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**JUSTICE – AN URGENT NEED FOR A BROADER  
PERSPECTIVE**

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**ABSTRACT**

*In modern times a discussion on justice has narrowed down to a discussion on the desired attributes of a social order. This has resulted into understanding justice as a legitimate demand of the citizens from their governments. In such discourse on justice the necessary conditions for justice to be realized are often ignored. It is ignored that the demands of citizens from their governments, whatever they might be, cannot be met in the absence of a certain type of moral personality they should bear for their demands to be met. Justice as a quality of social order is not possible without a culture of justice in the personality of its citizens. Therefore, a discussion on justice need to focus not only on the desired attributes of the social order and legitimate expectations of its citizens from their government, but also the desired traits of its citizens' moral personality and their legitimate expectations from each other. And that is what this paper attempts to show.*

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## I. INTRODUCTION

Describing the complexity of the question of ‘justice’, Prof Hans Kelsen wrote: “*No other question has been discussed so passionately; no other question has caused so much precious blood and so many bitter tears to be shed; no other question has been the object of so much intensive thinking by the most illustrious thinkers from Plato to Kant; and yet, this question is today as unanswered as it ever was*”.<sup>1</sup> “*This is one of those questions to which man cannot find definitive answer, but can only try to improve the question.*”<sup>2</sup> One such improvement in asking the question of justice in modern times is that now we have some consensus on what we are expecting in a discussion when we are discussing ‘justice’; some boundaries are drawn in this discussion and we now know when the discussion transgresses those boundaries. What may appropriately be considered a discussion on justice is more or less settled in modern times. Such improvement in asking the question of ‘justice’ does not help us in understanding clearly the answer to the question of justice, but it helps in narrowing down the question to a large extent, and that is no small achievement. Justice is now accepted as a quality of social order.<sup>3</sup> In modern times it is a common ground that while thinking about justice, our attention should be focused primarily on how the society is organized.<sup>4</sup> Interpersonal behaviour is supposed to be just if it is in conformity with a just social order.<sup>5</sup> A question of justice, therefore, is a question about what is a just

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<sup>1</sup> Hans Kelsen, *What is Justice?* (University of California Press, 1960) 1.

<sup>2</sup> *ibid.*

<sup>3</sup> *ibid.*

<sup>4</sup> Michael J Sandel, *Justice: What's the Right Thing to Do?* (Penguin Books, 2009) 6.

<sup>5</sup> Hans (n 1) 2.

social order; our actions aligned with the demands of a just social order being pre-supposed to be just.

This narrowed down and extremely specific transformation of the question of ‘justice’ has encouraged scholars to debate on the qualities that should be present in a social order for it to be considered as a just social order. Should social order be such that it aims at maximizing the aggregate happiness of the citizens,<sup>6</sup> or should it be such that it aims at maximizing the freedoms of the citizens?<sup>7</sup> Should social order be such that it aims to eliminate arbitrariness in interfering with the life, liberty and property of people by establishing a certain structure of governance,<sup>8</sup> or should it be such that it proactively try to eliminate the differences (especially in wealth and income) among people and make them equal? Should natural inequality be celebrated or despised?<sup>9</sup> The boundaries of the debate on justice have become so clear and fixed for all the participants that even sceptics have not dared to suggest any new field to fight the battle on.<sup>10</sup>

Such unwavering focus on the attributes of the social order in debating on the question of justice has resulted in a tendency of making a list of demands that the order must satisfy or else be prepared to be condemned as unjust. But who is to blame for an unjust social order? Social order is a state of affairs; it is not a person. In actual practice, most of the

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<sup>6</sup> See generally, Jeremy Bentham, *Introduction to the Principles of Morals and Legislation* (Oxford University Press, 1996).

<sup>7</sup> See generally, Robert Nozick, *Anarchy, State, and Utopia* (Basic Books, 1974).

<sup>8</sup> See generally, John Locke, *Second Treatise of Government* (Watchmaker Publishing, 1921).

<sup>9</sup> See generally, John Rawls, *A Theory of Justice* (Harvard University Press, 1971).

