



JOURNAL OF POLITICS

ISSN : 2277-5617

An Annual Publication of the Department of Political Science, Dibrugarh University
(A Blind Peer-Reviewed Journal)

Vol. XX, 2020

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REVISITING AMARTYA SEN'S NOTION OF JUSTICE : A CRITICAL ANALYSIS

Partha Protim Borthakur

Abstract

The issue of social justice has always been a concern and a question, right from the origin of the state to the present. Despite John Rawls contribution is widely acknowledged as seminal in this regard, Amartya Sen's understanding of justice engages with the Rawlsian project and attempts to tease out an alternative conception of justice. Sen's analysis of justice concentrates on social realizations and not on the quest for perfect institutions, as he suggests that there is no universal theory of justice but that different societies will work out their own accounts if they allow deliberative and democratic procedures to flourish. However Sen's notion of justice based on public reasoning and actual capabilities of the people, to what extent possible to achieve in a multicultural and multilingual state like India, where religion and superstitious beliefs of the people (like witch hunting, untouchability), determines the lives of the individuals in the society, contributed by inadequate representation of dissenting voices, is still a question. Focusing on such issues of paramount importance, the paper thus seeks to revisit and analyse Sen's understanding of justice.

Keywords : *Social Justice, John Rawls, Amartya Sen, Social Realization, Capability.*

Introduction:

In political philosophy the question and discussion on justice cannot be omitted, whether the concern of the researcher is in the area of value-free theoretical analysis or in that of the assessment and recommendation of rules, procedures and institutions. The sphere of social justice, which is the zone of our apprehension, is informative as it shapes the basis of life in society. Throughout the ages the concept of social justice has been discussed, however, the discipline was further enhanced during the European Enlightenment in the 18th and 19th centuries (though they differ in their approach to justice), complimented by the political atmosphere of transformation and also by the social and economic conversion in those areas. Ideas of social justice became a common reference point in almost all political discourses and philosophical enquiry. As such, concepts such as rights, liberties, equality, needs and deserts have been accommodated into justice's sphere which has increased its influence in political philosophy over times. From the publication of Plato's *Republic*, to the emergence of new approaches and theories on analysing the concept of justice, complemented by changes in Europe (due to Renaissance and Industrial Revolution), the concept too got developed and elaborated, becoming a vital exercise in the modern era of political philosophy (Pappas, 2003, p. 50-62). This practice arguably reached its high point in 1971 with the publication of, *A Theory of Justice*, by John Rawls. Reviving the themes of classical 'social contract' thinking, especially that of Immanuel Kant, Rawls understood and defined justice not in terms of law of nature or something based on reason, but as a fair distribution of primary goods among the people which consist of the basic rights, liberties, opportunities, and also benefiting the least advantage persons (the marginalised people) thus making the procedure fair and just (Rawls, *Justice as Fairness, A Restatement*, 2001, p. 41-42).¹

Besides, in the existing scenario, democracies in the world cannot be judged by the institutions that formally exist (like the three organs of the government-executive, legislature and judiciary). Taking the case of India, a multicultural and multilingual state where needs of the diverse sections of the society have to be protected and given adequate representation, a theory of justice has to focus on actual lives in the assessment of justice. Though we cannot ignore the importance

of the institutions and rules influencing the part and parcel of the actual world as well, but when the focus is on the actual lives of the masses, while assessing the notion of justice, the implications are very wide ranging in terms of the nature and attainment of the idea of justice. Under such an circumstance, an alternative having a influential and significant analysis of the idea of justice is provided by Amartya Sen, when he formulated the demands of justice not only in terms of principles of justice that were entirely concerned with just institutional arrangements for a society, but also emphasised on the broader outlook of social realizations, the freedoms that people can achieve in reality, thus giving importance to the reasonable behaviour and original lives of the citizens (Sen, *Identity and Violence: The Illusion of Destiny*, 2007, p. 117).

Unlike, former theories of justice that endeavours to limit the questions of justice, to the nature of perfect justice; the central theme of Sen's theoretical proposal is to eradicate manifest cases of injustices. It can be seen in his book, *Poverty and Famines*, where Sen analyses the causes of starvation in general and famine in particular through various case studies in various parts of the world (the Great Bengal Famine of 1943, Ethiopian famines of 1973-75 etc.) and has come to the conclusion that poverty is a very significant problem and not that simple as it is seen and so the actual causes of deprivations need to be understood and removed (Sen, 1982, p. 52-87). As we commonly pursue justice in terms of our understanding of the present world, how it is being ordered or controlled and to visualize and analyse the change by becoming a part of it, hence the paper tries to analyse critically the practicality in Sen's notion of justice in the present world especially in Indian context.

