

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 5

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

John Rawls' Theory of Justice vs. Amartya Sen's Idea of Justice: A Comparative Analysis

ROMANA ISLAM¹

ABSTRACT

Justice is defined as the condition of being morally correct or fair. The state establishes court administration to ensure justice. what is justice? There are two theories to answer the question. One is John Rawls' 'A Theory Of Justice'. He published the book in 1971. It is widely known as Political Justice. Another one is Amartya Sen's 'The Idea Of Justice' published in 2009. In his article, the author mostly criticized John Rawls's theory of justice and denoted another justice system known as economic and social justice. The author denoted both the theories and criticized them. This article is mostly a comparison between the two theories for the reason that it can easily be understood which one is more acceptable and sustainable in the present context.

Keywords: *Justice; Idea of justice; Theory of justice, Social justice; Political justice; Economical justice.*

I. INTRODUCTION

The Idea of Justice of Amartya Sen is rooted in the liberal tradition of integrating justice and development. Adding anything to what is already in the Amartya Sen corpus doesn't seem to add any new insight. According to the Idea of Justice, development should focus on giving people the opportunity to live the kind of life that they have a reason to value. In other words, it is about expanding rights, such as the right to read and write, to be healthy, to live in a peaceful and secure environment, to participate in community life, to appear in public without shame, etc. (Holmwood, 2013).

However, the idea of Justice goes much further than Development as Freedom. As a matter of justice, it proposes the expansion of valuable freedoms (Sen 2011). As such, Sen's Idea of Justice represents a significant intellectual revolution in development studies comparable to Rawls' Theory of Justice in political theory. The Idea of Justice challenges government discourses that equate poverty reduction with development by arguing that development should be synonymous with reducing injustices since poverty reduction does not always mean reducing injustices. If a

¹ Author is an Advocate at District & Sessions Court, Dhaka, Bangladesh.

country has reduced its income poverty rate from 40% to 30%, fewer people live below the poverty line, but this poverty reduction has not necessarily made the country anymore 'just', as a large percentage of people might still be denied many basic rights. They might still be unable to access education, avoid easily preventable diseases, or be denied freedom of expression (Maffettone 2011).

Can the Idea of Justice fulfill its purpose of diagnosing concrete injustices and offering insights to make the world a more just place by addressing them? The paper will seek to answer that question.

II. JOHN RAWLS' THEORY OF JUSTICE

John Rawls in his celebrated work "A Theory of Justice" asserted that a successful society is characterized by several virtues. Justice is the first virtue of a virtuous society. A truly just society doesn't require justice, but it does require the foundations of justice. All political and legislative decisions must be made with the goals of justice in mind.

(A) Objective: In this book, he argues that the principles of justice should guide the conduct of parties, guiding them in the principles of equality and freedom. Rawls proposes the notion of a fair choice situation in which parties could select principles of justice that were mutually acceptable. According to Rawls, parties would find their preferred principles of justice particularly attractive under these conditions, winning out over the alternatives (Dutta 2017).

(B) The Two Principles Of Justice: Rawls expressed his ideas of justice as fairness in his two principles of justice (Boot 2011) :

Principle 1. Each individual has the same indefensible right to an equally adequate scheme of equal liberties, a scheme that is compatible with the same scheme of liberties for everyone.

Principle 2. Inequalities must satisfy two conditions:

- Under fair equality of opportunity, they are supposed to be attached to offices and positions that are open to all;
- The benefits should be maximized for the least-advantaged members of society (the difference principle).

These positions should be made available to all under conditions of equal opportunity. They should be attached to offices and should be regarded as the most advantageous positions for the least-advantaged individuals in society (Boot 2011).

Rawls's second principle of justice has two parts. Fair equality of opportunity requires that individuals have the same opportunities regardless of their background or socioeconomic status.

The second principle, the difference principle, aims to regulate the distribution of wealth and employment. The difference principle requires that social institutions be arranged so that any inequalities of wealth and income work to the advantage of those who will be the worst off (Scanlon 1973).

III. CRITICAL REVIEW

Rawls' theory of justice has been criticized by various schools of thought. Various schools of thought have criticized the theory of justice. In 1974, Robert Nozick defended the principles of libertarian justice, while Michael Walzer criticized the concept of Utopia (Blake 2001). In the view of collectivists, Rawls has found the basis for justifying capitalism as it currently exists. He argues that the poor will profit automatically if the rich are given the freedom to accumulate wealth. The disparities between the rich and poor will not significantly decrease even if the principle of fair equality of opportunity is strictly enforced. Despite the slight improvement in the condition of the most disadvantaged sections, the system will continue to permit glaring socioeconomic disparities (Sugin 1991).