<sup>10</sup> See generally, Amartya Sen, *The Idea of Justice* (Allen Lane an imprint of Penguin Books, 2009).

governments in contemporary times might not have actually ‘established’ social order in their society but they are supposed to bear the responsibility to manage the social order. In some cases, they can even make very profound changes in the existing social order and they may be rightly held accountable for the existing shape of the social order. In any case, the demands which the social order should satisfy, because of the focus on social order while discussing justice, become demands that the governments should satisfy. Governments are condemned as unjust when certain demands are not satisfied. What demands shall be raised in the name of justice depend on the claimant’s conception of a ‘just order’. From a certain point of view of justice, it may be a demand for unqualified liberty; from another point of view, it may be for unqualified equality. Sometimes it may be for certain changes in the existing structure of governance and sometimes it may be for status quo. Sometimes it may be for the protection of human rights of criminals and sometimes it may be for the promotion of general safety and security of citizens. From one or the other point of view of justice, all demands may be argued as just and well-meaning demands; and, if not met the social order, and therefore governments, may be labelled as unjust.

In such a narrowed down discussion on justice two very crucial issues are thrown out of focus. *First* is that while we are arguing in favour of a certain conception of justice, we are actually saying that that conception of justice is very appealing for a certain reason. That reason for appeal maybe some moral reason or even an intuitive reason. What we forget in the discussion is that the reason that makes a certain conception of justice

appealing to us cannot be the reason for the success of that concept of justice when adopted in actual practice. No matter how appealing a certain model of justice might be, there is no guarantee that it will work when applied in any given society. This is because the reasons for the appeal of a model of justice and the reasons for the success of that model after its implementation are always very different. This very crucial point is often not properly grasped when any given social order, and thereby any government, is labelled as unjust. Many countries have experimented with various models, resulting in little to no success.

The second issue that is lost sight of is that a claim for a just social order is not only a 'claim' on governments to function in a certain manner, but also a claim on each other to maintain our interpersonal relations in conformity with certain standards of behaviour irrespective and independent of the social order. A discussion on justice is not only about how the governments should function, but also about what 'responsibility' the citizens bear in a given society. A social order does not become just independent of the behaviour of the citizens who are desirous of it to be just. Saying that a citizen's conduct is automatically just if it is in conformity with a just social order is demanding nothing from the citizens while expecting everything from the social order or governments. A just social order is an outcome of certain behaviour of its constituent citizens. This point is also not well grasped when social orders, and thereby governments, are evaluated on any standard of justice.

Both these issues which are generally ignored in a discussion on justice are to some extent interrelated, for the success or failure of any

model of justice may be linked with how the citizens behave in a given society. In other words, why a social order or a government appears to be just or unjust on any parameter of justice may have something to do with what standard of behaviour its citizens maintain irrespective of the demands of the model of justice adopted in that society.

The aim of this paper is to bring the focus back on these two issues. I will attempt to highlight that the reasons for appeal of a model of justice are different from the reasons of its success. I will try to show that an otherwise very appealing model of justice once adopted may remain unsuccessful if certain conditions are not satisfied. I will also try to show that the blame for an unjust order needs to be shared by its citizens. The model of justice that I will discuss for reference is Prof John Rawls' model of justice - *Justice as Fairness*. I am choosing this model for five reasons. *First*, that it is universally accepted as a very appealing model. *Second*, that social order established in many welfare states approximate to this model. *Third*, that it is a model that advocates for liberty as the primary virtue for full development of moral powers of citizens. *Fourth*, that Rawls himself while advocating for this model succinctly discussed the moral appeal behind it and the conditions for its success. *Fifth*, that the reasons for success that are elaborated in this model may, to a large extent, be the reasons of success for even a different model that may not be advocating for liberty as the primary virtue for the full development of moral powers of citizens.

## **II. THE APPEAL OF JUSTICE AS FAIRNESS**

Without a doubt, Rawls' idea of *Justice as Fairness* occupies a place of pride among the theories of justice. It is hailed as the most cogent

analysis of justice ever done. *Justice as Fairness* gets maximum attention when academics and other scholars discuss the question of political justice. Such attention is rightly given to this theory of justice not only because of its attention to details but also because of its starting premises that though nature is neither just nor unjust, political justice is about addressing and dealing with natural inequalities. The state cannot be a neutral spectator to the unequal outcomes in terms of income and wealth springing out of unequal initial positions of skill, power, position, opportunities, motivations, etc. Rawlsian theory does not advocate undoing the work of nature by making everyone equal. It advocates for establishing a political setup in which, after satisfying the principles of justice, the residue inequalities may be considered as just inequalities. That within any given society someone is successful and rich in life and someone else is unsuccessful and poor in life may be a just state of affairs provided that society is organized in a certain manner and sufficient conditions for equal participation in the society are created. The model of justice presented by Rawls also focuses only on the narrowed down question of justice, i.e., what is a just social order?