Amartya Sen's Idea of Justice:

Amartya Sen in an article written in 2006, *What Do We Want from a Theory of Justice?*, concluded that political philosophers should categorically end chasing, in the style of Rawls, the grand question, what a just society should be (Sen, 2006, p. 215-238). Sen provides a detailed critique of universal accounts of justice and advances the idea of value pluralism within the design of social justice (Sen, 2009, p. 5-9).² He promotes the notion that people should have their own

perspectives and accounts of justice; thus socially, just outcomes will not be universal across all cultures and societies. However, there is less doubt that the tradition of theories of justice that Sen has in mind has been positioned and dominated by the spirit of John Rawls from which he has learnt so much, hence Sen endeavours to put forward an alternative to the dominant theory of justice by critically engaging with it in his book, *The Idea of Justice*.³ Sen differentiates between the two models of classical Indian philosophy, ‘Niti’ (strict organizational and behavioural rules of justice) and ‘Nyaya’ (concerns with what emerges and how such rules affects the lives that people are actually capable to lead), wherefrom he draws the idea of realization perspective on social justice (Sen, 2009, p. 20). Sen criticizes the earlier philosophers like Rawls for neglecting and focusing on ‘niti centred’ approach and thus underrates the essential combination of just institutions and correspondent actual behaviours that makes a society practically just, from which he formulates his central argument. Sen thus subsequently emphasizes the opposite ‘nyaya centred’ approach according to which, ‘what happens to people’, must be the core concern for a theory of justice and thus provides a better understanding for justice. It should also be mentioned that Sen calls into question the fundamentally deontological approach to justice that we find in Rawls and hence puts forward more of an apparent consequentialist approach (though he himself does not refer to it as a strict consequentialist idea of the classical utilitarian era) in order to remove manifest injustices.

Moreover, Rawls argues in the opening pages of his book, *A Theory of Justice*, that his aim is basically to derive principles of justice for a ‘well ordered society’, that is society of ‘strict compliance’, where the objective of each and every individual is to act in a fair and just manner to create a perfectly just society (Rawls, 1999, p. 3-5). Sen considers this as a *transcendental institutionalist* perspective to justice, categorized by the focus on perfect justice, thus overlooking the non-institutional aspects of human relations, which in practice, and would determine how actual societies would function (Sen, 2004, p. 315-356). Thus what differentiates Amartya Sen from earlier theorists was that his evaluation of justice aimed not at recognizing the nature of just (whether it is just institutions or society) but rather to construct a theory that helps people to realize and make ways how to

reduce injustice and advance justice, as well as understanding the factors affecting the degree of justice in any existing society.

Sen vehemently focuses by providing examples of various cases of injustices in society such as slavery, the discrimination of women, the lack of universal healthcare in most countries of the world, the lack of medical facilities in parts of Africa or Asia, the tolerance of chronic hunger, for example in India, and the extreme exploitation of labour can all be recognized, besieged and removed without any need to hypothesize at all as to what would be perfectly just social arrangements or what would be just institutions. Sen makes his argument more clear when he uses another analogy. Sen argues that, when we were asked whether a Van Gogh or a Picasso is the better painting, it barely helps to be told that Da Vinci's Mona Lisa is the best painting in the world (Sen, 2009, p. 101). Though this analogy does not make the picture clear as what comprise the best painting, but what Sen here wants to point out is that in order to practice justice we have to make comparisons, meaning whether pursuing that method will help make the world a somewhat better place as opposed to that method, unlike the ideal world (as emphasised by Rawls) where this process for comparison has a very limited scope and platform.