Among Rawls' feminist critics, the weakness of Rawls was his inability to account for the injustices and hierarchies inherent in familial relations. Rawls argued that justice should only apply to society's fundamental structures (Matsuda 1986). A feminist movement rallying around the slogan "the personal is political" criticized Rawls for failing to address the injustices found within patriarchal social relations and the gendered division of labor, especially in the household (Cecile and David 2003). For instance, Amartya Sen has argued that we should attend not only to the distribution of primary goods but also how effectively people can use those goods to pursue their ends. *The Idea of Justice*, by Amartya Sen, a former student of Rawls', critiques and attempts to revive *A Theory of Justice*. Rawls is credited with reviving interest in what justice is and the importance of fairness, objectivity, equality of opportunity, eradicating poverty and preserving freedom. Amartya Sen describes that Rawls less-evaluates the problem to ensure justice for everyone in the society and to follow the social norms.

(A) Amartya Sen's Idea of Justice

He published in 2009 a major work titled, *The Idea of Justice*, in which he summarized and expanded on many of the most significant themes he has developed over the last quarter-century.

Initially, let's examine the economic versus the political rights debate. The argument is sometimes made that poor countries cannot afford to worry about political rights until their citizens' economic needs are met.

- a. Justice: Freedom And Reasoning:** Political philosophers and social scientists are the main audiences for Sen's Idea of Justice. So far it is in the area of political theory that The Idea of Justice has generated the most reaction. One of the reasons for this lies in the recent history of political philosophy. John Rawls' Theory of Justice was published in 1971 and a debate sparked with the Idea of Justice.

The comparison of situation A with situation B within the capability space is enough to begin redressing injustice in Sen's view. One does not need to identify 'just' institutional arrangements. This is because collective ownership of capital by the workers is more just or unjust than a handful of shareholders owning a company. Comparing these institutional arrangements based on their consequences for people's freedom is sufficient (Brown 2010).

The concept of a good life is up for interpretation, and the government may not have a specific concept of what a good life is. It has to be neutral and provide the conditions for the freedom of every individual to lead a life of his or her choosing. In the liberal philosophical tradition, justice is fundamentally a matter of respecting individual freedom. In a just society, each individual has the freedom to define the good life according to their standards (Romano 2009).

A benevolent dictator who knows what is appropriate will not be able to give people the opportunities they deserve to live the types of lives they value, but rather the people themselves, through processes that require collective reasoning and choice. Democracy is an exercise of collective reasoning. Democracy is not only about free and fair elections but also freedom of expression, information, freedom to protest, and dissent.

Justice, according to The Idea of Justice, does not require complete agreement on what just states of affairs are. It does require a reasoned partial agreement that one state of affairs is more just than another.

(B) A Critical Review of the Idea of Justice:

The Idea of Justice denotes that an individual is concerned with justice because justice deals with reasoning and reasoning are not carried by the groups only carried out by individuals.

Humans may be the only living beings capable of reason but are their capacity for reasoning a property of only individuals. Is an unjust situation usually the result of incorrect reasoning between individuals?

Institutional injustice creates a sense of powerlessness and the risk of alienation. People may disapprove of an unjust structure, but no one can change it on their own. Despite their disapproval of a structure they can't escape, they must submit to its logic. As a result, structural

injustice can also make people feel alienated. It was very difficult for people within the slavery system to see slavery as unjust (e.g. it was very hard for people within the slave system to see slavery as unjust)(Nussbaum 2003). Therefore, overcoming structural injustice requires collective action.

Limiting the idea of justice to comparative judgments about individual lives does not give due attention to the structural nature of human life. To be effective, the idea of justice must include a judgment of the nature of structures, whether they are 'just' or 'effective'. This judgment must include whether they provide the conditions for people to live flourishing human lives(Dutta 2017). As Sen contends, the concept of 'just institutions' is not redundant, as it is central to Rawls' Theory of Justice.

Although the Idea of Justice emphasizes the necessity of 'reason overpowering unreason', it does not acknowledge that this reasoning is done for a purpose, namely to pursue the good we aim to achieve. Reflection on the nature of the good life and the kind of society one wishes to create and live in is called public reasoning. During the fight for equal rights, women argued about what a 'good society' looked like, asking whether the cultural, economic, and political structures of their day reflected the good life as a common goal, or whether they were perverted from it. They argued that a society that excluded women from economic and political life was 'bad'. On the other hand, men argued that a society where women stay home is a 'good' society. It was not a case of 'reason overthrowing unreason' but one conception of the good society overthrowing another in the feminist struggle. To establish Justice, the goal that reasoning seeks must be explicitly acknowledged. Justice does not only consist of reasoning or freedom alone, it contains both.

