



BOOK REVIEWS

FRONTIERS OF JUSTICE: DISABILITY, NATIONALITY, SPECIES MEMBERSHIP (2006). By Martha C. Nussbaum. Oxford University Press, New Delhi. Pp xiii +487. Price Rs 695/-.

UTILITARIANISM, INSPIRED by British philosopher Jeremy Bentham, and political liberalism, inspired by the American political philosopher John Rawls, are two major philosophical trends in the contemporary political philosophy. Utilitarianism looks at pleasure, happiness and fulfillment of desires, and seeks to maximize happiness of the greatest number of the people in society. For example, developmental activities such as constructing huge dams, establishing huge power projects or engaging in large scale deforestation, and promoting privatization and economic liberalization, might be justified by the utilitarian principle of maximizing happiness of large number of people by providing more irrigation facilities, more food production, more power supply, more housing colonies, more water supply, and improving overall quality of lives of the people. A utilitarian would easily tolerate the miseries and deprivations caused to those who have been displaced or ousted by these mega projects or have been disadvantaged by the power of multinational corporations so long as these measures are designed to bring overall happiness and maximize common good.

John Rawls articulated his anti-utilitarian point of departure in his celebrated work, *A Theory of Justice* (1971) and further developed his theories in *Political Liberalism* (1993) and *The Laws of Peoples* (1999). Rawls theory of justice which remains the most influential theory of justice in contemporary century places individual rights and human freedoms at the heart of his political philosophy which has been structured around the social contract theories of Western tradition. Amartya Sen, recognizes the immense value of Rawls' theory of justice which requires that people's standing in society should be judged with reference to basic liberties and opportunities which society offers them. However, Rawls' theory, according to Sen, is limited from the point of view of human diversity; it does not go deep enough to capture some blatant inequalities in society. Rawls' theory works with the assumption of a liberal society where citizens have more or less equal capacities. Sen focuses on enhancement of human capabilities and freedom as the measure of human development. The capabilities approach articulated by Sen in his economic analysis of famines, poverty and development problems provides a stimulating conceptual framework for achieving social justice. The crucial question that should be asked is: What are



the social and personal conditions that facilitate or hinder the individual's ability to transform resources into functionings? Paying attention to nutrition, health, literacy, self respect and political participation and promoting them through coherent public policies is a matter of justice.¹ Sen's capabilities approach (in welfare economics) thus focuses on the comparative measurement of quality of life.

The American philosopher Martha C. Nussbaum has long been developing capabilities approach² to provide philosophical underpinnings for an account of core human entitlements that should be respected and implemented by the governments of all nations, as a bare minimum of what respect for human dignity requires. Nussbaum supports Sen's capabilities approach using his arguments and some additional arguments and unlike Sen, draws a comprehensive list of human capabilities which every society must protect and recognize. Inspired by the writings of Sen and Nussbaum the human development across the world is currently being measured by United Nations Development Program in its Human Development Reports, in terms of human capabilities measured by dimensions of life expectancy, educational attainments and people's command over natural resources.

In the book under review³ Nussbaum seeks to resolve three frontiers of justice which could not be addressed or resolved by classical theories of social contract. Throughout the book she maintains that even Rawls's theory has failed to address these three issues of justice, namely, the problem of securing justice for the people with severe mental and physical impairments, of extending justice to all citizens of the world and lastly the problem of doing justice to the non-human animals. In arguing for justice for these neglected areas she follows the path of liberal conception of justice and her position is anti-utilitarian like that of Rawls and Amartya Sen. Nussbaum propounds her own theory of justice revolving around the capabilities approach which she very cautiously and carefully develops through this book. She argues⁴ that all the classical theories of social contract including Rawls' theory are based upon the assumption that the contracting agents were men

1. A. Sen, *Development as Freedom* (2000).

2. The other famous books written by Martha C. Nussbaum include :*Poetic Justice: The Literary Imagination and Public Life* (1995); *Sex and Social Justice* (1999); *Women and Human Development* (2000); *Upheavals of Thought: The Intelligence of Emotion* (2001).

3. Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (2006).

4. *Id.*, Ch. 1 "Social Contracts and Three Unresolved Problems of Justice" at 9-92.