Sen in his book, *The Idea of Justice* has emphasized (also being an advocator of Social Choice theory), that we cannot attain justice by making an equal distribution of primary goods or benefiting the least advantage sections by giving them some special privileges, we have to go beyond it as justice cannot be indifferent to the lives that people can actually live.⁴ In an article written way back in 1990, entitled, *Justice: Means versus Freedoms*, Sen articulated a freedom based idea of justice (Sen, 1990, p. 111-121). Making 'capabilities' as the most appropriate method for assessing wellbeing rather than the utility space or Rawls's primary goods, Sen in his 1979, 'Tanner Lectures', and more expansively in his 'Dewey Lectures', argued that capability can provide more appropriate informational basis for justice (Sen, 1985, p. 169-221). Sen agrees that an index of primary goods signifies a vector, which is why it comprises more than income or wealth, but cannot act as a useful tool as it is still directed to serve the general purpose, rather than analysing the individual differentiation. Sen alleges that this is

incorrect because what really reckons is the way in which different people convert income or primary goods into good living, as poverty is dependent upon the different characteristics of people and of the environment in which they actually live (Sen, 2009, p. 66).

However, Sen was also conscious of the fact that, in diversified and multicultural society citizens will definitely have different voices and interests and will have different choices; hence citizens will apparently differ as to which conception of political justice they think most reasonable. Sen here therefore pursues an approach that is based on open impartiality, favouring Adam Smith's 'impartial spectator' rather than Rawls 'veil of ignorance', which he calls 'closed impartiality', as Rawls account considers only members of the given focal group (Sen, 2009, p. 133). What differentiates the Rawlsian method from the Smithian approach is the 'closed' nature of participatory exercise that Rawls invokes by restricting the 'veil of ignorance' to the members of a polity that are being constructed.⁵ Sen on the contrary to Rawls traditional concept of 'primary goods', rebuilds his own capabilities approach as elements of his theory of justice by borrowing from the social choice theory. Sen's while assessing the notion of justice builds its own concept at this time, when he adopted the comparative method (comparing the values and priorities of the people and ranking them after proper scrutiny and public reasoning) in order to make the demands of justice much more possible to achieve. It means that a theory of justice has to be based on partial orderings (through ranking the alternatives based on the connection or commonality of distinct rankings portraying different reasonable positions of justice), that all can endure the scrutiny of public reason seen in any democratic structure. Though Sen also argues that by taking the comparative route while dealing with the cases of justice people will agree on a particular pair wise rankings on how to enhance justice, despite the comparative assessments on the values and priorities of the people involved through discussions and scrutiny remains incomplete (Sen, 2009, p. 31-51).

Perhaps, Sen's notion of justice, which is pluralistic, multi-dimensional and existential because it is an arrangement of various aspects of what can be called variables of justice, in our own view, has given a new direction in the arena of theorizing social justice. Sen is definitely correct to believe that comparisons of

relative justice and injustice should also be a major concern to move from an ideal theory of justice to a workable idea of justice. Yet it is not wholly acceptable that the existing genuine problems seen in various parts of the globe and their going unaddressed will be solved by some general shift – perhaps moving away from the social contract model while perpetuating justice. Moreover, the definition of social justice is still not and settled one and the principles conflicting but the practical aspect of social justice cannot be ignored, as such David Miller has emphasised that the practical relevance is necessary for a theory of social justice which is right and in order to have universal validity (Miller, 1976, p. 20-22).

Revisiting Sen's Notion of Justice:

Sen's ambiguous relationship with liberalism, and calling into question the fundamentally deontological notion of justice that he finds in Rawls and putting forward more of a consequentiality approach (a key feature of utilitarianism) with his comparative approach to justice and assessment of states of affairs in terms of their consequences of people's wellbeing through the method of public scrutiny has created a new road map towards global justice. The key aspect in Sen's account is how we should approach justice is by public reasoning and deliberation. For that reason, he has placed democracy at the heart of his account of justice. For Sen, democracy, in order to deliver justice on ground and create a just society must go beyond the niti (procedural) aspects of ballots and elections to freedom of expression, the right to information, and the practice of public discussion (Subramanian, 2010, p. 33-42). The importance, in this context, of a free media and of parliamentary democracy for the pursuit of justice is supreme. However, he is also aware of the fact that democratic procedures do not ensure just outcomes, and observes that though in the constitution there is place for fundamental rights and protections of minorities, but people are always exploited and discriminated. In his book, *Engaging Freedom*, Dhiren Bhagawati, distinguishes between majoritarian and libertarian democracy and emphasizes how libertarian democracy pursues a narrow and limited scope to individual freedom (Bhagawati, 2009, p. 19-31). He argues that the real democracy is when people gets the opportunity to participate in the life of the community as its equal members and gets the opportunity to express their voice in the formulation of public policy. However, analysis's like