The idea of justice is about the idea of a righteous society. But this positive society requires 'good' people who act in such a way as to create a successful society, and it requires 'good' structures for people to be 'right'. Structures of racism cause people to act in ways that are not likely to be inclusive of other races. When people live in an economic system that is environmentally destructive, their actions are unlikely to be environmentally friendly.

IV. SEN'S THE IDEA OF JUSTICE V. RAWLS' A THEORY OF JUSTICE

In his recent book, *The Idea of Justice*, Amartya Sen presents a new theory of justice that may be termed as a socialist theory of justice. The book of Sen is a tremendously broad-ranging work, and the area of theories of justice he describes is diverse and complex. Although Sen has in mind a tradition of theories of justice, there is no doubt that John Rawls' political philosophy has initiated and dominated that tradition. Consequently, this book seems to be an attempt to

construct an alternative to Rawls' theory of justice.

Similarly, Amartya Sen tries to criticize Rawls in the same way that the latter did, in *A Theory of Justice*, against utilitarianism. By critically engaging with the dominant theory of justice, Sen here proposes an alternative. Sen himself recognizes that Rawls' has been 'the most influential theory of justice in modern moral philosophy. The second chapter of this book is devoted to 'Rawls and Beyond' with the first chapter being mainly methodological. So it makes sense to determine the effectiveness and significance of Sen's critique of Rawls when assessing Sen's account. His book presents a theory of justice that shows Rawls' limitations in his ability to simultaneously offer a more powerful alternative.

The author's answer on this issue is 'No! It's only partially negative, but it's still a negative answer. The author thinks that Sen provides many arguments against Rawls' theory of justice, some of which are rather persuasive. From The author's point of view, the core argument that Sen uses against Rawls is not satisfying, but there are side arguments that can provide useful re-adjustments from within the Rawlsian paradigm and maybe even beyond it.

This core argument is elegantly reformulated as a criticism of the neglect of what Sen himself calls in Sanskrit *Naya*. In effect, this is following the Indian legacy of supporting the opposite *Niti*. The *Niti-Naya* distinction ranges over (at least) two disagreements.

It appears that Rawls and Sen disagree about the transcendental and the comparative: Rawls focuses on what an ideal society should do, whereas Sen argues that the issues we need to confront are comparative problems, concerning ways of moving toward less unjust societies.

Rawls and Sen differ concerning the role of institutions: Rawls believes that justice is about institutions and that particular distributions of goods are derivatively just if they are produced by just institutions; Sen, on the contrary, thinks that justice is essentially about how well or badly off individuals are. The first disagreement does not present any particular difficulties to me. From a transcendental point of view, it is possible to contemplate actual unjust situations. For this reason, I will discuss the second disagreement.

According to Sen, Rawls' *Niti*-centred approach, being merely institutional, underestimates the necessary combination of just institutions and correspondent actual behaviors that make a society reasonably just. Sen consequently champions the opposite *Naya*-centered approach, according to which 'what happens to people' must be a central concern for a theory of justice.

The author's advice, this argument is based on Sen's old theory. The idea here is that Rawls' approach to distributive justice should be replaced with an approach based on capabilities in place of Rawls' 'primary goods' approach. The interesting thing is that Sen seems to think that

this distinction isn't so important.

To be fair, Sen recognizes that several positive lessons can be learned from the Rawlsian approach. It is impossible to move forward in a country without institutional justice that is pronounced and done by citizens themselves. He also ends the book by arguing that he forcefully distanced his argument from that of Rawls due to his academic habit of emphasizing distinctions more than affinities. The real intention of his actions is, however, to follow a parallel path.

For Sen, the main positive lessons to be learned from Rawls are connected with the following points:

1. The idea that fairness is central to justice;
2. The objectivity of practical reason;
3. The distinction between the 'reasonable' and the 'rational', and more generally, the reconstruction of the moral powers of persons as related to their capacity for a "sense of justice" and a 'conception of the good';
4. The insistence on 'fair equality of opportunities as an enrichment of the literature on inequality;
5. How primary goods are conceived, which gives people the opportunity to do what they would like with their own lives.