(women, children, elderly and disabled people excluded) who were roughly equal in capacity and capable of producing economic activity. The excluded people were not participants in the choice of political principles. The core moral idea was that of mutual advantage and reciprocity among the people who need to make such a contract. Since people with mental and physical impairments were unequal in capacities they could not be the subjects of justice. Second, the social contract tradition treated states with free, independent and equal powers. Does the rough equality and independence of state makes any sense in a world in which powerful global economy makes all economic choices and often imposes on poorer nations conditions that reinforce and deepen existing inequalities? Will the unequal nations be excluded and left out of the initial contracting groups? She maintains that even the best attempts made by John Rawls in his last work *The Laws of Peoples* (1999) proves inadequate to solve the problem of justice among nations as it ignores the impact of economic globalization. Third, as the core image of the principle of justice is that of a contract made among rational human adults, the social contract tradition is unable to address the question of justice involving non-human animals. She tells us that Rawls frankly recognized the weakness of his theory in addressing the question of justice to the people with disabilities. Rawls postponed the inequalities and disadvantages arising from human diversities to be settled later by legislative procedures.

This work of Nussbaum may thus be read as a constructive critique of Rawls' theory of justice to whom she dedicates this book in great reverence. The purpose of her project is to argue for an alternative to Rawls' social contract doctrine which can address the problem of justice to the three areas outlined above, namely justice for the people with disabilities, justice among nations and the question of justice to non-human animals. Her alternative is the "capabilities approach" to social justice which will extend justice to everyone. The theory of justice articulated by her is based upon an intuitive idea of a life that is worthy of the dignity of the human being. It is both intuitive and discursive. The capabilities are presented as the source of political principles for a liberal pluralist society. They are presented as an account of core human entitlements that should be respected and implemented by the governments of all nations through their constitutions or other measures. Like Sen, Nussbaum rejects the prominent approach in development economics to rank nations in accordance with gross national product (GNP) per capita as this approach does not ask about the distribution of wealth and income and about the quality of life of the people by reference to elements such as life expectancy, infant mortality, educational and employment opportunities, political liberties and so forth. She thus rejects Rawls' insistence on wealth and income



as an index of relative social position of individuals. Rawls is criticized for ignoring self respect as one of the primary goods.

Nussbaum develops a list of ten⁵ central human capabilities as central requirements of a life with dignity which should be viewed as general social and political goals. A society that “ does not guarantee these entitlements to all citizens, at some appropriate threshold level falls short of being a fully just society, whatever be its opulence”.⁶ These entitlements can be “adequately secured only if they are equally secured”, as it is the “equal dignity of human beings that demands recognition”.⁷ The capabilities approach is universal, demanding that each capability should be made available “to each and every citizen in each and every nation”⁸ and thus this approach is similar to the current international human rights movement. The capabilities approach also argues for a set of cross-cultural norms and against the stand taken in cultural relativism. This approach promotes respect for pluralism in many ways. She explains how her theory is outcome oriented in contrast to Rawlsian theory which is the procedural approach to justice.⁹ Her theory starts with “an outcome: with an intuitive grasp of a particular content having a necessary connection to a life worthy of human dignity”¹⁰ and then it seeks a political procedure such as a constitution, which will achieve that result as nearly as possible. The other difference is that whereas Rawls would measure relative social position by reference to income and wealth alone Nussbaum would measure the quality of life in terms of availability of all the ten entitlements to each

5. *Id.* at 76-78. The entitlements are presented as capabilities. For example, capability 1. *Life*: is formulated as “ being able to live to the end of a human life of normal length; not dying prematurely, or before one’s life is so reduced as to be not worth living. Capability 2. *Bodily Health*: is articulated as “ being able to have good health, including reproductive health; to be adequately nourished; to have adequate shelter., Capability 3. *Bodily Integrity*: “ being able to move freely from place to place; to be secure against violent assault and domestic violence; having opportunities for sexual satisfaction and for choice in matters of reproduction. Other capabilities include: Being able to have attachment to things and people outside ourselves; to love those who love and care for us, to grieve at their absence. Not having one’s emotional development blighted by fear and anxiety, having the social bases of self respect, being able to be treated as dignified being whose worth is equal to others, absence of discrimination on the ground of race, sex, sexual orientation, ethnicity, caste, religion, national origin. Being able to participate effectively in political choices that governs one’s life; having the right of political participation, protection of free speech and association, freedom from unwarranted search and seizure and so on.