Rawls' *Justice as Fairness* demands that the basic structure of the society should be so organized that:<sup>11</sup>

1. *Each person has the same infeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and*

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<sup>11</sup> John Rawls, *Justice as Fairness – A Restatement* (Universal Law Publishing, Indian Reprint, 2004) 42.

2. *Social and economic inequalities are to satisfy two conditions:*
  - a. *They are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and*
  - b. *They are to be to the greatest benefit of the least-advantaged members of society (the difference principle).*

This model of justice appeals to us for multiple reasons. The first and the most obvious reason is the manner in which these principles of justice are arrived at. Rawls has given us very tempting reasons for why, in the first place, these principles should be accepted as the principles of justice. In arriving at these principles as the principles of justice, he avoids the route of slavery of mankind in the world of senses, a route followed by the great champion of utility - Jeremy Bentham;<sup>12</sup> he also avoids the route of freedom of self in the metaphysical world outside the sensible realm, a route followed by the great champion of the moral law - Immanuel Kant.<sup>13</sup> Choosing the principles of justice in an unfree condition, as done by Bentham, strip off the moral appeal from such principles. How can we project any principle as having any moral foundation if the principle springs from an unfree nature of mankind? A social order organized on the basis of such principle(s), therefore, cannot have any moral foundation. Such social order will only reinforce the unfree nature of mankind and cannot be considered just. Man is much more than a pleasure-seeking entity, and to establish a social order in such a manner that conducive conditions are not

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<sup>12</sup> Jeremy Bentham, *Introduction to the Principles of Morals and Legislation* (Universal Law Publishing Co Pvt Ltd, 2006) 1.

<sup>13</sup> Immanuel Kant, *Groundwork of Metaphysics of Morals* (HJ Paton tr, Harper Perennial Modern Thought Edition 2009) 119-120.

secured for him to realize his higher self, higher than merely satisfying his senses, is the route best avoided. But a social order can also not be established on the foundation of the principles that appear to be mere speculations in a metaphysical world, as done by Kant, howsoever morally appealing they might be. Such social order will fail on empirical scrutiny and will have no defence against the objections of subjectivity. Man cannot be viewed as free and equal only in a metaphysical world. Freedom and equality while choosing the principles of justice have to be much more demonstrable. The organizing principles for establishing the social order arising from unrealistic freedom and equality in the metaphysical world should also be avoided.

The appeal of Rawls' principles of justice is the manner in which they are chosen. While choosing the principles of justice he acknowledges that man is unfree and the principles of justice, once chosen, will be the foundational principles for organizing an unfree society. Even more importantly he accepts that man is not just unfree, he is also unequal. This is unlike Bentham's approach where every man is equally unfree and therefore everyone is equal in that sense.

Rawls approaches the unfree situation of man not in the sense that he is a slave of his sovereign masters – pleasure and pain – but in the sense that he has no control over the conditions in which he is born and also no control over the native endowments that he is born with. Since everyone is born with different native endowments and in different conditions, everyone is unequal to another. In this sense, everyone is unfree and also unequal. But, unlike Bentham, he does not resign to such unfree and

unequal condition in choosing the principles of justice. He makes an effort to choose the principles of justice in such a manner that something is done about it. His thought experiment of original position is an attempt to arrive at a non-metaphysical and to some extent realistic, even if not empirically demonstrable, state of equality from where the principle should be chosen. While choosing the principles of justice, an objective awareness of unfree and unequal conditions that exist in the society for which the principles of justice need to be chosen without resigning to those conditions sets his method apart from pure utility (and therefore surrender) of Bentham and pure metaphysics (and therefore mere speculations) of Kant,<sup>14</sup> and that makes his principles of justice appealing to us.

Another reason that makes Rawls' model appealing to us is that it is a political, not a general, conception of justice.<sup>15</sup> But, despite being a political conception of justice its claim of universality is different from the claims usually made in a conception of justice. Though it is claiming to have universality in the sense that all the political societies may arrive at the same principles of justice provided the same method of discovering them are adopted, it is not making any claim that within any given political society these principles should be universally applied. *Justice as Fairness* focuses on the basic structure of the society as its primary subject. The political constitution with an independent judiciary, the legally recognized forms of property, and the structure of the economy, as well as the family in some

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<sup>14</sup> Michael J Sandel, *Liberalism and The Limits of Justice* (2<sup>nd</sup> edn, Cambridge University Press 1998) 24 - "It is the original position that 'enables us to envisage our objective from afar', but not so far as to land us in the realm of transcendence".

