

JUSTITIUM VS. JUSTITIA: A DEBATE BETWEEN RAWLS AND SEN

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Introduction

The concept of justice is a matter of apprehension from the antiquity. It was John Rawls who all the way through his enduring dedication introduced the mainstream theory of justice in a radical manner. He was vocal against the classical utilitarianism. Utilitarianism, Rawls opines, cannot offer a satisfactory account of basic rights and liberties of citizens as free and equal persons. It allows unacceptable trade-off among persons. With the influence of Kant's deontological approach, Rawls offers the idea of justice as *justitium*. Noble-laureate Prof. Amartya Sen is indebted to Rawls while developing his contemporary idea of justice. He brings a new interpretation of justice that goes against Rawls. Rawls' idea justitium is rule-based and deontological in nature, whereas Sen's idea of *justitia* is consequential in nature. Rawls developed his idea of justice by invoking deontological approach of morality whereas Sen develops his idea of justice by invoking consequential approach of morality. Thus, the debate between Rawls and Sen is fascinating. They not only develop two polar concepts of justice but equally take support from two classical theories of morality, such as, deontological and consequential approaches of morality.

Rawls interprets his idea of justice as *fairness*. Fairness is a demand for impartiality deeply associated with the idea of original position. Original position is the appropriate initial *status-quo* that ensures everything as fair. Thus Rawls, while developing his idea of justice as *justitium*, emphasizes more on just institutions rather than just societies. Sen, on the other hand, emphasizes more on just societies rather than just institutions. In this regard, Prof. Sen refers the two main characters of the great Indian Epic Mahabharata. In the Gita of Mahabharata, there we witness a fabled debate between Krishna (God) and Arjuna. Krishna talks in favour of *justitium* and differs from Arjuna who favors *justitia*. According to Sen, Arjuna is a prudent consequentialist because being a *Khatriya*, his virtue (*svadhrama*) is to take part in war. However, as a prudent consequentialist, he seriously thinks about the consequence of the war. He presumed that many more innocent peoples including his dearer and nearer would be killed in this great war. Rawls' idea of justice as *justitium* is at par with the role of Krishna and Sen's idea of justice as *justitia* is at par with the role of Arjuna. Rawls theory of justice as *justitium* actually hinges on two basic principles of justice which emphasise on the original position and impartiality preserved in terms of veil of ignorance. In this regard, Rawls voices in favor of institutional form of justice and

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denies the possibility of global distributive justice. Rawls focuses on social primary goods, which society produces and which people can use. On the contrary, Sen, focuses more on the capability approach what people are able to do. Thus, Rawls' theory of justice as *justitium* has been developed in terms of measuring primary goods. Contrary to this, Prof. Sen develops his idea of justice in terms of measuring capabilities of the individuals. Thus, the debate between Rawls and Sen regarding justice is enthralling in contemporary aspect. The main strategy of this paper is to explicate and examine the debate between Rawls and Sen from global perspective. The paper, at last, attempts to explore with critical outlook whether the debate actually creates a substantive gulf between Rawls and Sen as far as their theories of *justitium* and *justitia* are concerned.

I

Although the concept of justice has taken a dramatic turn in postmodern era, there is nothing wrong in assuming that the contemporary idea of justice is the outcome of a perpetual revision of the concept of justice from Greek tradition. In the editor's forwarded of The Concept of Justice of N.M.L. Nathan, W. D. Hudson said, "To arrive at a correct understanding of justice has been the aim of moral and political philosophy from Greek antiquity to our own day." (Hudson, 1971)

