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## Internal Debates within Capability Approach Debate Between Amartya Sen And Martha Nussbaum

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### **Abstract:**

*Capability approach is an evolving subject. While Amartya Sen developed the skeleton of the capability approach, the colleagues of Sen and his followers expanded the approach. Martha Nussbaum is a colleague of Amartya Sen who tried to use capability approach as a broad theory of social justice. Hence, she tried to be very methodological in her understanding of capability approach. She argued that a comprehensive understanding of capability approach needs us to go beyond Sen. She added a new twist to the existing understanding of the subject. She prepared a list of capabilities which she thought will provide the best conditions for human development. She claims that her list is more practical and suitable for gender justice. The present paper is an attempt to probe into the issues raised by Nussbaum. Along with this, the paper would also try to draw attention to the similar kind of lists prepared by other contemporary writers. In the concluding part it would focus on why it is an anomaly to prepare a list of capabilities in a diverse society like India.*

**Key words:** Basic capabilities, combined capabilities, functioning,

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While Amartya Sen introduced the capability approach in the 1980s, other scholars have developed it further in recent years. The most well known is the work of Martha Nussbaum. Sen's and Nussbaum's approaches are very closely related, and are allies in their critique of theories such as utilitarianism. However, Nussbaum and Sen also differ on a number of issues. (Gasper, 2004) Nussbaum and Sen have different goals with their work on capabilities. They also have different personal intellectual histories in which their work needs to be situated. Nussbaum aims to develop a partial theory of justice, by arguing for the political principles that should underlie each constitution. Thus, Nussbaum enters the capability approach from a perspective of moral-legal Political philosophy, with the specific aim of arguing for political principles that a government should guarantee to all its citizens through its constitution. To perform this task, Nussbaum develops and argues for a well-defined but general list of 'central human capabilities' that should be incorporated in all constitutions. As such,

her work on the capability approach is universalistic, as she argues all governments should endorse these capabilities. Sen did not have such a clear objective when he started to work on the capability approach. On the one hand, he was interested in the "equality of what?" question in liberal political philosophy, and argued that there are good reasons to focus on capabilities instead of Rawlsian resources or utility. (Sen, 1979)

First, whereas in Sen's work the notion of capabilities is primarily that of a real or effective opportunity (as in social choice theory), Nussbaum's notion of capability pays more attention to people's skills and personality traits as aspects of capabilities. Some scholars therefore favour Nussbaum's approach over Sen's. For example, Des Gasper argues that Nussbaum's approach has more potential to understand actions, meanings and motivations. But because Sen's approach lies closer to economic theory, many economists find his approach more attractive, and the UNDP's (1990- 2004) *Human Developed Reports* have also been

built on Sen's version. Second, Nussbaum develops three categories of capability which are different from Sen's. *Basic capabilities* are innate abilities (and thus, as discussed earlier, used in a very different meaning from Sen's use). *Internal capabilities* are states of a person that enable her to exercise a specific capability, if the circumstances and constraints allow this exercise. *Combined capabilities* are the internal capabilities together with the external provisions that effectively enable the person to exercise the capability (Nussbaum, 1988). But while their categories and terminology somewhat differ, both Sen and Nussbaum hold that politics should focus on combined capabilities. Third, Nussbaum proposes a concrete list of capabilities, which is composed of the following ten categories: 1. Life; 2. Bodily health; 3. Bodily integrity; 4. Senses, imagination and thought; 5. Emotions; 6. Practical reason; 7. Affiliation; 8. Other species; 9. Play; 10. Control over one's environment. Nussbaum has specified this list in more detail in several of her recent publications (Nussbaum 2000; 2003a). The list is always open for revision, hence one needs to look at the most recent version of her list. In addition, Nussbaum argues that if Sen's capability approach wants to have any bite with respect to justice, he too will have to endorse such a list. However, Sen has always refused to endorse one specific well-defined list of capabilities, for reasons that will be discussed in the next section. Fourth, Nussbaum explains her work on capabilities as providing citizens with a justification and arguments for constitutional principles that citizens have a right to demand from their government. (Nussbaum, 1988) Sen's capability approach, in contrast, need not be so focused on claims on the government, due to its wider scope. Indeed, one can discuss inequality in capabilities without necessarily knowing how these inequalities can be rectified, or without assuming that all redistribution,

rectification or social change have to be done by the government. Nussbaum has been criticized for her belief in a benevolent government, especially from authors who are more situated in the traditions of post-structuralism, post-colonialism, postmodernism and critical theory. (Menon, 2002) In liberal Anglo-American political philosophy, it is common to discuss issues of social and distributive justice in terms of what the government's responsibilities are to do justice, but in other paradigms there is no such a focus, or perhaps even a belief, in the actions of government. Fifth and finally, Nussbaum does not endorse the agency-well-being distinction that Sen advocates. Nussbaum argues that "all the important distinctions can be captured as aspects of the capability/functioning distinction". (Nussbaum, 2000) Some critics suggest that her theory doesn't sufficiently allow for agency in its diverse manifestations. However, Nussbaum has argued that practical reason has an architectonic role in her approach – it has a role that goes beyond its direct contribution to well-being. Thus, the exercise of practical reason is probably a main site of agency in Nussbaum's approach, but it remains to be further explored how the concepts of agency differ in Sen's and Nussbaum's work.

