. It has to take into account both personal and public aspects. In case of Savita, public reason based on religious beliefs had resulted in the denial of her right to life.

Sandel in another example mentions the famous debate between Abraham Lincoln and Stephen Douglas over the question of 'Slavery' in America. In the

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famous debate of 1858 over the question of slavery, Douglas argues that in a democracy we should respect the popular sovereignty of each and every state. They should decide whether they want to erase slavery as an exploitative system or not? Douglas argues that people were bound to disagree about the morality of slavery, so national policy should be neutral about this question. The popular sovereignty of states should be respected and it should be left to the people of each territory to make their own judgement. He argued that the moral question of slavery should be bracketed for the formation of a political agreement. Lincoln argued against Douglas's case asking instead that national policy should always consider substantive moral judgements about an issue which denies the basic rights and liberties to a whole class of people. Sandel argues that, the debate between Lincoln and Douglas is not about the morality of slavery but this debate is basically about whether to bracket a moral controversy for the sake of political agreement. Sandel questions such bracketing of moral and religious beliefs on the basis of political conception of justice. He discards the Rawlsian claim of "fact of reasonable pluralism" in democratic society arguing instead that despite thinking of reasonable pluralism about the good, we should construct an imagination about fact of reasonable pluralism about justice.

One could also prove this point with the help of other examples. Contemporary debates about legalisation of homosexuality, health care, free speech versus hate speech, capital punishment, and other such debates demand that we would accept the idea of a plural conception of justice. In very simple terms,

- 1) Disagreement about justice is natural and justice for me could be different from what justice is for you. It means any idea of fact of reasonable pluralism of good should not deny the existence of plural understandings of justice.
- 2) This plural imagination of justice would lead us to the reconsider the priority of the right over the good.
- 3) An idea of deliberation and engagement affords a more spacious public reason than liberalism allow.
- 4) We should aim to create an imagination of a deliberative mode of respect than the forced mutual respect which liberalism demands of us.

Social Justice:

Here I would like to introduce the concept of social justice. Charles Taylor in his famous Essay "The Politics of Recognition" criticises the procedural aspect of "justice". He attacks the basic principle of Rawls' theory, saying that the self is a product of society so one cannot ignore social inequality and social differences when dealing with justice. Justice is just not about the fulfilment of rights. He argues that identity is the most important aspect of people in modern societies. This brings the question of dignity and authenticity to the fore front. It gives an important role to history in the formation of identity. Taylor writes that egalitarian theorists says that politics of equal dignity and that the demand of egalitarianism can solve this issue and bring about social justice. Charles Taylor differs from these egalitarian philosophers. He substitutes the politics of equal dignity with the "politics of difference". He says that in politics of difference there will be a place for recognition and the survival of minority cultures. He argues further that recognition must come from actual respect not as part of compulsive obligations. In a different vein, Nancy Fraser also propagated this idea. She criticises Rawls and argues that justice is not just about redistribution. It is also about recognition – the recognition of differences of caste, class, gender, sexuality, race, religion, culture, value systems and our differences in desires, hopes and aspirations. In her famous article, "From Redistribution to Recognition? Dilemmas of Justice in a "Post Socialist Age," she argues, that justice today requires both redistribution

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and recognition. We would have to combine both social equality and cultural recognition. We would have to address both cultural disrespect and economic disadvantages both.

In the movie 'The Help,' we see a story of black women and how their identity creates trouble for their social and cultural life. Those women were facing economic injustices because of their racial status and their gender. What is required for them is to give both social respect and economic inequality.

Feminist Critique:

Carole Pateman, Susan Moller Okin and Martha Nussbaum are feminist scholars who gave the feminist critique of the Rawlsian understanding of justice. Carole Pateman, in her book 'The Sexual Contract'⁶ starts with the criticism of all kinds of social contract theories, and argues that all social contract theories work on the repression of the sexual contract, though it is an integral aspect of contract theories. Turning specifically towards John Rawls, she points directly at his "original position." Rawls' task is to find a picture of an original position that will confirm our intuition about the existing situation, which includes patriarchal relation of subordination. Pateman blames that Rawls did so successfully by remaining silent on the matter of sexual identities of the participants to the contract. Pateman blames that parties in the original position would have choices and reason but they are sexless people – they cannot know their sexes. This silence about the sexual contract in Rawls' theory actually denies the conjugal relationship between man and woman, and denies the existence of rights to women against patriarchal domination. It gives priority only to political rights. Pateman argues that since all men and fathers who are the part of social contract come from the womb of women, the rights of women and the social rights should come prior to political rights.