<sup>15</sup> Rawls (n 11) 11.

form belong to the basic structure.<sup>16</sup> The manner in which these institutions fit together into one system of cooperation is the concern of *Justice as Fairness*. Rawls' model of justice leaves adequate scope for applying different principles of justice at the local level.<sup>17</sup> Labour unions, firms, universities, families, co-operative societies, NGOs and many other institutions flourish within the basic structure of the society each requiring a unique set of principles of justice for its regulation.

Rawls does not make any claim that the principles of justice appropriate for the basic structure should also be considered appropriate for the institutions operating within the basic structure. Since each institution within the society can have an independent existence generally constrained by the basic structure of the society, each one of them may be governed by a unique set of principles of justice generally constrained by the principles of justice applied to the basic structure of the society. This flexibility allows the institutions to progress and modulate as per the need of the time, yet never violating the fundamental parameters of justice that regulates the basic structure. For example, how much public-private partnership is required for the economic growth of the nation, or how much privatization of the businesses is required for the best economic output may vary from time to time and therefore be subjected to different standards of justice from time to time; but at no point of time equal access to the business opportunities should be denied because that is a principle

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<sup>16</sup> *ibid* 10.

<sup>17</sup> *ibid* 11.

applied at the basic structure of the society. This cautious approach in *Justice as Fairness* makes it unique and appealing.

Applying the principles of justice to the basic structure of the society and leaving sufficient flexibility at the local level makes the idea of *Justice as Fairness* a background procedural justice. Together with its main goal of ‘distribution’ rather than ‘allocation’, the effort to maintain background procedural justice presents a very realistic picture of how people living in association with each other actually experience life. Human beings in a society associate with each other to produce resources, opportunities, commodities, wealth, etc. Participation in such cooperative production is at varying levels with varying degrees of involvement, commitment and efforts. The needs, desires and preferences of the participants also differ from one another. When it comes to claiming a share in the resources, opportunities, commodities and wealth, *Justice as Fairness* takes into account the involvement, commitment and effort as the criteria rather than the need, desire and preference of the participants. However, the involvement, commitment and efforts of the participants is conditioned by various non-voluntary reasons for which background procedural justice provides a solution. The social class in which a person is born and develops before the age of reason, the native endowments of a person, the opportunities to develop his native endowments, and good or bad luck of a person, are some of the reasons that may affect his involvement, commitment and effort in the production process that goes on in the society. Background procedural justice makes the prospects of an individual’s complete life fairer by reducing the impact of non-voluntary

reasons in his participation in the process of production and in turn in his staking a claim on a share of the produce.

When considered realistically, it is not enough that there is a just distribution, even on the basis of distributive principle rather than allocative principle, only at the initial stage because the circumstances faced by people over a complete life may not remain static. Different people go through different phases in their life. In some cases, life circumstances at the time of birth may be very favourable but may change overtime to become very unfavourable. In some cases, it may be the reverse. Such reversal in life circumstances affects their involvement, commitment and effort in the production. Applying the principles of justice to the basic structure and making it a background procedural justice is an effort to understand that justice is not only about initial just distribution, but also about continued fairness in distribution over the complete lifespan of citizens. The agreements that citizens enter upon and the share that they get in the produce over their complete lifespan are just if those agreements and distributions are done within the constraints of background procedural justice. Such realistic and humane approach of addressing the inequalities over a complete lifespan makes Rawls' model very appealing.

While addressing inequalities, the aim of *Justice as Fairness* is not to establish 'formal' equality. It attempts to establish 'fair' equality. When it comes to offices and positions in the society, *Justice as Fairness* demands that they should be open to all under the conditions of fair equality of opportunity. Fair equality of opportunity is that pre-condition of competition for the offices and positions where people who are similarly

gifted, similarly motivated and making similar level of effort should have a similar chance of success in attaining those positions and offices. In contrast, formal equality of opportunity is that condition of competition where no one is excluded from competition but competitors for offices and positions do not have similar chances of success in attaining them even if they are similarly talented, motivated and hard-working. Without empowering the citizens and enabling them to compete at a level playing field, the equality is only 'formal' and not 'fair'. If people do have enough training opportunities for the competition, or if offices and positions are concentrated only at very few places in the society where only some people can have access, people will not have similar chances of attaining the offices and positions even if they are similarly talented, motivated and hard-working, and even if no one is prevented from participation in the competition. That will be only a 'formal' equality of opportunity and not 'fair' equality of opportunity.