As a result of all these points, we can conclude that Sen and Rawls share a very significant concern with justice. Rawls' theory of justice has, of course, some critical points that Sen sees. Moreover, Sen provides many critiques of Rawls, making it difficult to discern the true differences between the two authors.

It is Rawls' fault that he doesn't present a way for primary goods to be adapted to comfortable living. In this sense, for Sen, capabilities work better than primary goods, not representing a 'foundational departure' from Rawls' program (Dutta 2017). Sen's whole argument against Rawls seems to be an understatement in light of this last comment. Sen's criticism is based primarily on difficulties that cannot be solved within the Rawlsian paradigm.

Among them we can list the following difficulties (Maffettone 2011) :

- 1.** The relevance of actual behavior which Rawls is supposed to under-estimate. Rawls, according to Sen, is committed to strong institutionalism. His theory of justice sees the 'basic structure of society as its primary subject.

2. Rawls' theory can only be operated on a developed country. People suffer from extreme hunger, no resources in countries where there is no rule of law; there, his theory is vague.

3. Several of Rawls' most relevant charges can be conflated within the Niti-Naya distinction: it is impossible to identify just institutions without making them conditional on actual human behavior. Due to this reason, Sen's readers are strongly advised to reject Rawls' transcendental institutionalism in favor of Sen's realization-focused comparativism. It is also interesting to note that some form of anti-institutionalism is typical within the scope of political theory as practiced in the Indian academic world.

It is indeed challenging to choose between transcendental institutionalism and realization-focused comparative because, as the author said, Sen inflates his thesis with an enormously large number of arguments whose total is supposed to count against that by Rawls(Blake 2001). It surely makes it difficult to decide the case. In Sen's opinion, it seems unlikely that global relevance is impossible because of transcendental institutionalism. It is also highly questionable whether the Rawlsian approach excludes the idea that democracy is the exercise of public reason (that is how Sen defines democracy).

4. According to Sen, the Niti-Naya distinction forms a basis for three distinct arguments(Satz 2012):

- A kind of anti-institutionalism;
- a thesis opposing Rawls' approach based on ideal theory; and
- The idea that 'resourcism' is insufficient because we should rather consider the resources–personal relationships.

The author did not intend my remarks here to minimize Sen's impact. It is probably true that a social contract approach to Rawls makes global legitimation hard. And the strong liberal institutionalism of Rawls can make the integration with democracy as deliberation more difficult than necessary. On this last point, Sen devotes a whole chapter to showing how the social choice-based approach is much better than the social contract approach(Dhawal 2016).

In my opinion, Sen has not demonstrated here that social choice theory and democratic deliberation are so well suited together, but this is not the main focus of the debate, which, The author repeat, corresponds to the Niti–Naya distinction mentioned above. Sen's main critique stands or falls with it. Due to this, The author will reduce Sen's mountain of criticism against Rawls to a smaller but important issue in the following discussion. In so doing, The author intends to show that the therapy creates more problems than they initially supposed disease.

Although The author remains unconvinced by Sen's general argument, there is still a piece of it that could well be incorporated into a liberal vision like that of Rawls. The author's comment presupposes that people's preferences and desires, especially if we have in mind large numbers, are generally opaque. Perhaps you can successfully try to share some of your goods among your children, provided that you have a good understanding of the individuals involved.

If we carefully consider Rawls' vision of justice, we would note that the foundational concept of the basic structure must not be invariant. This is more of a historical notion, which implies a strong link between civil society and institutions. On the other hand, Sen emphasizes people's desires, basic needs, freedom, rights, and happiness.

V. FINDINGS AND RECOMMENDATIONS

John Rawls published his Theory Of Justice in 1971. At the time, the world focused on developing political and institutional justice. He described a uniform process to uphold justice by the institution that shall be controlled by the government or executive body of the state. The institutions (like jail) shall carry out the punishment. This type of justice emphasizes the penalty or preventive or retributive theory of punishment. That creates fear among the wrongdoers to commit a crime.

On the other hand, the Idea Of Justice, denoted by Amartya Sen, is a very recently published theory. It must be noted that he was a student of John Rawls and published his book very recently in 2009. He criticized the Theory Of Justice and suggested a new one defined as the Idea Of Justice. He denoted social and economic justice. In plain words, justice can be termed as the process to return the party to its earlier position as if the incident didn't occur. He argued what is the profit of the victim if the criminal is imprisoned, or hanged, or fined. For example, the accused has killed the only earning member of a family consisting of seven members. The court sentenced him to the death penalty. What profit did the family get? The family will struggle to survive as they have lost their only earning member. The social position of the family shall be hampered as well. The family will hardly be able to fulfill its basic needs. Moreover, this type of justice creates a bad impact on the criminal's family as well. If the court orders the criminal to earn for the victim's family (compensate for his crime), it will be helpful for both the families (the victim and the wrongdoer's family). It can be termed as economical justice. It will create a precedent among the wrongdoers and also be helpful to the victim.