John Dryzek, one of the major thinkers in deliberative democracy, have criticized Sen for a ‘facile treatment of Democracy’, in the sense that it seems institution-free and does not discuss who should participate in discussion, how this process produces outcomes, and so on. According to Dryzek, Sen thinks of deliberation in terms of public reason (singular), and thereby places too much emphasis upon logic and reason in deliberation (Dowding, 2011, p. 83-98). Dryzek points to those who suggest that such an idea of reason diminishes the views of those who find it harder to articulate their viewpoints. Besides, it is also not clear that any agreement where people agree partially through orderings will rank actual social arrangements as more and less just. As such the question again arise that, why should public reasoning, rather than focusing on institutions, on configurations of rights or duties that need to be implemented, will focus on removing manifest cases of injustice. Onora O’Neill believes that, Sen seeks emphasis of these welcoming claims about imperfect as well as perfect obligations, and his argument probably directs further than he explores; as such it rules out drawing any very clear boundary to justice (O’Neill, 2010, p. 384-388).

Perhaps the most debated aspect of Sen’s approach is the difficulty in translating his theory into an operationalised measurement index. As such, how Sen’s capabilities can be transformed into something that is reckonable is still a question not discussed by him (Macpherson, 1973, p. 53-70).⁶ Martha Nussbaum agrees with Sen that the capability approach as a scaffold for examining social justice is far better than the utilitarianism, resource-focused analysis, the social contract tradition, or even some accounts of human rights (Nussbaum, 2003, p. 33-59). At the same time, she argues that to make the capability approach more useful for exploring social justice, Sen needs to take a more definite stand on which capabilities are important in our ethical judgments and our conceptions of justice. According to her, without endorsing such a list, the capability approach cannot offer reliable prescriptions on gender justice (Nussbaum, 2003, p. 39-44). Nussbaum also holds that Sen’s treatment of freedom needs to be more specific. Freedom, she argues, can have both good and bad dimensions and not all freedoms are of equal value. Nussbaum further proposes a list of ten capabilities which according to her are valuable normative guidance, relevant in any aspect, although she also emphasizes that the list could be modified by context.

Critically Analysing Sen's Idea:

Sen's understanding of the notion of justice, has illuminatingly discussed the enormous difficulties of achieving a perfectly just society, but that does not take away the importance of searching and establishing ideal principles of justice. Evaluating Sen's own analogy of comparing between the picture of a Picasso and a van Gogh, he is right that we do not need an ideal theory to adjudicate and present, *Mona Lisa* as the best painting in the world for the purpose of the comparison at hand, but that does not in itself wipe out the importance and position of *Mona Lisa* in this context (Sen, *The Idea of Justice*, 2009, p. 16-17). If for a time being we assume to agree on deciding to set a criteria through which we can evaluate whether *Mona Lisa* is indeed the best painting in the world. The same criteria can also be applied to compare between the paintings of Picasso and a van Gogh? If this is possible, then we can derive and arrive at a conclusion that the transcendental 'theory' of painting is also sufficient for the comparative purpose. Further Sen argues that in contemporary societies due to plurality of values and reasoning, there can be different descriptions of a perfectly just society or even with no agreed description at all. For instance while analysing Sen's notion of justice, considering the question of gender inequality, we will receive different suggestions and results for improving the unequal social position of the women (like, providing reservations for women, abolishing gender hierarchy, restructuring the social institutions etc.), depending on the variety of our evaluation pattern and understanding of the phenomena and also on the social situations on which we are actually standing. Thus in order to solve this complex problem exemplified through the question of improving the status of women, does press us to move to a higher level of abstraction. However, if we do want to move this higher level, the problem will be such, that people would obviously disagree with one another, though might reach an agreement but would be based on options and thus has the chance of rejection. And, importantly, an individual might, through a process of reflective equilibrium, clarify what he/she thinks, as the framework of reasoning that Sen has applied fails to address this problem. Debra Satz while analysing Sen's idea, points out that, when such a situation arise a person can never figure out which ranking to select or which superior position to move, among the various alternative

available for him, without working out his own conception of what ‘perfect justice’ entails (Satz, 2012, p. 280-282). There are times when we need a Mona Lisa to guide our judgments about Picasso and Dali. It can also be argued that an approach focused on ranking the available alternatives through a comparative method is at risk of ignoring unrepresented possible choices (Silveria, 2016, p. 21-22).