#### **BROAD CONTEXT**

Nussbaum argues "certain universal norms of human capability should be central for political purposes in thinking about basic political principles that can provide the underpinning for a set of constitutional guarantees in all nations." (Nussbaum, 2000) These norms are used for comparison across nations. Capability approach begins with the question of what actually the person is able to do and able to be? Suppose we are taking a stand for political purposes on working a list of functions that would appear to be of central importance in human life. We may ask is the person capable of this or not? We not only ask about the person's

satisfaction with what she does, but also whether she is in a position to do (what her opportunities and liberties are). We also enquire not only about the available resources, but also how these resources enable the person to function in a fully human way. (Nussbaum, 2000)

When it comes to comparison, it is in terms of these capabilities to function in certain core areas that we would measure that person's quality of life. Then only we will be able to compare her quality of life to that of others. Second, the political arrangement would find it easy to ensure justice when we have a list of areas where to stress. On Nussbaum's words "If People are systematically falling below the threshold in one of these core areas this should be seen as a situation both unjust and tragic in need of urgent attention or even if in other respects things are going well." (Nussbaum, 2000)

Nussbaum provides two reasons for this arrangement. First, there are certain functions which are central in human life and their presence defines the standard of living. Second, to function in a humane way and not just to behave like animals. Marx explains this point by saying that a starving person does not use food in a fully human way rather he/she grabs the food for survival. The question of human dignity has cross cultural appeal. At one extreme we may judge that the absence of capability for a central function is so acute that the person is not really a human being at all, or any longer. But the important point to be stressed is not that boundary rather a threshold, a level at which a person become truly human. Nussbaum like Sen wants to treat each person a bearer of value as an end. Each person is treated as worthy of regard in which each has been put in a position to live really humanly. That is where the idea of threshold comes in. A person is to be treated as an end; capability is to be sought on an individual basis and not on the basics of family, or corporate bodies. No doubt these institutions are important in

promotion of human capabilities. Yet the ultimate goal is always the promotion of the capability of each person. Before we proceed further, we have to understand the fact that capability carries different meaning for Sen and Nussbaum. For Amartya Sen, capability reflects a person's freedom to achieve valuable functionings. Nussbaum argues that capabilities are potential functionings. That is why she wants to enlist those capabilities.

### **NUSSBAUM'S VERSION OF CAPABILITY APPROACH**

The basic idea of her version of capability approach has been explained in the book *Women and Human Development: The capability approach*. She begins with a conception of human life with full of dignity. To pursue this life of dignity she attempts to justify a list of ten capabilities as central requirements of a life with dignity. These ten capabilities are supposed to be general goals that can be further specified by the society in question, as it works on the account of fundamental entitlements it wishes to endorse. Moreover, the capabilities are held to be important for each and every person; each person is treated as an end and none as a mere adjunct or means to the ends of others. And although in practical terms priorities may have to be set temporarily, the capabilities are understood as both mutually supportive and all of central relevance to social justice." (Nussbaum, 2006) Nussbaum calls the list of capabilities as Central Human Capabilities. The *Central Human Capabilities* are:

- Life: Being able to live to the end of a human life of normal length, not dying prematurely, or before one's life is so reduced as to be not worth living.
- Bodily Health: Being able to have good health, including reproductive health, to be adequately nourished, to have adequate shelter.
- Bodily Integrity: Being able to move freely from place to place to be secure against violent assault,

including sexual assault and domestic violence, having opportunities for sexual satisfaction and for choice in matters of reproduction.

- Senses, Imagination and Thought: Being able to use the sense, to imagine, think and reason and to do these things in a truly human way, a way informed and cultivated by an adequate education, including by no means limited to, literacy and basic mathematical and scientific training. Being able to use imagination and thought in connection with experiencing and producing works and events of one's own choice, religious, literacy, musical and so forth. Being able to use one's mind in ways protected by guarantees of freedom of expression with respect to both political and artistic speech, and freedom of religious exercise. Being able to have pleasurable experiences and to avoid non beneficial pain.
- Emotions: Being able to have attachments to things and people outside ourselves, to love those who love and care for us, to grieve at their absence, in general, to love those who love and care for us etc.
- Practical Reason: Being able to form a conception of the good and to engage in critical reflection about the planning of one's life.
- Affiliation: Being able to live with and toward others, to recognize and show concern for other human beings, to engage in various forms of social interaction, to be able to imagine the situation of another. (Protecting this capability means protecting institutions that constitute and nourish such forms of affiliation, and also protecting the freedom of assembly and political speech. Having the social bases of self respect and non

humiliation, being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of nondiscrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion and national origin.

- Other Species: Being able to live with concern for and in relation to animals, plants and the world of nature
- Play: Being able to laugh, to play, to enjoy recreational activities
- Control over one's Environment
  - Political: Being able to participate effectively in political choices that govern one's life, having the right of political participation, protections of free speech and association.
  - Material: Being able to hold property (both land and movable goods), and having property rights on an equal basis with others, having the right to seek employment on an equal basis with others, having the freedom from unwarranted search and seizure. In work, being able to work as a human being, exercising practical reason, and entering into meaningful relationship of mutual recognition with other workers.