In a free-market system, the long-term trend of wealth concentration is the primary reason that adversely affects equality. In a free-market economy, long-term trend of wealth concentration leads to an uneven development of various sectors in the society. When it comes to enabling people to compete with each other for offices and positions, one such sector becomes very crucial, and that is education sector. Due to wealth concentration in the society, some pockets in the society tend to exhibit far better development in quality of education available there, compared to many other pockets in the same society. Though nobody may be denied access to education the availability of good quality education for

all may not be a reality in free-market economy. Also, wealth concentration may result in political domination. Attainment of political positions may not remain a realistic possibility for poor and economically deprived classes. *Justice as Fairness* ensures that market forces are so regulated that if not long-term trend of wealth concentration, at least its accompanying vices of affecting political offices and equal distribution of opportunities in the society are neutralized. It also advocates for establishing equal opportunities of education for all irrespective of initial birth condition. Advocacy for free market economy with a mechanism to avoid the vices of wealth concentration is yet another reason to prefer Rawls' model of justice.

Once fair equality of opportunity is established, *Justice as Fairness* goes one step further and allows for social and economic inequalities if they are for the greatest benefit for the least-advantaged members in the society.<sup>18</sup> Yet another charm of Rawls' model of justice in this 'difference principle' is that the identification of least advantaged members of society is to be done solely on the basis of their income and wealth.<sup>19</sup> Assuming that historically, inequalities have arisen due to gender, colour of the skin, race, caste, ethnicity or a combination of these or similar factors, and now after the application of 'equal basic liberties' principle and 'fair equality of opportunities' principle such factors may not be independently operating for creating inequalities in the society, the only independent variable for creating inequality shall be income and wealth.

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<sup>18</sup> *ibid* 42.

<sup>19</sup> *ibid* 59.

Other reasons for inequalities like gender, caste, colour of skin, etc. may overlap with income and wealth but shall not independently operate. It may so happen that people with lower income and wealth ‘also’ are usually women or are born with a certain colour of skin, but that may only be a tendency for such features to characterize who are less well-off in income and wealth after the ‘equal basic liberties’ and ‘fair equality of opportunity’ is ensured. The crucial question is: should such inequalities in income and wealth be considered as ‘just’ inequalities? Or, should some further correction be done? This is a very crucial point because it brings our attention to the main reason behind the entire exercise of identifying the principles of justice.

Establishing a just social order is not only about neutralizing the historical and non-voluntary factors that create inequalities in the society, but also about recognizing the dynamic nature of life circumstances and creating such background conditions in which everyone has a chance to realize his full potential no matter where he is placed at the moment. It is important to realize that there cannot be a static just condition. For example, one section of the society may need some extra support at one point in time but after some time they may not need that support because they may have gained enough ground, and now continued support to them may result in pushing some other section of the society on a downward slope. A correction will then be required, and support may require to be extended to some other section of the society. Identifying the least advantaged section on the basis of income and wealth brings the kind of dynamism that is required in a just social order. Other factors like sex,

colour of the skin, caste, etc., remain unaltered with a person for his entire life span, but income and wealth is a fluctuating factor. Any support on the basis of static factors will be a continued support even after the beneficiary becomes an equal participant in the society and no longer needs the support.

In Rawls' model at any given point of time, a person's capacity for equal participation in the society is directly correlated with his income and wealth at that point of time because it is his income and wealth that determine his prospects of accessing primary goods.<sup>20</sup> Income and wealth being a non-static factor, people may gain or lose their capacity to fully exploit the basic liberties to their advantage at different stages of their life. A just social order should be sensitive to this changing capacity of people. Who has gained the capacity to equally participate in the society and who has lost the capacity to equally participate in the society should not be a settled question. A just social order should always be searching for the section of the society that needs support at the present moment because it has lost, or it is losing, the capacity to remain equal with others. If the social order is so arranged that the schemes of cooperation are chosen in such a manner that the preferred scheme is enhancing the chances of access to

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<sup>20</sup> *ibid* 58-59:

Five things are identified as primary goods, (i) The basic rights and liberties: freedom of thought and liberty of conscience, and the rest; (ii) Freedom of movement and free choice of occupation, against a background of diverse opportunities; (iii) Powers and prerogatives of offices and positions of authority and responsibility; (iv) Income and wealth, understood as all-purpose means (having an exchange value) generally needed to achieve a wide range of ends whatever they may be; and (v) The social basis of self-respect, understood as those aspects of basis of institutions normally essential if citizens are to have a lively sense of their worth as persons and to be able to advance their ends with self-confidence.

primary goods, and thereby being equal with others for those who have the least chances at the present moment in time, then it establishes a dynamic equality. In such an order the lowest in the order will always be pulled up, and who is the lowest is not determined for all times to come. The result is that the social order will continually be searching a new lowest in the order which needs support at that time. Empowerment schemes will not be extending benefits to only a permanently identified group. *Justice as Fairness*, in its difference principle, allows this dynamism by continually identifying the section of the society that needs support at the present moment and by adjusting the social and economic inequalities in such a manner that they work out for the greatest advantage for such section. Advocating for justice as equality in such dynamic sense makes *Justice as Fairness* even more appealing to us.