I think the root of the system of modern justice, in some sense or other, finds its foothold in Hebrews, carried through the Greeks and Romans and in turn subsequently transmitted in the West and the other parts of the world. In fact, we find a comprehensive idea of justice in Plato's Republic. In Book 4, 434c, Plato says, "Justice is harmony" and again in his Book 4, 443b, he says, "Justice is doing one's own job." More importantly, Plato conceived justice both in terms of soul as well as in terms of state. Plato says, "Justice exists in a state as well as in an individual, because a state is simply the lives of its citizens 'and if we find that society in a natural expression of men's natures, we may conclude that social justice is the natural expression of the justice in men's soul.'" (Plato, 1961, xxxi) Justice, for Plato, is a human virtue that eventually makes a society internally harmonious and good at large. Justice, being an assemblage of elements, indeed reveals a degree of integration and unity on account of the integrity of a neighborhood. In this sense, there is nothing wrong to claim, of course, from a general perspective that justice is a map of that neighborhood. (Schmidtz, 2006, 3) Justice means what is just and it has something, of course with certain exception, to do with treating like cases alike and hence is associated with the principle of generalization. Aristotle says, "Justice is thought to be equality; and so it is, but for equals, not for everybody. Inequality is also thought to be just; and so it is, but for unequals, not for everybody." (Aristotle, *Politics*, 1280a9) Aristotle, of course, emphasized proportionate equality based on the principle of treating 'similar similarly and dissimilar dissimilarly'. Having said this, the contemporary debate between Rawls and Sen regarding the very nature of justice is philosophically absorbing. Therefore, in the subsequent sequels, we propose to develop, in order, Rawls's theory of justice as *Justitium*, then Sen's idea of justice as *Justitia* and finally make a comparative study

between Rawls and Sen in my own rationale towards preconceiving whether the gulf as presumed between *Justitium* and *Justitia*, is at all fundamental in nature or not.

II. Rawls' Theory of Justice as *Justitium*

Even though the impact of the idea of justice of Plato, Socrates and Aristotle is colossal on the modern interpretation of justice, but honestly speaking, it was John Rawls who indeed introduced *the mainstream idea of justice*. Rawls' idea of justice is groundbreaking because while developing his theory of justice as *justitium*, he denies utilitarianism as the criterion of justice on one hand and affirms deontological approach as the criterion of justice on the other. In the form of an admiration, Rawls' Harvard colleague, Robert Nozick says, "A theory of Justice is a powerful, deep, subtle, wide-ranging, systematic work in political and moral philosophy which has not seen its like since the writings of John Stuart Mill." (Nozick, 1974, 183) In fact, it was John Rawls who in his book *A Theory of Justice* has ingrained the ditch of modern interpretation of the idea of justice. His idea of justice is a cascade of illuminating ideas, integrated together into a lovely whole. Rawls' theory of justice as *Justitium* is guided by his two basic principles of justice. These are as follows:

The First Principle of Justice

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 (the principle of equal liberty).

The Second Principle

Social and economic inequalities are to be arranged so far they are both:

- (a) *Attached to offices and positions open to all under the conditions of fair equality of opportunity (the principle of fair equality of opportunity).*
- (b) *To the greatest benefit of the least advantaged, consistent with the just savings principle (the difference principle).*

The first principle is the principle of equal liberty which, according to Rawls, is a must for all without exception. The second principle contains two parts. The first part of the second principle is known as the principle of fair equality of opportunity. It is concerned with the institutional requirement of making sure that public opportunities are open to all irrespective of caste, race, religion, etc. The second part of the second principle is known as *Difference Principle*. It is concerned with distributive equity as well as overall efficiency and it is particularly taken care of the worst-off members of the society.

The main contention of Rawls' theory of justice as *justitium* is to secure a higher level of intellection on the basis of generalization in Locke, Rousseau and Kant. In this regard, Rawls intuits a well-ordered (just) society as the basic structure in the initial (original) position which is purely hypothetical in nature. A just society, Rawls intuits, is a basic platform of human association where every person comes to know what he actually is; it is a kind of society based on shared conception of justice along with the underlying promise of civil friendship. Everyone enjoys equal liberty without exception in the original or initial position. Any agreement that would be made in the initial position would be fair in terms of equality what Rawls termed as justice as fairness.