The combination of the Theory Of Justice and the Idea Of Justice is effective in the recent context. The state shall develop its political institute and institutional justice and provide social and economic justice for the citizens. Where the victim is vulnerable, compensation from the

wrongdoer must be provided to him. Well, Social and Economic justice cannot be ensured without a fair political and institutional justice system.

VI. CONCLUSION

Both of them uttered the same theory under different circumstances. One sought justice through a political process and institutional approach, whereas the other attempted to attain it through an economic approach. The author concludes that both theories become one when viewed at a second glance as socio-economic-political theories. Governments and judicial authorities can provide results.

VII. REFERENCES

- Blake, Michael. 2001. "Distributive Justice, State Coercion, and Autonomy." *Philosophy and Public Affairs* 30: 266. <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1088-4963.2001.00257.x>.
- Boot, Martijn. 2011. "The Aim of a Theory of Justice." *Ethical Theory and Moral Practice* 15 (December): 7–21. <https://doi.org/10.1007/s10677-011-9308-5>.
- Brown, Chris. 2010. "On Amartya Sen and The Idea of Justice." *Ethics & International Affairs* 24: 309–18. <https://doi.org/10.1111/j.1747-7093.2010.00269.x>.
- Cecile, Fabre, and Miller David. 2003. "Justice and Culture: Rawls, Sen, Nussbaum and O'Neill." *Political Studies Review* 1: 5–17. <https://onlinelibrary.wiley.com/doi/abs/10.1111/1478-9299.00002>.
- Dhawal, Shankar. 2016. "RAWLS'S THEORY OF JUSTICE THROUGH AMARTYA SEN'S IDEA." *ILI Law Review* Winter issue: 151–60. https://www.ili.ac.in/pdf/p11_dhawal.pdf.
- Dutta, Sampurnaa. 2017. "RAWLS' THEORY OF JUSTICE: AN ANALYSIS." *IOSR Journal Of Humanities And Social Science* 22 (December): 40–43. <http://links.jstor.org/sici?sici=00483915%2820012>.
- Holmwood, John. 2013. "Public Reasoning without Sociology: Amartya Sen's Theory of Justice." *Sociology* 47 (December): 1171–86. <https://doi.org/10.1177/0038038512470767>.
- Maffettone, Sebastiano. 2011. "Sen's Idea of Justice versus Rawls' Theory of Justice." *Indian Journal of Human Development* 5: 120–31. <https://doi.org/10.1177%2F0973703020110106>.
- Matsuda, Mari J. 1986. "Liberal Jurisprudence and Abstracted Visions of Human Nature: A Feminist Critique of Rawls' Theory of Justice." *NEW MEXICO LAW REVIEW* 16: 620. https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/nmlr16§ion=49.
- Nussbaum, Martha. 2003. "CAPABILITIES AS FUNDAMENTAL ENTITLEMENTS: SEN AND SOCIAL JUSTICE." *Feminist Economics* 9 (December): 33–59. <https://doi.org/10.1080/1354570022000077926>.

- Romano, Carlin. 2009. “Amartya Sen Shakes Up Justice Theory.” <https://www.chronicle.com/article/Amartya-Sen-Shakes-Up-Justice/48332>.
- Satz, Debra. 2012. “Amartya Sen’s The Idea of Justice: What Approach, Which Capabilities.” *Rutgers Law Journal* 43: 277. https://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/rutlj43§ion=15.
- Scanlon, Thomas M. 1973. “Rawls’ Theory of Justice.” *University of Pennsylvania Law Review* 121 (December): 1020–68. <https://doi.org/10.2307/3311280>.
- Sen, Amartya. 2011. *The Idea of Justice*. Belknap Press Of Harvard University Press. <https://dutraeconomicus.files.wordpress.com/2014/02/amartya-sen-the-idea-of-justice-2009.pdf>.
- Sugin, Linda. 1991. “Theories of Distributive Justice and Limitations on Taxation: What Rawls Demands from Tax Systems Symposium - Rawls and the Law: Panel VI: Property, Taxation, and Distributive Justice.” *Fordham Law Review* 72: 2003–4. http://ir.lawnet.fordham.edu/faculty_scholarship/59.