There are two important qualifications on this list. First, they are a list of separate components. They are distinct in quality and all are of central importance. Second, they are related to one another in complex ways that can only be discovered empirically. Nussbaum also tries to distinguish between different capabilities. Basic capabilities are the innate equipment of individuals that is the necessary basis for developing more advanced capabilities. She points out that

most infants have the basic capabilities for practical reason and imagination, though without a good deal more development and education they cannot use it. Healthy children have basic capabilities in all ten of the areas in the above list. Internal capabilities are states of persons that are . . . sufficient conditions for the exercise of the corresponding function (given suitable complement of external conditions). Internal capabilities build on pre-existing basic capabilities by processes such as exercise, education, and training. Most adults have the internal capabilities of use of speech, capabilities that would not exist without the informal education that occurs along with socialization. Many internal capabilities require a more structured educational environment. Combined capabilities are defined as internal capabilities plus the external conditions that make the exercise of a function a live option. The aim of public policy is the promotion of combined capabilities; this requires two kinds of efforts (1) the promotion of internal capabilities (say, by education or training) and (2) the making available of the external institutional and material conditions.

After preparing a list of central human capabilities, she argues that the list is sensitive to cultural differences because of several reasons. First, she considers the list to be open-ended and subject to ongoing revision and rethinking, in the way that any society's account of its most fundamental entitlements is always subject to supplementation. Second, the items on the list ought to be specified in a somewhat abstract and general way. This is done precisely in order to leave room for the activities of specifying and deliberating by citizens and their legislatures and courts that all democratic nations contain. Within certain parameters, it is perfectly appropriate that different nations should do this somewhat differently, taking their histories and special circumstances into account. Thus, for example, a free speech right that suits Germany well might be too

restrictive in the different climate of the United States. Third, the list is introduced for political purposes only and without any grounding in metaphysical ideas of the sort that divide people along lines of culture and religion. Fourth, if the appropriate political target is capability and not functioning, then again the defense of pluralism comes here. Many people who are willing to support a given capability as a fundamental entitlement would feel violated if functioning is made basic. Thus, the right to vote can be endorsed by believing citizens who would feel deeply violated by mandatory voting, because it goes against their religious conception. They believe that it is wrong to participate in political life, but they endorse the right of citizens to vote. The free expression of religion can be endorsed by people who would totally object to any establishment of religion that would involve dragooning all citizens into some type of religious functioning. Fifth, the major liberties that protect pluralism are central items on the list: the freedom of speech, the freedom of association, the freedom of conscience. By placing them on the list she gives them a central and non-negotiable place. The items on the list ought to be specified in a somewhat abstract and general way, in order to leave room for the activities of specifying and deliberating by citizens and their legislatures and courts that all democratic nations contain. (This has been challenged in the last part of this chapter). Nussbaum argues that major liberties that protect pluralism are central items on the list: the freedom of speech, the freedom of association, the freedom of conscience. By placing them on the list we give them a central and nonnegotiable place. (Nussbaum, 2000)

Nussbaum argues that Sen is absolutely silent on these issues. There is a tension in Sen's writings. On the one hand, he speaks as if certain specific capabilities are absolutely central and nonnegotiable. Nussbaum argues that Sen's discussions of health, education, political and civil

liberties, and the free choice of occupation are important but the readers have a feeling of that these human capabilities should enjoy a strong priority and should be made central by states the world over, as fundamental entitlements of each and every citizen. In the case of liberty, Sen actually endorses giving liberty a considerable priority, though without giving an exhaustive enumeration of the liberties that would fall under this principle. His role in the formulation of the measures that go into the Human Development Reports, moreover, clearly shows that he is endorsing a group of health and education related capabilities as the appropriate way to measure quality of life across nations.

One the one hand, Sen has conspicuously refused to endorse any account of the central capabilities. Thus, the examples mentioned by Nussbaum remain insignificant. They are examples of something he thinks very important, but it is not clear to what extent he is prepared to recommend them as important goals for the entire world's people, goals connected with the idea of social justice itself. And it is equally unclear whether there are other capabilities not mentioned so frequently that might be equally important, and if so, what those capabilities might be. The reason for this appears to be his respect for democratic deliberation. He feels that people should be allowed to settle these matters for themselves.

Nussbaum claims that the arguments presented in *Development as Freedom* are more problematic. (Agarwal, 2004) Sen uses the language of perspective of freedom and continues to use it again and again, suggesting that freedom is a general all purpose social good, and that capabilities are to be seen as instances of this general good of human freedom. Such a view is not incompatible with ranking some freedoms ahead of others for political purposes. But it does seem to go in a problematic direction. First of all, it is unclear whether the idea of

promoting freedom is even a coherent political project. Some freedoms limit others. The freedom of rich people to make large donations to political campaigns limits the equal worth of the right to vote. The freedom of businesses to pollute the environment limits the freedom of citizens to enjoy an unpolluted environment. The freedom of landowners to keep their land limits projects of land reform that might be argued to be central to many freedoms for the poor. Obviously, these freedoms are not among those that Sen considers, but he says nothing to limit the account of freedom or to rule out conflicts of this type. (Agarwal, 2004) The conflicting role of human freedom has significant bearing for Indian society which is hierarchical. (Nussbaum, 2000) In a society marked by features of hierarchy, freedom loses its significance because it produces more conflict. Freedom can be more valuable and productive when the social set up is liberal and democratic. In India, while the political system is liberal democratic, the social system is authoritarian.

