

MY IDEA OF JUSTICE

The concept of justice is a complex one, it can be regarded ambivalent because one can observe that all the values are rejected in favour of rather vague and general standards. Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Plato's conception regarding justice gave more emphasis on the substantive portion than the procedural aspect. As per utilitarian, justice lies in the greatest good done to greatest number of people but the inherent fault lies as to what about the fact that justice is not being done towards those who do not constitute amongst the greatest number of people. Marx considered justice as a sham, a mask which facilitates capitalist exploitation. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. Therefore in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests. The only thing that permits us to acquiesce in an erroneous theory is the lack of a better one; analogously, an injustice. Being first virtues of human activities, truth and justice are uncompromising.

Professor Amartya Sen's Idea of Justice completes the John Rawls Theory of Justice. Rawlsian concept of justice attempts to a theory of justice by proposing a new social contract theory, he construed the notion of justice in terms of maximisation of liberty, equality and opportunity as the central theme seeing 'justice' in the light of fairness. Rawls theory of distributive justice is based on the idea that society is a system of cooperation for mutual advantage between individuals. As such, it is marked by both conflicts between differing individuals' interest and an identity shared interest¹. Principles of Justice should 'define the appropriate distribution of the benefits and burdens of social cooperation. One must not fail to observe the fact that Rawl's theory of justice as fairness, stretches its roots from the social contract theory, Sen argues that the basic problem associated with Rawls concept of justice is that it also rests on some pre requisites as the earlier theories of social contract, i.e., on a perfect arrangement, such perfect arrangement is simply impossible as the plurality of opinions will never allow any arrangement to become perfect, therefore, in absence of such a perfect arrangement the concept of justice as such may never fructify, it is, therefore, necessary to understand the 'idea of justice' first and then to approach towards the concept of justice subsequently. The aim should be to mitigate injustice and justice shall automatically advance, unfurl and bloom. According to Professor Sen, presence of remediable injustice may well be connected with behavioural transgression rather than with institutional shortcomings. Justice ultimately connected with the way people's lives go, and not merely with the nature of the institutions surrounding them. He took cue of the early Indian Jurisprudence to shed light on the different concepts of justice, 'Niti' and 'Nyaya'. The idea of *Niti* relates to organizational propriety as well as behavioural correctness, whereas the

¹ John Rawls, *A Theory of Justice*, 1971, The Belknap Press of Harvard University Press Cambridge, Massachusetts London, England.

latter *Nyaya* is concerned with what emerges and how and in particular the lives that people are actually able to lead. In other words it is necessary to assess the roles of institutions on the basis of fact that how much inclusiveness is reflected in them i.e., the broader perspective of *Nyaya* which pertains to the world that actually emerges and not just constricted to the institutions that we possess².

In this backdrop of Professor Sen's Idea of Justice and John Rawls Theory of Justice, I believe what we are lacking is love, compassion and empathy. My idea of justice shifts towards these missing pieces which I feel needed a relook. For a solid example, I would like to narrate my experiences as a law student and a law graduate. I have experienced the course structure in law schools across the country and come across many experienced scholars, legal luminaries, academicians, read far reaching essays on various theories. With years on, I started forming my own opinion, developing a sense of belief which doesn't agree with the existing form of framework set out for us to follow and walk along on the path that has been laid down. One such was that we were taught to be void of emotions while dealing with our clients, neither to be emotionally attached nor be empathetic towards them. It is given utmost importance that lawyers follow due process of law and procedures laid down. We were mainly concern of the procedure, actions, and intentions more than understanding the root cause of certain action, be it criminal or civil. It is of my utter belief that if law students are made to internalize emotions such as compassion and empathy during their course, their response to situations they consider incorrect or immoral will be more sustained, kind and effective. This goes same for all walks of life. In schools, we were taught to be compassionate, kind and empathetic in moral science. However, this diminishes as we go further towards higher studies and political leadership completely wants absence of it. The interpretation of justice lacks this view point. During our time as students, we were exposed to theories of criminal justice, learnt why a criminal justice system based on retribution was archaic and ineffective and how the law disproportionately affects the oppressed. Our pedagogy gave us an understanding of what injustice was and the importance of social justice movements in remedying these injustices. However, our classes on jurisprudence mostly focused on the works of male, western scholars whose imaginings of justice were bereft of emotions such as empathy, compassion and love and instead focused on cognitive aspects of rationality, calmness and reasonableness. By the time we had graduated and become part of the legal profession, our sensitivity towards violence had decreased considerably. We need to sharpen our awareness of injustice by the values of empathy and compassion. Philosophy has for long regarded emotion as antithetical to reason. Centuries of patriarchal conditioning have resulted in thinkers and scholars shunning emotion, relegating it to the realm of the feminine and as unworthy of consideration. Our understanding of social justice movements is that they work towards remedying unfairness. We failed to learn that it is possible to understand justice as love, and social justice as making the experience of compassion to all. Interestingly, criminal law itself makes room for some emotions such as anger, jealousy and passion (grave and sudden provocation, fear (right to private defense), hatred (promotion of enmity) and disgust (obscenity). Martha Nussbaum's work is important in this context. Nussbaum believes that emotions, wrongfully regarded as opponents of reason, are of immense ethical value³. The cultivation of emotions has not received sufficient interest from liberal political