However, neither it is an equality in the initial participation in the process of production of social resources and wealth, nor it is an equality in the final distribution of the outcome of the production. *Justice as Fairness* guarantees an equality of a very different kind. It ensures equality in providing conducive political and social conditions, essential for developing their moral powers, to all citizens. Therefore, *Justice as Fairness* mandates a lexical priority in applying the principles of justice. The first virtue of a just social order from this point of view is that it ensures equal basic liberties. Freedom of thought, liberty of conscience and freedom of association, etc., allow people to develop and exercise their moral power in judging the justness of the basic structure of the society and in forming, revising and rationally pursuing their conception of the good. Such version of equality

where liberty is the core value for the sake of developing the moral powers of people is a unique vision. People should not only be free to choose their calling, but they should also be free to judge the justness of the basic structure of the society. Such freedom is not possible in a social order where such moral powers of people cannot be fully developed or exercised. A model of justice that ‘empowers’ people to develop and exercise their moral powers to pursue their conception of good and to evaluate the justness of the basic structure of the social order at the same time is without doubt bound to be appealing to one and all.

Rawls’ model of *Justice as Fairness* uncovers the basis of a possible moral agreement among the citizens who are differently situated in life and who are pursuing different and sometimes conflicting conceptions of the good. Despite allowing enough scope to pursue their unique lives in their private sphere this model of justice encourages citizens to look beyond their individual self and grasp the larger picture of a society that they inhabit – a society which has a history and a future. This model of justice very successfully attempts to calm our frustration and rage against our society and its history by showing us the way in which its institutions, when organized according to the proposed principles, may work out to be just for everyone.

To sum up, the appeal of *Justice as Fairness* lies in these unique features of this model – it is derived from an objective awareness of unfree and unequal conditions of human beings without resigning to such conditions; it makes a limited claim of universality; it focuses on distribution and not on allocation; it advocates for fair and not just formal equality; it

attempts to extend help to the least advantaged by identifying them on the basis of a dynamic factor of income and wealth; it empowers people to develop and exercise their moral powers; it uncovers the basis of moral agreements among the citizens; and, it calms our nerves by showing a possibility of a just social order. But, all these features, that make this model very unique and appealing to us, even collectively are not sufficient to ensure the success of this model. Success of a model of justice is another story. The success of *Justice as Fairness*.

A model of justice, despite all its attractiveness, requires favourable conditions for its success.<sup>21</sup> Conditions that are supposed to be favourable for the success of *Justice as Fairness* involve a certain kind of moral personality that the citizens of a political society are expected to carry. As noted in the previous section of this paper, Rawls' idea of *Justice as Fairness* envisions that a just social order is the one which 'empowers' people to develop and exercise their moral powers to pursue their conception of good and to evaluate the justness of the basic structure of the social order. But for the success of this model what is first needed is that the social order is arranged in accordance with the principles of justice and the moral powers of its citizens which it aims to strengthen work in a symbiotic relationship. The social order should strengthen the moral powers of its citizens and the moral powers of the citizens should in turn strengthen the justness of the social order. This is the first requirement for the success of this model of justice, and this needs some further explanation.

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<sup>21</sup> *ibid* 13.

Citizens of a social order, in this conception of justice, are imagined having a personality such that all of them have sufficient moral powers necessary to engage in social cooperation over a complete life and to take part in society as equal citizens. They are supposed to have two such moral powers, namely: (i) capacity for a sense of justice, and (ii) capacity for a conception of the good.<sup>22</sup>

Capacity for a sense of justice is their capacity to understand, apply and act from (and not merely in accordance with) the principles of political justice. Capacity for a conception of good is their capacity to have, to revise, and to rationally pursue a conception of the good. A conception of good is a citizen's personal aim in life - the final end toward which he works. As seen in the previous section, a just social order should ensure access to basic goods which help an individual in forming and realizing his conception of good. With enough freedoms and empowerment measures secured in the basic structure of the social order one may form his conception of good, he may also revise his conception of good as many times as he wants.