Susan Moller Okin in her book 'Justice, Gender and Family,' gives a deeper analysis of the whole political philosophy of John Rawls than just his idea of original position. Okin argues that in the book "Political Liberalism" Rawls basically creates a divide between the public and the personal spheres. He limits any discussion about an idea of justice in the domain of public sphere. In 'Political Liberalism,' Rawls basically argues for a political conception of justice. It implies that Justice is only about the achievement of political rights in the public sphere. Okin criticises this aspects of Rawls' overall political philosophy arguing that this actually denies justice in matter of inequalities within the family and the household. The denial of justice within the personal domain actually denies the political aspects of what is considered to be private and personal. It also subordinates the personal domain. Feminism, on the other hand, has shown to philosophy that the personal is political. Thus Rawlsian divide between personal and public goes against the basic philosophy of feminism, and by extension, equality and justice itself.

Here is an example. Today, women are working equally with men in every sector. They are doing all kinds of jobs, from nursing to teaching, from mountain trekking to army services, and from the social sector to that of the corporate. They contribute in the private and the public domain. They are, thus, playing double roles. Despite this double burden, they seldom get any rewards or benefits, even though due to this pressure of maintaining a balance between public and private sphere, they suffer extreme physical and mental stress, which

⁶ Carole Pateman, The Sexual Contract, Polity Press, UK, 1988.

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in turn affects their personal and public aspects. The state does not recognise this double burden. This amounts to a denial of substantive equality and freedom to women.

Martha Nussbaum, in her book 'Women and Human Development: A Capability Approach,' argues that the Rawlsian conception of justice could be made just if he would add the development of capabilities of women and children in his list of primary goods. Nussbaum criticises Rawls on three simple grounds:

First, Rawls includes family as a part of basic structure, but he also established the family as a voluntary institution analogous to the church and the university. Nussbaum argues that the family as an institution could not be compared with church and university. It's a most basic institution of society and it has its pervasive influence on every other institution. It should therefore come prior to the church and university.

Secondly, Nussbaum critiques Rawls' faith in the nuclear family. Rawls fails to acknowledge the parochial character of this. Nussbaum emphasises that in very large parts of world, like South Asia, the idea of extended family exists, with village groups, and different women collectives. Rawls gives no reasons why we should choose the nuclear family over any other form of family?

Thirdly, Nussbaum claims that Rawls ignores the fact that the state plays an important role in the constitution of the family structure, in the formation of strongest group of family, in recognition of life in togetherness as family (same sex marriage is still illegal in the largest part of world).

We could summarise that the feminist critique attacks the Rawlsian divide between public and private. From Dowry law to divorce law to rape laws, there are a lot of issues where state law could and should address this divide between the personal and the political. These are issues of justice too. We can now see that the feminist contribution in conception of justice actually restructured the whole debate around justice.

Global Justice:

Rawls in "A Theory of Justice" emphasises the point that the domain of justice should be limited to national political community. The concept of "global justice" came to the fore against this well-established notion. In an interconnected globalised world, our lives are connected to people whom we don't know and whom we never met. Environmental issues, terrorism, poverty, gender issues, and other such issues, constitute the main thread of this interconnectedness. We are connected to each other whether we want this or not. In this intensified situation of global interconnectedness, the commitment to justice cannot be limited to the nation state alone. Justice would have to spread its domain to the global society. That's why concept of global justice has become important in the contemporary world. Brian Barry, Onara'O Neill, Thomas Pogge, Ulrich Beck, Peter Singer are some of the scholars whose writings have contributed immensely to the development of a global theory of justice. The idea of justice in global context could only be imagined with the help of world institutions (United Nation, WTO,) and their democratic functioning. O' Neill argues that each of us pursues our interests and goals in full consciousness and that others do the same, within the space of shared practices and specific institution. Our interest is, in part, based upon the action of others insofar as we dependent on them, because we formulate our goals and our tasks and our expectation of outcomes in the context of other human beings. Our actions are conditioned by and contribute to institutions that affect others and their actions contribute to the institutions that affect us. For O' Neill, global justice could only be assured by pursuing our

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obligations towards strangers. In this way, she argues in favour of the extension of justice beyond borders.