However it should also be noticed that Amartya Sen’s criticisms of perfect justice as finding difficulty in figuring out what to do in complex non ideal cases has been the central point of the beginning of Sen’s idea and the departure of Rawls’s theory. However, in *A Theory of Justice*, Rawls does not begin by trying to provide a particular solution for the very intense injustices that motivate Sen (Rawls, 1999). Rather he simply denotes such injustices as wrong. For instance slavery is wrong; likewise extreme poverty and avoidable deprivation is wrong and thus should be removed in order to perpetuate justice. It seems like Rawls never believed that a separate theory of justice should be designed to measure these practices and categorizing it as right and wrong or in Sen’s view just and unjust. Rawls formulates his theory by taking such wrongness, injustices practised in the society as the starting point and later goes on to develop his principles of justice. In this sense Rawlsian theory cannot be discarded only as a theory formulating ideal justice. Thus, Rawls’s ideal theory was never originated to play an extensive independent role in dealing exclusively with these practices, and so Sen’s charge that ideal theories of justice are ‘redundant’ at least in this context, misses the mark (Satz, 2012, p. 281-282).

This takes us to another point of limitation which concerns, Sen’s emphasis on the importance of public discourse and reasoning in scrutinising capabilities. Sen argues that in order for a society to decide on which freedoms and capabilities should be prioritised, there need to have public discussion. Although in principle it is very much useful as it promotes peoples participation beyond cultures thus strengthening democracy. However, the problem lies in how this can be actually translated into action (especially in a country like India), and if it is exercised how effective it will be in giving a voice to the most vulnerable is still a question (Agarwal, Humphries, & Robeyns, 2003, p. 3-12). Besides, Sen’s prescriptions to justice (or a wider range of normative concerns) should also address issues like the differences

between sound and unsound public reasoning in order to function properly (O'Neill, 2010, p. 384-388). Evidently, as public reasoning speaks on behalf of the entire mankind therefore Sen accepts that it needs the support of 'free, energetic and efficient media' (Sen, 2009, p. 337). Yet what is to be done if the media is working contrary to it? Where as in the present scenario it is seen that, media power is driven by partisan agendas, and news are often made and paid for deliberation, under such a situation the so called free press can further corrupt the public discourse and can confuse the public, even if no voices or considerations are excluded. Further, Sen emphasizes the importance of 'unobstructed discussion and scrutiny', but gives limited information on measuring this reasoning to set standards in discussion and scrutiny or about which publicly offered deliberations have normative force (Sen, 2009, p. 386-387).

Moreover, Sen seems to believe too much on the institution of state as a neutral actor, with the propaganda of achieving national interest. The reality at present is that states often seek to realise the interests of the 'dominant social classes'. Consequently, if the most vulnerable are not engaged in the discussion, it is unlikely that their voices will be heard, resulting in the continuation of the status quo. However, while evaluating the history of India it can be concluded that religion is still a very powerful force in the social and individual life of the people. In fact, despite constitution granting women equality and equal right to worship, it is seen that most of the temples in India have strict taboo on women worshipping gods and goddesses. However Amartya Sen's abundant use of Indian literature, history and philosophy as being methodologically consistent with his attempt to formulate a non parochial conception of justice, fails to mention the persistence of problems associated with caste system and untouchability. As caste system being one of the major social problems in India, however, the most alarming feature of Sen's work is its complete silence on the subject of caste-based discrimination in India, and the depleting conditions of the untouchables.⁷⁷ Though Sen's notion of justice based on public reasoning, emphasizing on the social realizations and freedom of the people, should have taken the issue of caste seriously as such socio-political and religious-cultural problems cannot be neglected and overlooked, while taking into consideration the capability aspect of the people. As Neera Chandoke has rightly