This is made possible because the principles of justice are chosen behind the veil of ignorance. As a result, ‘no one in the original position knows his place in society, no one knows his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like.’ (Rawls, 1971, 12) Thus, the veil of ignorance of Rawls would certainly be an effective means in the original position as it removes differences in the original position and in turn making justice as justice as fairness. As a result, the original position is supposed to be the most philosophically favored interpretation of a hypothetical *status-quo* in which fundamental agreements would be fair. The parties of the well-ordered or just society in the original position under the *veil of ignorance* are mutually disinterested as they are, so to speak, neither philanthropic, nor resentful. Thus, Rawls’s main objective is to show in what sense the well-ordered (just) society in the initial or original position can function under the veil of ignorance through fair agreements. The theory of justice as *justitium* is guided by universal and unconditional rules and principle in the line of deontology of Kant only with the exception of *Difference Principle* which deals inequalities within the constraint of justice. Further, Rawls’ theory of justice as *justitium* is absolute in the sense that it represents, in some sense or other, *transcendental institutionalism* with the perception of *arranged-focused view of justice*. It states that there will be a unanimous choice of a unique set of two principles of justice in a *hypothetical situation of primordial equality* where parties’ vested interests are set aside under the *veil of ignorance*.

III. Sen’s Idea of Justice as *Justitia*

Amartya Sen, even if is obligated to Rawls, introduces the idea of justice as *justitia* and in this regard, Sen affirms utilitarianism (consequentialism) at length and denies deontological approach as the foundation of justice as *justitia*. Sen develops his idea of justice as *justitia* as an alternative approach by way of criticizing Rawls’ theory of justice as *justitium*. While developing his idea of justice as *justitia*, Sen, at the very outset, departs from Rawls on two important accounts just by criticising his contractarian or transcendental approach of justice.

First, Sen criticizes Rawls’ idea of transcendental institutionalism of justice that has been developed within the background of Kantian deontology; and secondly, he equally departs from Rawls’ view of just institutions and rules. As far as transcendental institutionalism is concerned, Sen finds two problems in Rawls’ theory of justice. First, he thinks that there is no reasoned argument in transcendental approach of justice as *justitium* even though Rawls imposes some stringent conditions, such as, impartiality, open minded scrutiny on the nature of just society in the initial position. Thus, for Sen, Rawls’ transcendental institutionalism lacks reasoned viability in the initial position of a well-order society what Rawls terms it as “just society”. The other problem is the problem of *redundancy* crafting from the attempt of transcendental solution that indeed is not transcendental at all. Sen, then, terms these two problems as the problem of feasibility and redundancy. The second departure of Sen from Rawls is primarily concerned with the position that unlike Rawls, Sen does not emphasize on just institutions and rules, but to effort mainly on actual realizations and accomplishments.

Sen, then, attributes Rawls' transcendental institutionalism as an *arranged-focused view of justice* and his own position has been termed as a *realized focused view of justice*. He then relates the dichotomy between 'an arranged- focused view of justice' and "a realisation–focused understanding of justice". (Ibid. 10) According to Sen, an arranged-focused view of justice is the outcome of *justitium* whereas his realisation–focused understanding of justice is the outcome of *justitia*.

Sen further contends that Rawls' position of *justitium* in the form of arranged-focused view of justice guided by two unique set of principles of justice in the initial position under the purview of veil of ignorance actually hinges on mistake. Sen, in this regard, goes on to say that one should not overlook the differences of distributional equality on one hand and overall or aggregate enhancement on the other. Now, as far his development of arranged-focused view of justice is concerned, Rawls gives prominence on transcendental identification just by focusing on the lexicographic maxim rule (Ibid. 11) among many other available convincing alternatives for achieving impartial attention in the initial position of the well-order society. However, in doing so, Rawls, Sen opines, sets aside, without giving sufficient reasons, many other supposed reasoned differences associated with his two principles of justice. Interestingly, while developing arranged-focused view of justice in the initial position, Rawls indeed does not rule out the available possible alternatives, but to set aside everything in the initial position by imposing the metaphor 'the veil of ignorance'. This, in fact, I think, is a matter of temporary suspension of the alternative possibilities in the just society, because after conceptualizing initial position in the just society Rawls introduces his second principle of justice of which the second part, being a *Difference Principle*, acknowledges the possibility of inequalities on the basis of merits, talents, least advantage, better-off, etc. The difficulty, Sen reveals, I do believe, in Rawls' position is to find out whether the plurality of reasons for justice as fairness would, in fact, allow one set of principles of justice to surface in the original position of just society. If it does and the possibility is very much there, Sen claims, then Rawls' position of transcendental institutionalism as an arranged-focused view of justice would be at stake at its introduction.