Furthermore, even if there were a coherent project that viewed all freedoms as desirable social goals, it is not at all clear that this is the sort of project someone with Sen's political and critical views ought to endorse. The examples that Nussbaum has just given show us that any political project that is going to protect the equal worth of certain basic liberties for the poor, and to improve their living conditions, needs to say forthrightly that some freedoms are central for political purposes, and some are distinctly not. Some freedoms involve basic social entitlements, and others do not. Some lie at the heart of a view of political justice, and others do not. Among the ones that do not lie at the core, some are simply less important, but others may be positively bad.

For example, the freedom of rich people to make large campaign contributions, which is defended by many Americans in the name of the general good

of freedom. This is not an ideal condition of freedom, that lie at the heart of a set of basic entitlements to which a just society should commit itself. Similarly, the freedom of industry to pollute the environment is again not among those freedoms that should enjoy protection, beyond a certain point. Suppose, I am a wholesale businessmen who sell cereals and pulses in the market. Suddenly, there is a crisis in its production. Immediately, I decide to double the prices of the products. This type of freedom cannot be defended.

Nussbaum argues that the idea of gender justice cannot be successfully pursued without limiting male freedom. For example, the right to have intercourse with one's wife whether she gives consent or not, has been understood as a time-honored male prerogative in most societies, and men have greatly resented the curtailment of liberty that followed from laws against marital rape. Still many societies do not acknowledge it. The freedom to harass women in the workplace is tenaciously guarded prerogative of males the world over, the minute sexual harassment regulations are introduced, one always hears protests invoking the idea of liberty.

In short, no society that pursues equality or even an ample social minimum can avoid curtailing freedom in very many ways, and what it ought to say is, those freedoms are not good, they are not part of a core group of entitlements required by the notion of social justice, and in many ways indeed, they subvert those core entitlements. Of other freedoms, for example, the freedom of motorcyclist to drive without helmets, a society can say, these freedoms are not important, they are neither very bad nor very good. They are not implicit in our conception of social justice, but they do not subvert it either.

In other words, all societies that pursue a reasonably just political conception have to evaluate human freedoms, saying that some are central and some trivial, some good and some actively

bad. This evaluation also affects the way we will assess an abridgement of a freedom. Certain freedoms are taken to be entitlements of citizens based upon justice. When any one of these is abridged, that is an especially grave failure of the political system. In such cases, people feel that abridgement is not just a cost to be borne; it is a cost of a distinctive kind, involving a violation of basic justice. When some freedom outside the core is abridged, that may be a small cost or a large cost to some actor or actors, but it is not accost of exactly that same kind, one that is independent of the cost, at least in terms of standard subjective willingness-to-pay models. Thus, motorcyclists may mind greatly a law that tells them to wear a helmet. In terms of standard willingness to pay models, they might be willing to pay quite a lot for the right to drive without a helmet. On the other hand, many citizens probably would not think that not being able to vote was a big cost. In terms of standard willingness to pay models, at least, they would not pay much for the right to vote, and some might have to be paid for voting.

Sen's response to these questions has been to say that freedom per se is always good, although it can be badly used. (Sen, 1995) Freedom, he said, is like male strength: male strength is per se a good thing, although it can be used to beat up women. This argument of Sen does not convince Nussbaum. For so much depends on how one specifies the freedoms in question. Some freedoms include injustice in their very definition. Thus, the freedom to rape one's wife without penalty, the freedom to hand out sign saying No blacks here, the freedom of an employer to discriminate on grounds of race or sex or religion-those are freedoms all right, and some people jealously defend them. But it seems absurd to say that they are good per se, and bad only in use. Any society that allows people these freedoms has allowed a fundamental injustice, involving the subordination of a vulnerable group. Of

other freedoms, for example, the freedom of the motorcycle rider to ride without a helmet, we should not say, good in itself, bad only in use, we should say neutral and trivial in it, probably bad in use. Once again, attention to the all important issue of content is vital.

Nussbaum argues that Sen cannot avoid committing himself to a core list of fundamental capabilities, once he faces such questions. (Agarwal, 2004) If capabilities are to be used in advancing a conception of social justice, they will obviously have to be specified. Either, a society has a conception of basic justice or it does not. If it has one, we have to know what its content is, and what opportunities and liberties it takes to be fundamental entitlements of all citizens. One cannot have a conception of social justice that says, simply, 'All citizens are entitled to freedom understood as capability'. (Sen, 1995) Besides, being wrong and misleading, such a blanket endorsement of freedom/capability as goal would be hopelessly vague. It would be impossible to say whether the society in question was just or unjust.

There is a possibility that some might defend the case of preparing the list of capabilities but would insist that it should be left open to societies themselves to prepare it through public deliberation. The answer to this question, however, is given in all of Sen's work, some human matters are too important to be left to whim and caprice, or even to the dictates of a cultural tradition. To say that education for women, or adequate healthcare, is not justified just in case some societies believe that it is not justified seems like a capitulation to subjective preferences, of the sort that Sen has opposed throughout his career.