6. *Id.* at 75.

7. *Id.*, Ch. 5, “Capabilities across National Boundaries” at 293.

8. *Id.*, Ch. 1 at 78.

9. *Id.* at 82.



and every citizen in the nation.¹¹

Nussbaum asserts: “The capability approach insists from the start that the elements of life are plural and not single and thus that the core social entitlements are also plural. It would be a grave error to single out any one of the ten to bear the weight of indexing relative social position: all are minimum requirements of a life with dignity and all are distinct in quality”.¹² Her theory of social justice would, therefore, forbid any trade offs and balancing when dealing with the threshold level of each of these requirements. Her theory begins from a conception of person as social animal “where dignity does not derive from idealized rationality” and offers a more adequate conception of the full and equal citizenship of people with physical and mental impairments and those who care for them.¹³ Her theory focuses on capabilities and takes care of those who are hampered due to structural reasons. Role of care thus emerges as an essential element in the theory of justice which, according to her, Rawls has ignored. What happens if a nation fails to secure all the ten entitlements to its citizens due to disparate circumstances or perhaps due to lack of resources? Nussbaum’s answer is that “it becomes then a practical question what to do next, not a question of justice. The question of justice is already answered. Justice has not been fully done.”¹⁴

After developing a theory of justice based on capabilities approach, Nussbaum talks about global justice that is hampered by the forces of globalization and the hegemony of international financial institutions and trade agreements, creating a wide gap between richer and poorer nations. According to her, the inequalities among the nations adversely affect the basic opportunities and increase poverty, hunger, unemployment and environmental degradation. The hegemony of multinational corporations and power of global market also erode the autonomy of the poorer nations. Besides the multinational corporations, the non governmental organizations, social movements, multinational international treaties and other global actors pervasively influence the life chances of the people in every nation. Here also she argues that the social contract theories are deficient in many ways to address the problem of justice among nations. These theories see global agreements as the outcome of a contract that people make for mutual advantage to leave the state of nature and govern themselves by law. These theories have structural defects and according to her even John Rawls’s *The Laws of Peoples* (1999) provides an inadequate account of global justice

11. *Id.* at 84.

12. *Ibid.*

13. *Id.*, Ch. 2, “Disabilities and the Social Contract” at 99.

14. *Id.*, Ch. 3, “Capabilities and Disabilities” at 175.



as it does not suggest redistribution from richer nations to poorer nations without departing in major ways from the contractarian approach.¹⁵ According to her Rawls fails to take cognizance of the global economic order and the disadvantages it poses on poorer nations.¹⁶ The idea of mutual advantage requires that all parties believe that they have something to gain by departing from state of nature. They must be rough equals. In such a setting some liberal democratic states which are poorer in terms of their GDP per capita such as India, South Africa, Bangladesh and so forth will not be members in good standing of the society of peoples proposed by Rawls.¹⁷

Nussbaum's capabilities approach says that "a world in which people have all the capabilities on the list is a minimally just and decent world".¹⁸ She thinks of building a just and decent world in which richer nations and individuals will be required to sacrifice their riches for the poorer individuals and nations. She goes Aristotelian/ Marxist way in including in her theory the idea of sociability and argues that "fully human life requires many things in the world: adequate nutrition, education of faculties, protection of bodily integrity, liberty of speech and religious self expression and so forth".¹⁹ The capabilities approach being an outcome-oriented approach seeks to measure justice in terms of a nation's ability to secure to its citizens a list of ten central capabilities, the measure of justice not being utility or opulence or GNP per capita. This approach is closely allied to human rights approach and may be regarded as a species of the human rights approach. Her list of capabilities include many of the entitlements that are also stressed in the human rights movement such as political liberties, freedom of association, the free choice of occupation and a variety of social and economic rights. A nation which fails to recognize all the ten central entitlements would not be a just nation. The capabilities approach talks about rights as an affirmative task and eschews any distinction between negative and positive rights.

Nussbaum cites the Indian Constitution as an example which typically supports her capabilities approach as it specifies rights affirmatively such as article 19 and, "the constitution is quite explicit that affirmative action programs to aid the lower castes, and women not only are not incompatible with constitutional guarantees, but are actually in their spirit."²⁰ She notes the measures such constitutional amendments in

15. *Id.*, Ch. 4, "Mutual Advantage and Global Inequality: The Transnational Social Contract" at 226.