Though, Rawls intuits the possibility of a unique transcendental promise in his theory of justice as fairness, but Sen expresses serious reservation about its unique impartiality. In this regard, Sen gives us an illustration of a flute of three children. Anne, Bob and Carla are three children who are involved in a quarrel of taking hold of a flute on the basis of Rawls' principle of justice as fairness. Now, Anne claims that she deserves the flute because she alone knows how to play it. As the very objective of a flute is to play, she deserves it prior to others. In an alternative situation, Bob claims that he deserves the flute as he is poorer (least-off) than the others and the flute should give the poorest or least advantageous to play. In another set up, it is Carla who claims that she deserves the flute because she has been working industriously for a considerable period to make the flute with her own effort. Now, Sen's position, at this juncture, is that if anybody would take note of the standpoint of Anne, Bob and Carls separately, then , of course, even within the purview of Rawls' theory of justice as *justitium*, he would think that their respective entitlement is justified and indeed strong enough in seizing the flute in their own stride. However, theorists of different

inducements perhaps may take their own standpoint to identify the right person. From economic egalitarian perspective, Bob certainly deserves the flute because its main objective is to minimize gap in the economic means of people. From libertarian perspective, Carla, being a maker of the flute, certainly deserves it. Again, from the utilitarian hedonistic point of view, Anne certainly deserves the flute because she is the only one who can play the flute and by virtue of doing it she gains happiness.

I think the egalitarian position of Bob has well been supported by the *Difference Principle* of Rawls' in which preferential treatment can be justified on the ground of economic condition. Out of these three perspectives, such as, economic egalitarianism, liberalism and utilitarianism, liberalism, for Sen, is unconditional as, like utilitarianism, it does not pay attention on individual happiness; rather unlike utilitarianism, it pays attention on person's right. Sen, however, thinks that it would indeed be difficult to show how Rawls fulfils the possible plurality of competing principles as non-transcendental alternatives as discussed in the case of flute can be accommodated within the straight jacket of his transcendental approach of justice. Transcendental alternative, Sen claims, in any sense of imagination, does not offer 'a solution to the problem of comparisons between any two non-transcendental alternatives'. (Sen, 2009, 13)

According to Sen, Rawls' theory of justice, being a transcended institutionalism, does not bear any concrete sense on comparative assessment. In fact, apart from intellectual interest, it does not endure any undeviating significance to the problem of choice. On one hand, Rawls intuitively transcended institutionalism and on the other hand, he talks in favor of social justice with the inducement of *Difference Principle* that deals with inequalities. Sen, in this regard, says that it would not be possible to choose between a Picasso and a Dali, one cannot make it out even in the transcendental institutionalism simply for the reason that the ideal picture of the world is neither a Picasso nor a Dali, but Mona Lisa. Sen says, "If a theory of justice is to guide reasoned choice of politics, strategies and institutions, then the identification of fully just social arrangements is neither necessary nor sufficient." (Ibid. 15) Even though it would be interesting to hear, but the very fact, Sen reveals, is that neither of this picture belongs to the world. I think the anxiety of Sen actually hinges on the very question: Does transcendental institutionalism of Rawls indeed being capable of identifying transcendental alternative? If it does, how do we realize it? According to Sen, Rawls' theory of justice actually fails to identify even transcendental alternative because any forms of alternative are measured in terms of their respective closeness to the perfect choice with the hope that even transcendental identification indirectly gives rise to a ranking of alternatives. Thus for Sen, Rawls' theory of justice as *justice as fairness* falls short on two important accounts as it is neither confined to the choice of institutions as it has been promised to be; nor to satisfactory with regard to the identification of ideal social arrangements. A theory of justice, in the true sense of the term, must be accountable to humans. Rawls' theory of justice, being a transcended institutionalism, fails to do this as it is indifferent to the lives of people. Rawls' gives emphasis more on the institutions, but the fact is that human lives, experiences and realizations cannot be augmented by institutional rules and principles.