In short, it makes sense to take the issue of social justice seriously, and to use a norm of justice to assess the various nations of the world and their practices. But if the issue of social justice is important, then the content of a conception

of justice is important. Social justice has always been a profoundly normative concept, and its role is typically critical, we work out an account of what is just, and we then use it to find deficiency in various ways. Sen's whole career has been devoted to developing norms of justice in exactly this way, and holding them up against reality to produce valuable criticisms. Nussbaum argues that Sen's commitment to normative thinking about justice requires the endorsement of some definite content.

Such leaving up for grabs is all the more dangerous when we are confronting women's issues. For obviously enough, many traditional conceptions of social justice and fundamental entitlements have made women second-class citizens, if citizens at all. Women's liberties, opportunities, property rights, and political rights have been construed as unequal to men and this has been taken to be a just state of affairs. Nor have traditional accounts of justice attended at all to issues that are particularly urgent for women, such as issues of bodily integrity, sexual harassment, the issue of public support for care to children, the disabled, and the elderly.

Nussbaum presents two points that pertain specifically to the norm of respect for pluralism which I have challenged in the last part of this chapter. First, the value of respect for pluralism itself requires a commitment to some cross-cultural principles as fundamental entitlements. Real respect for pluralism means strong and unwavering protection for religious freedom, for the protection for religious freedom, for the freedom of association, for the freedom of speech. If we say that we are for pluralism, and yet refuse to commit ourselves to the nonnegotiability of these items as fundamental building blocks of a just political order, we show that we are really half hearted about pluralism. Nussbaum believes that Sen would agree with this proposition. She expects that Sen would say the same about other items on

the list such as health and education, if a nation says that they are for human capabilities, but refuses to give these special protection for all citizens, citing reasons of cultural or religious pluralism, Sen will surely say that they are not making a good argument, or giving genuine protection to pluralism. Instead, they are very often, denying people the chance to figure out what culture and form of life they actually want. So they are actually curtailing the most meaningful kind of pluralism, which requires having a life of one's own and some choices regarding it. And that goal surely requires a certain level of basic health and education.

The second argument is one that derives from the Rawlsian idea of political liberalism. The argument says that classical liberalism erred by endorsing freedom or autonomy as a general good in human life. Both earlier liberals such as John Stuart Mill and modern comprehensive liberals such as Joseph Raz hold that autonomy and freedom of choice are essential freedom across the board. Rawls and Nussbaum hold that this general endorsement of freedom shows deficient respect for citizens whose comprehensive conceptions of the good human life do not make freedom and autonomy central human values. People who belong to an authoritarian religion cannot agree with Raz or Mill that autonomy is a generally good thing. Presumably, the Milean state would denigrate them too, and would design education and other institutions to disfavor them, although their civil liberties would not be restricted. Rawls and Nussbaum would agree that this strategy shows deficient respect for a reasonable pluralism of different comprehensive conceptions of the good life. We should respect people who prefer a life within an authoritarian religion so long as certain basic opportunities and exit options are firmly guaranteed.

Nussbaum holds that this respect for pluralism is fostered both by making capability and not functioning the appropriate political goal and also by endorsing a relatively small list of core capabilities for political purposes. Two things are important in this context. First, that endorsing the capabilities list does not require them to endorse the associated functioning as a good in their own lives. Second, since it is a very short list shows that we are leaving them lots of room to value other things in mapping out their plan of life. We do not ask them to endorse freedom as a general good-as we might seem to do if we talk a lot about freedom but fail to make a list. Instead, we just ask them to endorse this short list of freedoms for political purposes and as applicable to all citizens. They may then get on with the lives they prefer.

#### ***Criteria for Selecting the Capabilities***

The fact that the capability approach is not a fully fleshed out theory means that its further specifications can be diverse. For each such specification, Nussbaum proposes a list of capabilities. How should this selection be made, and what type of list is appropriate when drawing up a list of capabilities? Nussbaum has suggested that the following five criteria should be employed to select the list of capabilities.

*The Criteria of Explicit Formulation:* The most basic criterion is that the list should be explicit, discussed, and defended. To political and moral philosophers this might seem an obvious requirement as can be seen from Martha Nussbaum's very careful and elaborate defense of her list. Here, Nussbaum actually speaks about public deliberations. Being a liberal philosopher, she understands the value of public deliberations. Deliberations sometimes produce excellent results. It produces a list with wider acceptability.

*The Criterion of Methodological Justification:* When drawing up a list, we should clarify and scrutinize the method

that has generated the list and justify this as appropriate for the issue at hand. Methods are very important as they explain the procedures of selection.

*The Criterion of Sensitivity to Context:* The level of abstraction at which the list is pitched should be appropriate for fulfilling the objectives for which we are seeking to use the capability approach. This criterion thus proposes a pragmatic approach towards drawing up a list by acknowledging that it is important to speak the language of the debate in which we want to get involved. For example, in philosophical discussions the list will be specified at a highly abstract level, whereas for political, social or economic discussions the list will be less abstract. And even within the latter discussions, the level of abstraction can vary: the context of legal rights will require a list at a higher level of abstraction when one measures socio-economic inequality.