Our conceptions of good is, however, shaped by various religious and philosophical and moral views that we hold. Because our religious and philosophical and moral views differ with each other, our conceptions of good conflict with the conception of good of our fellow citizens. A just social order cannot be established on any one conception of good. For the success of *Justice as Fairness*, the moral power to form and revise our conception of good should not be understood to allow us to impose our

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<sup>22</sup> *ibid* 18-19.

conception of good over others. Citizen's moral power of having the sense of justice should be prevailing over their moral power to form their conception of good. The citizens are expected to understand, to apply, and to act from the principles of political justice. It is expected that citizens act from the principles of political justice not *because* they feel a need to compromise and strike a balance between their different conceptions of good, but *in spite of* and *independent of* their conception of good. Their moral power to act from the principles of justice should have an independent existence (independent of their moral power to form a conception of good) in their moral personality. They need to understand that the constitution and its political values as realized in their institutions must be affirmed by their actions.<sup>23</sup> Only then their individual conceptions of good can be realized. This establishes a symbiotic relationship between the social order and the moral powers of the citizens. They get strength from each other. First requirement for the success of *Justice as Fairness*, therefore, is that citizens should so act that a symbiotic relationship is established between their moral powers and the social order.

*Justice as Fairness* recognizes that most serious conflicts are the conflicts within ourselves. Our judgments on various issues are not consistent with each other. If we do a close examination of our judgments on various issues, we may discover that on many occasions our stance in one issue is principally in conflict with our stance in a different issue. We suffer from internal inconsistency. This happens because we refuse to consider the counter arguments. We tend to stick to the first view that we

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<sup>23</sup> *ibid* 20.

have formed on any issue and try to justify that view in a dogmatic manner no matter how persuasive the counter arguments might be. This is the defect of 'narrow reflective equilibrium'. This leads to an internal inconsistency which in turn extrapolates in the form of a clash of our judgments with the judgments of others.

If the citizens form their opinion about justice on a narrow reflective equilibrium there shall never be a consensus in the society on what is just. What is required is that after forming an opinion people should reconsider and make many changes in their first opinion. This wide-ranging reflection and, therefore, a 'wide reflective equilibrium' is necessary to develop a general consensus on how the members of the society shall justify their actions to each other.<sup>24</sup> Without such wide reflective equilibrium Rawls' model of justice cannot have the foundation of equality among citizens as moral persons capable of forming and pursuing their conception of good. A dogmatic adherence to one's views undermines the idea of freedom and equality. Free and equal persons should be able to reach at the consensus on the terms which are accepted as just and on which they should be able to cooperate with each other. They should be able to create common reference points for the justification of their conflicting opinions.

A just social order cannot be established where the citizens consider justice only from their narrow reflections and refuse to accommodate the reflections of others. Citizens need to treat each other as equal moral persons. A model of justice has to be a publicly justifiable model, which is

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<sup>24</sup> *ibid* 29-32.

not possible without internal consistency in its citizens and social cooperation with mutual respect among its citizens. But, even more importantly, the demand for *Justice as Fairness* is that cooperation should not be a result of any coercive political authority exercised over people.<sup>25</sup> This cooperation should be there in the society even without the exercise of any coercive political authority. Without anyone coercing them, citizens should align their views and make them internally consistent, and they should also align their views with the views of fellow citizens. That the citizens have such capacity for reason that *without any coercive political authority* they are able to make their judgements consistent both within themselves and also with the considered judgments of others, thereby creating common reference points (whatever they might be) for evaluating their divergent views is the second requirement for the success of *Justice as Fairness*.

For distributive justice, a society is viewed as a fair system of cooperation over time from one generation to the next.<sup>26</sup> A fair system of cooperation is more than merely coordinated activities. Activities may be coordinated by coercive orders. For example, drivers of vehicles may be asked to drive on the left side of the road by some authority which has coercive power over all the drivers. When everyone drives on the left side of the road, the activity of the drivers is coordinated. But this may not be cooperation among the drivers. An inter-generational fair system of cooperation, in contrast with merely coordinated activities, require mutuality and reciprocity. Every generation inherits something from the

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<sup>25</sup> *ibid* 50.

<sup>26</sup> *ibid* 58-59.

previous generations and passes on something to the next generations. Citizens of a just social order have to be sensitive to this inter-generational relationship. The production and distribution of wealth, resources and opportunities in a society is required to be viewed as an ongoing process taking place from generation to generation. That the citizens are able to understand their position in this inter-generational process, and that they are ready to cooperate in the process of inter-generational production and distribution is the third demand for the success of *Justice as Fairness*.