Sen's Concrete Proposal of Justice as *Justitia*

While delineating the subtle distinction between an *arranged-focused* and a *realisation-focused* view of justice, Sen invokes an old fashioned distinction between *niti* and *nyaya* from classical Indian Sanskrit literature. In classical Sanskrit literature, both the terms *niti* and *nyaya* stand for justice. According to Sen, the ethical term *niti* (principle) has been conceived as the weapon of organizational decorum and behavioural correctness and hence is associated with arranged-focused view of justice. On the contrary, *nyaya*, being an ethical term, is linked with the comprehended world and thus is associated with the realisation-focused view of justice. In this regard, Sen invokes the relevance of the metaphor *matsyanyaya*. The metaphor *matsyanyaya* actually means ‘justice in the world of fish’ where the big fish of the pond can nip the small fishes of the pond. If it does, then how do we control the will of the big fish of the pond? Like the big fish of the pond, there are many big guys in our society who can exploit, extort and subjugate in manifold of ways the marginalized people, the disabled, the down-trodden even within the regulating system of the state. Thus, the fundamental objective of justice is to resist the will of *matsyanyaya* in our society in order to make sure that the justice of fish cannot overrun the world of human beings. In this regard, Sen voices in favor of *nyaya* because he feels that “realisation of justice in the sense of *nyaya* is not just a matter of judging institutions and rules, but of judging the societies themselves”. (Ibid. 21) Having said this, if there remains the possibility in our society where a big fish could still nip a small fish at will, then, of course, it would be a patent violation of human justice as *nyaya*.

In this regard, Sen refers two important characters of Krishna and Arjuna of the great Indian epic *Gita* of *Mahabharata*. Here Sen intuitively sees the role of Krishna as a deontologist and the role of Arjuna as a prudent consequentialist. As a deontologist, Krishna (God) advises everything in accordance with rules (*Dharma*). Now, on the eve of the battle when the unconquerable warrior, Arjuna being a Kshatriya, expresses serious reservation of taking part in the battle by conceiving it prudently that the consequence of the battle will lead many killings of his dearer and nearer, Krishna, being a mentor, persistently insists Arjuna that being a Kshatriya he (Arjuna) should take part in the battle because it is his *Svadharmā*, i.e., the essence of every Kshatriya. As far as *niti* (principle/maxim) is concerned, Arjuna, being a Kshatriya, should take part in the battle and as far as *nyaya* is concerned, he should think of the consequence of the battle. Thus, considering the two forms of justice at random, Arjuna falls in a dilemma. (Ibid. 22) While delineating his idea of justice as *justitia* in the line of prudent consequentialism, Sen here makes a stunning contrast by characterizing Krishna as a deontologist and Arjuna as a prudent consequentialist. Krishna, being a deontologist, accentuates on unfringeable moral maxims (*nitīs*) which are universal, absolute and supreme in nature. On the contrary, Arjuna, being a prudent consequentialist, thinks about the consequence of the battle in terms of reasoned or ground reality (*nyaya*). In this regard, Professor Sen says, “The ground debate is often interpreted as one about deontology versus consequentialism, with Krishna, the deontologist, urging Arjuna to do his duty, while Arjuna, the alleged consequentialist, worries about the terrible consequence of the war.” (Ibid. 23)

Even though both *niti* and *nyaya* stand for justice in classical Sanskrit, but according to Sen, *nitīs* (principles) are organizational or institutional property and are

being used for behavioral correctness. On the contrary, *nyaya* stands for 'a comprehensive concept of realized justice'. (Ibid. 24) For Sen, realization in the sense of *nyaya* is a matter of judging the societies themselves and if a big fish goes on oppressing a small fish at will just like the case of *matsyanyaya*, then it must be a patent violence of justice as *nyaya*.