*The Criterion of different Levels of Generality:* The fourth criterion is related to, but distinct, from the third. It states that if the specification aim at an empirical application, or wants to lead to implementation policy proposals, then the list should be drawn up in at least two stages. The first stage can involve drawing up a kind of ideal list, unconstrained by limitations of data or measurement design, or of socio-economic or political feasibility. The second stage would be drawing up a more pragmatic list which takes such constraints into account. Distinguishing between the ideal and the second best is important, because constraints might change over time, for example as knowledge expands, empirical research methods become more refined, or the reality of political or economic feasibility changes. Care labour is a case in point in the context of gender inequality. Few, if any, empirical data sets have information on capabilities related to care labour, however listing these capabilities in an ideal list strengthens the case for collecting data on care, which will then

alter the analysis and perhaps the policies. Gender biases in the social sciences partly explain why many data sets contain so little information on who provides caring labour, and where, when how much, why and under what circumstances. Without this multi-stage procedure, the list could automatically reproduce the existing biases. The use of this procedure could help reduce such biases stemming from the social situatedness of researchers and policy makers.

*The Criterion of Exhaustion and Non-reduction:* The last criterion is that the listed capabilities should include all important elements. Moreover, the elements included should not be reducible to other elements. There may be some overlap, provided it is not substantial. This does not exclude the possibility that a subset might have such an important status that it requires being considered on its own, independent of the larger set.

To sum up, the selection of capabilities requires careful attention, as there is a potential danger of strengthening existing and eccentric and other biases.

#### **LIST OF CAPABILITIES: SOME QUESTIONS**

While the idea of defending a particular list of capabilities seems to be very attractive yet it raises several questions. Martha Nussbaum has argued that Sen should endorse one definite list of valuable capabilities if he wants to apply the capability approach to social justice and gender inequality. Nussbaum has herself drawn up such a list of capabilities that she defends as universally valid. It is crucial to note that Nussbaum and Sen's version of the capability approach have different theoretical assertions and their approaches entail different conceptions of what the list should be doing. As Sabina Alkire notes: 'Nussbaum's list is 'A list of normative things to do', it has a highly prescriptive character and she makes strong universalistic claims regarding its scope.(Alkire, 2002) Nussbaum has also used the capability approach to develop a

universal theory of the good: it applies to all social justice issues and to the world as a whole. This does not imply, she argues that her list is insensitive to culture and context. It is formulated at a highly abstract level, and for each country or community it can then be made more specific. Hence, in Nussbaum's theory, there is one universal general list that can be translated into more detailed and specific lists to suit the context."(Alkire, 2002) In her approach to enlisting of capabilities, she tries to emulate John Rawls' political liberalism. (Nussbaum, 2000) Nussbaum provides her neo-Aristotelian account of universal values 'as a basic political principle that should underwrite constitutional guarantees' (Nussbaum, 2000). Nussbaum describes the outcome of her enquiry as a set of central human capabilities which can be endorsed for political purposes, as the basis of central constitutional guarantees, by people who otherwise poses as the moral basis of central constitutional guarantees, by people who otherwise have very different views of what a complete good life for a human being would be. (Nussbaum, 2000)

Sen's capability approach, by contrast, makes broader and less specified claims. Given the intrinsic under specification of Sen's capability approach, there cannot be one catch-all list. Instead, each application of the capability approach will require its own list. For Sen, a list of capabilities must be context dependent where the context is both the geographical area to which it applies and the sort of evaluation that is to be done (Sen, 1995). Applications of Sen's capability approach can be very diverse. They can be academic, activist or policy oriented. They can be abstract and philosophical or applied and down to earth. They can be theoretical or empirical. They can concern social, political, economic, legal, psychological or other dimensions of advantage taken together or individually or in any

combination. They can be specified for the global or the local context. Nussbaum also argues the same thing. But in spite her claims of being sensitive to the local context, the list is subject to lot of criticisms and in fact the entire process would never be a viable one in Indian context. This is central focus of my argument in this chapter.

It is important to note how a particular list could prove to be dangerous in Sen's capability approach. The process that generates a list is important and this could affect a list's political or academic legitimacy. Amartya Sen has repeatedly emphasized that in matters of social choice and distributive justice, processes matter a great deal. Indeed, we should be concerned not only with culmination outcomes (the outcome narrowly defined, here the items on the list) but also with the comprehensive outcome, which includes aspects of the choice process, including the identity of the chooser. Suppose a social scientist applies the capability approach to gender inequality assessment or a village council uses the capability approach to decide on priorities for the allocation of its funds then they end up using Nussbaum's list of capabilities. In terms of the comprehensive outcome, it would still be important that the social scientist or the village could go through a democratic process for drawing up a list of priorities. This will give legitimacy to the entire process. Copying Nussbaum's list will not generate that kind of legitimacy. In her book *Women and Human Development, The Capability approach*, Nussbaum has repeatedly argued that even her list also will be generated through political deliberation and is subject to constant revision. But is this a practical one? Take the case of India where each village has specific requirements. In western societies the demands in a particular locality are identical. But in India, even in a panchayat, which is considered to be lowest unit of democratic governance, there are variations in demands. So