argued that communities that have suffered from multiple historical injustices is not because they are economically deprived, but also socially backward, politically insignificant in terms of the politics of 'voice', and so before romanticizing and advocating for a global notion of justice, Sen should focus on such local and direct issues of social justice first (Chandoke, 2015, p. 30-36). The recent democratic uprisings in various parts of the world against terrorist atrocities and fight for their basic human rights is a sign of Sen's rightful assessment of the idea of justice where people are agreed and protesting to remove the injustices from the society which will ultimately enhance global justice. However the problem that has arisen is that (not addressed by Sen), the world in where we live has so much of deprivation of one kind or another (like about 30% of the population of India live below poverty line), can the actual lives of the people be realized? Sen's emphasis on understanding and uplifting the lives of the people and focusing on the fairness of global arrangements, (rejecting the questions like whether poor are getting poorer or rich are getting richer) fails to address a simple question- how to strengthen democratic process at the global level. It is seen that the forces of globalization like the, Multinational Corporations (MNCs) and financial donors, has created new forms of disparities and has widened the gap between rich and poor, while exploiting the deprived sections (Stiglitz, 2005, p. 228-241). Justice has not been ensured to significant sections of population in underdeveloped societies and indeed we found new forms of injustices haunting the plebs. Thus in practice, Sen's understanding of justice and its explicit critic of the Rawlsian theory, limiting it to nation states and his emphasis on public reasoning that should accommodate voices from different societies and cultures puts justice within the domain of the liberal marketplace of ideas now vehemently spread through internet and the other social networking mediums, and hence does not go beyond the structure of liberalism.

Conclusion:

It is and should be the objective of each and every justice oriented theory to move towards a world of shared responsibilities and shared benefits of a 'fair globalization', and to an ethics of 'global justice', and it is only possible, by actually serving the interests of all of the world's people specially the marginalised and deprived ones. The paper recognizes the fact the though Sen admits the importance

of Rawls's approach, its influence not only in his work but also on the later philosophers and the proximities between both the paradigms of justice, however cannot disregard the theoretical dissonances and its importance in political philosophy. Formulating an alternative approach to justice, differentiating it from the traditional notions, Sen's idea of justice has been heralded as a theory of justice 'for an imperfect world', as 'dedicated to the reduction of injustices on earth practically rather than to the creation of ideally just castles in the air' (Osmani, 2010, p. 599-607). But despite the dual ambition of practically implementing political philosophy to the actual lives of the people, with the intention of limiting the gap between the institutions and people's realisation through the instrument of public reasoning and of centering justice to the heart of development thinking, Sen's notion of justice however, in practice does not do much in the real world, beyond generic references to famines, gender injustice or malnutrition. Besides, the state in this current era of globalization has abandoned its distributive functions and has transferred its power to the capitalists, making social justice dismal, despite legislating welfare laws and adjudicating measures to deliver social justice. In this changed world, the concept of social justice at a new dimension needs to be explored. The question therefore, is how to formulate the principles of social justice. Even after 70 years of getting independence, are the provisions of Indian constitution appropriate and able to create the ladder of equity and deliver social justice? In fact the caste system is getting itself adopted with new changing society. The problem for us is now to find out whether the new world has forced to renourish and redefine Sen's notion of social justice in order to make it practically more feasible.

Endnotes:

¹Rawls main concern were social and economic inequalities and he tries to deal with them by looking at the firmest convictions about basic rights and liberties, the fair value of the political liberties as well as fair equality of opportunity.

²Amartya Sen argues that the various theoretical arguments advanced by libertarians, utilitarians, egalitarians and the like have real significance in the sense that they contribute to our understanding of justice.

³One of the many pleasures of *The Idea of Justice* is Sen's vast analysis of India's culture and literature, which helps him to emphasise and formulate the public reasoning aspect of justice seen in many societies across the nation.

⁴It should be noted that social choice theory should not be confused with rational choice theory, as the latter defines rationality as the pursuit of self-interest. However, Sen assumes that fairness involves a reasonable concern for the interests of others and his depiction of social choice theory reflects this thinking.

⁵The impartial spectator approach that Sen applies, does not seek unanimity. It may not even reach an agreement that is clearly just. Perhaps, it will yield an outcome that is plausibly just or at least not manifestly unjust.

⁶According to Macpherson any democratic theory must treat and measure an individual power in terms of (quantity) developing his capacities and measuring hindrances in using his capacities, that is impediments to the maximum attainable in principle at any given level of social productivity and knowledge (1973, p. 70).

⁷Surprisingly, Sen's major works such as *Development as Freedom* or even *Inequality Re-examined*, also fails to mention the genuine and common problems associated with untouchability and the chronic poverty of that sizable community.

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