Observation

The on-going debate between Rawls' theory of justice as *justitium* and Sen's idea of justice as *justitia*, I think, is philosophically relevant in the sense it reflects the socio-economic-political issues of our surroundings. Rawls' theory of justice as *justitium* bangs more on the role of institutions. In this regard, Rawls denies utilitarianism and favors deontological approach. Sen, on the other hand, repudiates deontology in the strict sense of the term and favors consequentialism in the form of welfarism where individual prudence takes the upper hand. Now, the pertinent question that needs to be taken care of at this juncture is that whether there underlies any substantive gulf between Rawls' understandings of the theory of justice as *justitium* and Sen's understanding of the theory of justice as *justitia*. Are these two approaches mutually exclusive in nature? Even though the outlook of Rawls and Sen is different as far as their respective interpretation of the idea of justice is concerned, but certainly they are not mutually exclusive. Rawls, being a socio-political philosopher, has emphasized more the institutional form of justice, and in this regard, he gives more importance to rules and principles along with the line of the deontological approach. In this regard, Rawls has been influenced by Kantian deontology. On the other hand, Sen, being a moral philosopher of welfare economy, stresses development ethics and in this regard, he emphasizes the practical aspect of the concept of justice. As a proponent of ethics and economics, Sen takes the insight of utilitarianism in the form of consequentialism. He then claims that his interpretation of utilitarianism would be a prudent one, and in this regard he has mentioned the role of Arjuna of *Gita* of *Mahabharata* as the model of prudent consequentialist.

There is no question of doubt that Rawls' theory of justice as *justitium* is deontological in nature. In this sense, Rawls was indebted to Kant and others as well. I believe Sen's anxiety regarding Rawls' theory of justice as *justitium* actually hinges on its practical inapplicability. If it does, and perhaps if I am not wrong to read Sen properly, then Sen's position would really be unfair to Rawls. In fact, Rawls in his later writings, particularly in his *The Laws of People, Political Liberalism* etc., offers us many aspects that would be useful as far as our understanding of social justice is concerned. Of course, Sen is right in sensing Krishna as a deontologist in the sagacity of Rawls and Arjuna as a prudent consequentialist in his own intellect, but the very fact is that when the tussle arises between a deontologist and a consequentialist, in our case between Krishna and Arjuna, the ultimate winner would be the deontologist, but not the consequentialist as it had happened in the *Mahabharata*. Perhaps Professor Sen agrees with me that in India we have too much *niti* and too little *nyaya*. Unlike *nyaya*, *niti* endures enormous appeal as it encompasses all. In the *Gita* of *Mahabharata*, Arjuna's doubts should not be dismissed in the way Krishna dismissed them. However, Krishna, being a deontologist (*niti* person) did not make Arjuna's fight as a war or battle and kill people. The war was plunge on the *Pandavas* because justice has been denied for them.

In fact, Krishna answered the doubt of Arjuna in the logical and spiritual way. The doubt of Arjuna were not on the issue of whether to fight or not; rather it is primarily concerned with how he would feel when he would be killing people with whom he grew up with, people who taught him so much in his life etc. Having said this, Sri Krishna repeatedly pointed out to Arjuna that it was his duty to fight for justice; otherwise intimidators would have had a field day in terrorizing the people as it would happen in the case of *matsyanyaya*