Nussbaum would really be surprised to apply her methodology in India. Because she will exhaust herself preparing a list for each village. I am sure that was not her intention. And moreover she elaborately discusses the values of universalism in her writings (Nussbaum, 2000). She claims that pluralism and religious toleration are some of the universal values which need to be respected across humanity. But in the pretext of defending some of the cherished values of humanity, she has ended up in defending the values of universalism. In other words, even if the application of Sen's capability approach leads us to a list identical to Nussbaum's, the process by which Nussbaum's list is generated might lack the political legitimacy needed for policy design. Similarly, when the capability approach is applied to particular research questions concerning gender inequality, all might prefer lists that are derived from, embedded in and engage with the existing literature in that field. In that sense, Nussbaum's list even when proposing the same dimensions might lack academic legitimacy (Alkire, 2002). Second, Nussbaum argues that there are political obligations to protect each of these capabilities. Nussbaum develops Aristotle's approach in two stages (Sen, 1993). The first is to notice the different incommensurable 'spheres in which humans must make choices and act somehow 'if not properly, then improperly'. (Sen, 1993) She refers to this stage as the initial demarcation of the sphere of choice-for instance, the ten general categories of functionings. (Nussbaum, 2000)

At the second stage, one requires into what the appropriate choice, in that sphere, is—in other words, what choices in that sphere bring one across the threshold of a truly human life. (Nussbaum, 2000) "People will, of course, disagree about what the appropriate ways of acting are" (Nussbaum, 2000). This is because humans and cultures are 'advancing

competing specifications of the same virtue'. (Nussbaum, 2000)

Still, Nussbaum saw and continues to see one role of development ethics to be that of evaluating specifications and selecting the optimal ones for an international consensus. Furthermore, Nussbaum argues that the central human capabilities, thus specified are legitimately used in making comparisons across nations, asking how well they are doing relative to one another in promoting human quality of life. (Nussbaum, 2000)

A critical weakness in Nussbaum's approach is that it cannot fulfill both the respect for pluralism and the other characteristics at the same time and it does not give a procedural account of how these processes of local specification and cross-national comparison are to unfold over time. To take just one example, at one point in time how can the list be both deeply flexible and useful for cross-national comparisons. Directly comparable aspects of the list such as protection against discrimination on the basis of race, sex, religion, caste, ethnicity or national origin leave little room for pluralism. Deeply flexible aspects of the list for example, expressions of senses, imagination and thought are notoriously difficult to compare meaningfully between countries.

The importance of the specification process heightens, when one tries to imagine how Nussbaum's capabilities approach is applied to micro economic investments. For example, a woman who loves cooking and caring for her family would be told to protect the values of freedom of assembly and speech. These are some values which are of no use to her. Microeconomic activities of this kind will be temporal, limited in their pursuit of those capabilities to very particular aspects of them. In order for these investments to have as their objective capability expansion rather than economic growth, it seems a process would be needed to identify the contingently vital, valuable

and possible ways to expand capabilities in one context. But this process is very unclear.

The specificity of Nussbaum's project considerably restricts the domain of flexibility which is available to give priority to the particular. It is also difficult to reconcile with a dynamic understanding of community and value. If needed the local and particular are to be given ongoing priority, then the capability approach would seem to require a sketch of the process by which the national normative conception of the human is to be developed in local forms, rather than a sketch of the normative human conception such as she gives. If there were a procedural account, then what might be most useful as a companion to it would not be a fully normative account of the human being but rather a set of dimensions of human being that could usefully spark conversation.

Third, Nussbaum does not actively identify who is to develop a set of capabilities for national use but it is clear that some people are expected to do so. Throughout the book *Women and Human Development*, the pronoun 'we' is employed without explanation. Sometimes the 'we' seems to be the unspecified community that is developing the capability approach; sometimes it seems to be intellectual or legal or political elite who are currently in authoritative offices. For example, when she explains the centrality of practical reason and where we set the threshold, for each of the separate capabilities, and also constraints on which specifications of it we will accept. When explaining the value of capability over functioning she explains, we set the stage and as fellow citizens, present whatever arguments we have in favour of a given choice, then the choice is up to them.

The problem would not be resolved by a phrase of terminological clarification. Rather, the observation is that Nussbaum does not develop a proactive account of who these 'reflective equilibrium'

discussions should involve. But will the suitable 'we' emerge passively-for example in a rural village of Orissa where the Panchayati Raj institutions are active but people are passive participants. As Nussbaum herself points out, the voices of the poor, of women, of the marginalized do not automatically sing out; these groups may not articulate their views unless specific effort is made to involve them. This is well known, and efforts ranging from participatory poverty reduction strategies to national conservation plans to constitution-building exercises regularly and deliberately engage a wide cross-section of communities and subgroups in hopes that the reluctant general strategies will include their views and concerns. So Nussbaum's omission surely is not an oversight. Rather, Nussbaum deems the 'we' fixed externally-for example, by appointment to the supreme court or by elections-or she assesses that proactive involvement of poor women in this exercise is not essential. Yet, if indeed Nussbaum regarded it as very important that persons from different cultures agreed on the list would it not be equally important that persons from lower economic classes took equal part in the dialogue-given that their perspectives may differ deeply from those of the educated and privileged. The point that we are trying to make here is that Nussbaum's lack of elaboration of the 'we' that is invested with the power of specifying capabilities and constituting an overlapping consensus, leaves her approach vulnerable to self-selected elites who might legitimize their own views in eloquent capability language. At the microeconomic level, where the governance structures of community organizations are yet more flexible, and the probability of local elite capture is high, a direct account of who should participate is essential.