Thomas Pogge's contribution to this debate is also remarkable. He argues that transnational social structures, for example WTO, IMF, which govern the multiple transactions of an interconnected world, have always worked in favour of already privileged countries, like United States and the UK, and have always worked against developing economies. Pogge gives an idea of "Moral Cosmopolitanism," where he argues that "every human being has a global stature as an ultimate unit of moral concern" and those of us who are committed to justice would do well to rectify these wrongs in two ways:

- 1) By critiquing unjust global arrangement, and
- 2) By recognising our obligation to those who suffer the consequences of this highly inequitable world order.

Peter Singer and many other scholars who have a faith in the conception of cosmopolitan imagination of human society argue that we owe a certain responsibility to those who are not in position of taking care of themselves.

Neera Chandhoke, in her article 'Global Civil Society and Global Justice,' criticises Thomas Pogge and his idea of obligation to those who suffer injustices of transnational social structures. She argues that on behalf of obligation to others, a lot of global organisations are working in problematic ways. Through global human rights organisations and other international non-governmental organisations (INGOs), Chandhoke argues that these organisations have acquired legitimacy and authority as upholders of moral canon. They have acquired tremendous legitimacy against powerful nation and profit driven market, but these global human rights institutions have begun to speak on behalf of the people living in the global south. Human beings who have experienced injustice in their daily lives are denied the opportunities to frame their responses in their own terms, in their own languages, because the political initiative has been hijacked by these institution and INGOs. People are arguably disempowered rather than empowered when highly specialised professional civil society actors tell them what is wrong with their daily existence and how they should solve their problem of collective lives.

Conclusion.

Thus we would have to understand that justice has different understanding for different people. Justice is not only about materiality, it is not just about social equality, it is about a balance among economic inequality, cultural disrespect, sexual disrespect, gender differences and many other issues. It has different meanings for different purposes. We cannot explain this unidimensionally. It is a multidimensional contested concept. We would have to understand that this contested aspect of justice gives it a political status. In the matter of North-South divide and disadvantaged position of global south, on the matter of dominance of powerful nations in international organisations, environmental issues, or issue of cultural fundamentalism or ethnic, racial, sexual, gender, and caste differences we will have to develop a comprehensive approach of justice by keeping in mind its political aspects. Rawls has theorised his understanding of justice by creating a divide between personal and political, but as we understand from the different critique of Rawls, in contemporary time we need a new theory of justice which would try to encapsulate these critique. This force us to ask a question like

Can we Imagine a theory of justice where "the Personal" and "the Global" both would come under the ambit of "the political"?

Justice

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Movie Clip:

- FIRE (Dir. Deepa Mehta) for Sexual Justice,
- The Help (Bennett Miller) for collaboration of redistribution and recognition,
- Lincoln for social Justice

Glossary:

Normative: The word Normative has different meaning in different context and different academic discipline. Here normative means interpreting the things in terms of what it should be rather than just a factual or descriptive interpretation of the things. Political philosophy we give importance to ideal understanding of things norms) though in political science we understand things in scientific and descriptive manner.

Deontology: (Greek: Deon) deontology is the branch of ethics dealing with duty and rights and some sort of moral commitment. Here for Rawls deontological ethics means, set of ethics that do not presuppose any particular conception of good.

Substantive: Something that is not imaginary but real and considerable.

Deliberation: Discussion, dialogue and consideration on some issue.

Utilitarianism: Jeremy Bentham propounded the Utilitarian principle. In his book *A Fragment of Government* he argued that "it is the greatest happiness of greatest number that is the measure of right and wrong". In "Utilitarianism" utility will be the deciding factor.

Culmination: Culmination means to come to an end.

Comprehensive: broad in scope, inclusive in approach.

Digression: Diversion from the main.

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Heterogeneity: A state of being heterogeneous as oppose to homogeneous. The quality of being diverse.

Abstraction: The act of considering something in terms of Idea rather than something concrete or real.

Unencumbered: Not encumbered (burdened) with social or any sort of contextual burden.

Liberalism: An ideology which support liberal ideal of unencumbered human self and free and autonomous self.

Communitarianism: An ideology which argue against an unencumbered understanding of human self.

Exercises:

- 1) Critically analyse Rawls theory of justice.
- 2) What are the principle difference between procedural and substantive theory of justice?
- 3) Discuss Amartya Sen's capability approach in brief.
- 4) Critical examine Rawls's principle of justice from the communitarian and feminist perspectives.