Now, let me remind Gandhi in this regard. Apparently, Gandhi was a deontologist in the sense that he introduced the theory of *Sarvodaya* which includes all without exception. In fact, Gandhi severely criticized the utilitarianism approach on the basis it denies the interest of the minorities in proportion, and it is very much the same as Rawls does against utilitarianism. Thus, the position of Rawls and Gandhi about the limitation of utilitarianism would remain the same. The point which haunts me the most is: how does Gandhi support Krishna who has insisted Arjuna to engage in a battle leading towards violence (*himsa*)? Gandhi's concept of *Sarvodaya* is based on the concept of non-violence or *ahimsa* in the true sense of the term. Now, if Sen would read the battle of *Mahabharata* in terms of severe conflict and violence, then certainly, Gandhi could not support the position of Krishna of *Gita of Mahabharata*. But the very fact is that Gandhi supported Krishna in this regard. Does it then lead us to assume Gandhi had made a mistake in supporting Krishna? If we stand with Sen, then perhaps the answer is yes, as Sen puts emphasis more on ground reality. On the contrary, if we stand with Rawls, then the answer would be negative, because in such a case everything would be determined in accordance with moral rules and principles. As we all know the Gandhian concept of justice is at par with his very concept of truth (*sat/satya*). Thus, for Gandhi to fight for justice is to fight for truth (truth=justice). Now, if Krishna insisted Arjuna realize the war of *Mahabharata* not as a mere war or battle, but a means to fight for justice, then there is nothing wrong on the part of Gandhi to take the side of Krishna. If it does, then how do we retain Gandhi's concept of non-violence (*ahimsa*) in the battlefield of *Mahabharata*? We can perhaps tackle this problem by bringing the Vedanta's concept of *Maya* (illusion) and *Brahm* (reality). We can then say that in appearance it would seem there is a serious conflict and violence in the battlefield of *Mahabharata*. Yet, in the real sense, it is an illusion, because it is not a battle, but a means and the only means to fight for justice (truth) where there is no conflict or non-violence.

What then can I embrace regarding Rawls and Sen? Do I mean to say that Rawls is right and Sen is wrong or vice-versa? I think as far as their development of the theory or idea of justice is concerned, they invoke different outlooks. Even though Rawls' theory of justice is deontological in nature, but his main intention was to establish a well-ordered society in the initial position on the basis of the principle of equal liberty. Sen's main objection against Rawls is that as a theory of justice as *justitium*, Rawls's theory of justice like Kantian morality is absolute, ideal, transcendental lacking practice utility in solving social-economic inequalities happening in our surroundings. I think Sen perhaps is wrong in this regard. Rawls, I think, while developing his theory of justice, intuitively at the very outset a well-ordered society in the original position under the veil of ignorance where the basic liberty to all is ensured. This was Rawls'

conceptual vision or conceptual structure at the starting point of his theory of justice at the original position in a well-ordered society. As a theory there is nothing wrong. Therefore, it would not be prudent or fair to nullify the relevance of Rawls' theory of justice as *justitium* by tagging it with the notion of *absolute transcendentalism*.

According to Sen, even though Rawls' theory of justice as *Justitium* being a *transcendental institutionalism* is primarily concerned with reason or rationality in the real sense of the term, but there is indeed lacking reasoned viability in Rawls' *transcendental institutionalism*. We think this is also unfair. By denying the position of Rawls' theory of justice as *justitium*, Sen actually rips to pieces so many other well-established humanitarian and classical ethical theories, such as the *deontological approach* of Kant and the *Sarvodaya* concept of Gandhi. Interestingly, Gandhi while developing his theory of *Sarvodaya* denies utilitarian principle: "Greatest good of the greatest numbers". As a moral philosopher and welfare economist, Sen has a point to say in favor of utilitarianism in the articulate manner of "prudent consequentialism". In fact, there is no available moral theory at out hand that may cohere with welfare economy except utilitarianism. However, as a moral philosopher, Sen is much harsh and antagonistic in evaluating Rawls' theory of justice as *justitium*. Sen perhaps overlooks the social implication of Rawls' second part of second principle known as "Difference Principle", which we think has a close proximity to Sen's vision of welfarism. Even we do not find anything wrong in conceiving Rawls' difference Principle as much as close or at par with Sen's welfarism in terms of prudent consequentialism. The very objective of utilitarianism in general and Sen's prudent consequentialism in particular will remain obscure so long it has not been delimited by deontological view of justice. If it does, then the gulf between Rawls' theory of justice as *justitium* and Sen's idea of justice as *justitia* is minimum. They are mutually inclusive. Their theories then should not be accentuated as the two sides of the same coin.

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