When it comes to justice our expectations are often in conflict with our character. We demand a lot from the social order, but we are not ready to contribute to its maintenance. We highlight the injustices done to us, but silently sweep under the carpet our own acts of injustice. The fourth precondition for the success of *Justice as Fairness* is that the citizens should act reasonably. For the success of a just social order, it is expected that citizens act reasonably and not merely rationally. It might be rational for a person to protect his personal interest, but it might not always be reasonable to do so. Reasonable persons protect their personal interest only when it is also the right thing to do. They act on non-utilitarian reasoning.<sup>27</sup> Reasonable persons honour commitments even at the expense of their own interests; rational persons merely pretend or propose to honour commitments but are ready to violate them when it advances their personal interest. Rational persons demand the protection of their rights from the top of their voice but conveniently ignore their duties. Reasonable persons are ready to share

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<sup>27</sup> Think of Kant's Categorical Imperative - 'Universalize Your Maxim' - as a non-utilitarian reason to choose your actions, always asking - 'am I prioritizing my interest over that of others?'

the burden of sustaining a just social order. They give importance to the duties of citizens as much as they give to the rights of citizens. *Justice as Fairness* cannot succeed if citizens are merely rational, and not reasonable.

*Justice as Fairness* can succeed only when citizens successfully overcome their tendencies of envy, spite, and a will to dominate others; when they are ready to reaffirm and strengthen the social order even to the detriment of their personal interests; when they are ready to revise their comprehensive religious, moral and political views; when they envision themselves as a part of inter-generational arrangement in which cooperative production and distribution need to be done. The success of *Justice as Fairness* is possible only when the citizens include the good of political society in their conception of good for themselves.<sup>28</sup> Only when the citizens have a capacity and will to give justice to each other despite their different comprehensive moral views about life, and this they are willing and able to do without any compulsion, force or coercion, can *Justice as Fairness* succeed. In other words, the success of *Justice as Fairness* is possible only when the citizens of the society have a certain kind of moral personality.

There should be no doubt that, at least from the contractarian point of view, the social order emerges from the moral personality of the citizens. Subsequently, it is maintained for further strengthening that personality. It should be clear that the *appeal* of *Justice as Fairness* lies in that it proposes a scheme in which the citizens are guaranteed sufficiently favourable conditions to develop their moral powers, but its *success* depends on how

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<sup>28</sup> *ibid* (n 11) 202.

citizens actually put to use those powers – and that is their moral personality which they already have. And they are two very different things. It demands its success that *first*, citizens already have in their personality justice as the primary virtue, and *second*, they participate in the social order in such a manner that their sense of justice is further strengthened. Therefore, the onus is on citizens when it comes to making justice a reality. No matter how appealing a model of justice they adopt in their constitution and how they organize their social and political institutions, citizens cannot dream of a just social order without first imbibing a culture of justice in their individual personalities.

### **III. CONCLUSION**

The narrowed down discussion on justice in modern times asking only the question – ‘what is a just social order’ – and claiming that ‘the conduct of citizens is just if it is in conformity with a just social order’ is losing sight of the fact that the social order itself emerges from the moral personality of its constituent citizens, and it is their moral personality that is chiefly responsible for justness or unjustness in the social order. This narrow approach toward justice focuses entirely on what the social order provides for the citizens, and completely throws out of focus what citizens need to bring to the table. It encourages us to understand justice as a relationship between citizens and their governments in which the role of the governments is to protect rights of the citizens and citizens are always justified in claiming rights. From this viewpoint, just governments are the ones which protect more and more rights. So much so that the

governments are expected to be tolerant toward anti-democratic claims of the citizens. This is the slippery slope where justice can never be realized.

The discussion on justice needs to be broadened. In a discussion on justice an equal, if not more, attention should be given to what is expected from the citizens. It is not correct to say that the conduct of citizens is just if it is in conformity with a just social order. The correct approach toward justice is that *a social order will usually be just if its citizens' conduct is just*. Search for justice needs to start from within our moral self. It should be realized that justice is as much about how we as moral personalities act as it is about how governments function. Unjust social order and unjust governments cannot be established when the citizens' moral personality is already exhibiting justness. Justice is as much about our reasonable behaviour in staying committed to the institutions of democracy, even when it is not to our rational advantage, as it is about claiming for the protection of our rights to show dissent. Justice is as much about our self-restraint and showing respect toward fellow citizens as it is about our claiming a right of self-expression. Justice is as much about how citizens treat each other as it is about how governments treat citizens. Justice is as much about duties as it is about rights. If justice is the primary virtue of citizens' moral personality it will be the primary virtue of the social order. Justice is not a thing to be demanded, it is a thing to be given!