² Amartya Sen, *The Idea of Justice*, 2010, Penguin.

³ Malavika Parthasarathy, *Why law schools need to focus on compassion and empathy*, Bar and Bench, July 26, 2020.

philosophers. Emotions such as anger, disgust, shame and love and empathy have played a role in shaping our beliefs. She construes the emotion of disgust as robbing the marginalized of their humanity, and of seeing the other from the lens with which see ourselves in order to decide whether they are worthy of being treated in a humane or dignified manner. She argues that it is our shared vulnerability as human beings that of being subject to the whims of an external force, or fate that must convince us of the need for ethics of empathy and love. Our legal education has unfortunately not taught us how to extend our concern and empathy to those who have broken the law and who have in their own way carried out injustice by not adhering to it. We display collective apathy towards the squalor in which they survive in prisons and towards the abject lack of humanity in terms of how they are dealt with. This also applies to the present situation of pandemic. Though the virus did not discriminate between the poor and rich, the impact is quite visibly different. The hatred shown towards the migrants during this pandemic is a blatant injustice to them. We have failed to be empathetic and as a result social justice failed. Also, we have heard police brutality to the law violators during the lockdown and curfew imposed for public good. However, we failed to understand why, how, who were the violators. Though we all are in this extraordinary times together the impact has a stark difference, to mention a few, the vegetable sellers, daily wage earners, 'Imas' of Ima Keithel in Manipur have faced hardships for survival during this pandemic, add on to it the police brutality for violating laws. We failed to show compassion to this issue. Our justice system lack this notion. Our pedagogy has left us obsessed with the pursuit of the absolute truth and textbook notions of justice. In understanding justice, we refer to our sense of morality and law as the focal point, rather than the dignity, humanity and the experiences of another. The significance of literature as a pedagogical tool to promote empathy lies in how it serves as the gateway to truly placing ourselves in a character's position, irrespective of how different the character is from our lived reality, and to understand why the character does what she does and what got the character here. Our justice system may then shift to a more balanced form, where the perpetrator's rehabilitation is also given due importance. We have seen great benefits of adopting empathy to deliver justice. For instance, the Truth and Reconciliation Commissions in South Africa, helped both the victims of apartheid and its perpetrators truly each other's position and achieve closure over a wrongdoing. Such an approach to justice has many other systematic benefits such as reduced recidivism rates, and providing the State the bandwidth to focus on its welfare goals without perpetrating violence. The benefits of such an approach are far more positive and sustainable than our traditional approach of achieving justice. When our response to police brutality is rooted solely in anger, unaccompanied by a strong sense of empathy and compassion for the tortured, our desire to effect change fades as our anger dissipates. It is crucial to harness the potency of our love for our fellow beings to sustain any social justice movement, including one geared towards police reform. Two important, much revered political figures who have had a deep impact on the world-Mohandas Gandhi and Nelson Mandela who were also lawyers. Both harnessed the revolutionary power of love in their movement towards justice. Recognizing empathy, compassion and love as cornerstones of political, social and economic justice will make an effective tool for social change and a better society. Thus, the concept of justice, our idea of justice will be more inclusive in nature with our shared values of humanity as the central idea.

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