16. *Id.* at 262.

17. *Ibid.*

18. *Id.*, Ch. 5, "Capabilities across National Borders" at 274.

19. *Id.* at 278.

20. *Id.* at 288.



India that guarantee one-third representation in local *panchayats* “are strongly suggested by the capabilities approach, which directs the government to think from the start about what obstacles there are to full and effective empowerment for all citizens and devise measures that address these obstacles”.²¹ She further states that “the capabilities approach we may now say, sides with the Indian Constitution and against the neoliberal interpretation of the U.S Constitution. It makes clear that securing a right to someone requires more than absence of negative state action.”²²

Nussbaum is able to formulate ten principles for the global structure for securing human capabilities for all the citizens of the world.²³ Since one cannot aspire to create a world state, the central human capabilities (read entitlements) should be secured domestically world over. She makes a number of suggestions to achieve global justice. For instance, the prosperous nations should have the responsibility to give a substantial portion of their GDP to poorer nations, the multinational corporations should have the responsibility for promoting human capabilities in the regions in which they operate, and the main structure of global economic order (eg, IMF, WTO, World Bank) must be designed to be fair to poor and developing countries. Further, we should evolve a system of global governance with some coercive powers, compatible with the sovereignty of individual nations to deal with grave violations of human rights, global labor standards, ill effects of global trade system and to deal with the problem of environmental degradation and so forth. She recommends that all institutions and individuals should focus on the problems of the disadvantaged in each nation and region. There is also a need for care of the ill, elderly, children and the disabled.²⁴

In discussing the problem of justice for animals, Nussbaum says that in the social contract theories commitment to rationality as the ground of dignity and the demand of contract between rough equals denied any obligation towards animals. Even Rawls’ theory applied only to humans and he never thought the issues of animals as issues of justice. She recognizes her own difficulties in extending her capabilities approach to animals as her entire approach is grounded in the intuitive idea of human dignity and a life worthy of it. However, she attempts to formulate the capabilities list for the animals also on the basis that the animals are entitled to “a wide range of capabilities, those that are

21. *Ibid.*

22. *Ibid.*

23. *Id.* at 315-22.

24. *Ibid.*



most essential to a flourishing life, a life worthy of dignity of each creature”.²⁵

The capabilities developed in this book provides philosophical underpinnings about the purpose of political and social cooperation and the nature of political principles and makes us to think in fresh directions in search of justice for all citizens of the world. Will the capabilities approach to social justice ever be realized in a world afflicted by global terrorism, rampant corruption and flagrant violation of human rights of the poor and the vulnerable and growing power of the multinational corporations posing serious threat to the autonomy of nations? Nussbaum does not aspire to show us how her theory of justice will be realized in the world. She says that if the capabilities approach is ever to be realized in the world a liberal society must “devote sustained attention to the moral sentiments and their cultivation—in child development, in public education, in the arts”²⁶. She believes that public education in a liberal society cultivating sentiments among the people requiring them to have great sympathy and benevolence might support the capabilities approach.

Nussbaum’s capabilities approach is an account of minimum core social entitlements that a society must guarantee to all its citizens. It focuses from the start on what people are actually able to do and to be. Reading this book makes one to be convinced that the language of capabilities developed in this book is preferable to the language of human rights used in the current human rights movement, as it treats all human entitlements as positive entitlements to be conferred by the governments of all nations and this approach eschews any distinction between enforceable and unenforceable rights or between positive and negative rights or between universalism and cultural relativism and so on. Central human capabilities are urgent entitlements grounded in justice. One may criticize this approach as hopelessly unrealistic, incapable of being realized in the world but that fear applies to all philosophical questions. The book will be of interest to scholars and advanced students of political theory, philosophy, jurisprudence, and human rights as well to law professionals. The central theme of this book has great relevance for the current Indian debate on the issues of social empowerment in the context of economic globalization and its impact on the marginalized and disadvantaged people and the debate about socially inclusive growth.

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25. *Id.*, Ch. 6, “Beyond Compassion and Humanity: Justice for Non-Human Animals” at 392.

26. *Id.*, Ch. 7 “The Moral Sentiments and the Capabilities Approach” at 414

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