Besides these general observations against the list of Nussbaum, there are specific circumstances where the list becomes ineffective. For example, in Indian conditions, Nussbaum's list will be

clueless with regard to its applicability. In the following address it is argued that preparing a list of capability cannot provide solutions to the existing system of exploitation in India.

### **NUSSBAUM'S LIST AND INDIAN SCENARIO**

Martha Nussbaum presents a list of capabilities which has serious implications for India. Nussbaum's account can be criticized looking at the ground realities of India. The following are a set of examples to demonstrate how Nussbaum fails to articulate the Indian scenario comprehensively. First of all, Nussbaum's list fails to encapsulate the multiple channels of oppression that individuals carry on Indian soil. The interconnections between caste, class and gender cannot be addressed through a list of capabilities as Nussbaum suggests. The presence of so many caste and sub castes makes it really difficult to prepare a list of capabilities. Castes matter in Indian society not because they carry any values with them. Rather it is power which symbolizes one caste in one particular place or location. Hence caste backed by power becomes crucial to understand Indian society. There is little scope for universalizing this theory in India. We cannot simply say that political theory has to take note of the power relationships and caste into consideration. Rather, in each village or locality we find new structures of dominance which is essentially different from other places. The point that is crucial here is that universality cannot be a principle if one intends to study these intricate relationships.

Second, the existence of large scale inequality, poverty and illiteracy leaves the people vulnerable if they are compelled to be part of universal list. Let us say, the list is generated through democratic deliberation process. But most often, it is seen in India that in Gram Sabha or Palli Sabha, decisions are taken by a few elites in the name of the majority and the entire village just says yes to their decisions. Again it is because of their power, that

nobody raises any question in the public meetings. Even decisions often processed through democratic process, can be manufactured and this really affects the health of democracy in a country. So in this context, it is really surprising that how Nussbaum has predicted that a particular list will serve the purpose. The mass ignorance leaves vast opportunities for the agents of state to dictate the terms. That is why it is often said that Nussbaum's ideas promote state paternalism. One can seriously question the credibility of Nussbaum's list looking at the hierarchical power structure of Indian society.

Third, Nussbaum's preference for some universal principles which would guide the functioning of human society does not augur well for Indian women's rights activists. There was a time when women's activists were supporting Uniform Civil Code. The underlining argument was that the common code will protect women from domestic violence. However, after some time, the activists realized how the institution of state can be vulnerable to the minorities. So now the articulations of demands have changed. The faith in the agency of the state to protect and enforce individual rights is not shared by the majority of democratic rights activists in India today ( Menon, 2002). In this context, it is important to highlight the point made by Nivedita Menon, a contemporary women's rights activist. She writes that:

"She is clear that the inviting should not be done by the present government, given its religious bias, or by the Supreme Court, 'given the history of the Shah Bano Case'. Rather, the dialogue should be promoted by concerned NGOs and women's groups and political parties that favor pluralism. The point, however, that is the enforcing and ensuring required by Nussbaum can only be carried out by the state. It does not seem to me that the Capabilities

Approach goes beyond the early pro-UCC Indian secular feminist position which as we have seen has become considerably more complex since then". ( Menon, 2002)

Menon tries to underline biasness of the Indian state and how a universal law cannot address the question of women's exclusion and deprivation. Along with this, it can be further argued that even the kind of faith that Nussbaum reposes on NGOs and other political parties or civil society organizations is problematic to me. There are many cases where it is seen that local movements mobilized on local issues are being carried out by NGOs and they in fact hijack the grassroots movements to a great extent. NGOs are at best can be called as mediating institutions between Indian Government and International agencies working for spread of globalization. So, NGOs are funded by international agencies. This means that NGOs are not accountable to the local people since they derive their entire existence from outside. It would have been interesting if NGOs would have been based on local resources and support. Looking at the present structure, nobody can be assured of their role. For example in Kasipur of Kalahandi district, so many NGOs are working towards the upliftment of poor tribals. Many tribal movements in Kashipur district are led by NGOs. Local people have no idea of such movements. It can be argued that NGOs are actually working as a safety valve of the state institutions. They neutralize the resisting force of the local people.

Fourth, in Nussbaum's account of capability approach, there is hardly any scope for mass movements of resistance. On the contrary, her approach is state centered and directed towards elite initiated policy changes. Mass movements of resistance can only be possible only when there is space for collective aspirations. Movements are always backed by collective action. Collective action may be

violent or peaceful. While movement for separate statehood for Jharkhand or Telangana is violent, Narmada Bachao Andolan is very Gandhian or peaceful. Movements can be defined as collective challenges by people with common purposes and solidarity in sustained interaction with elites, opponents and authorities ( Tarrow, 1994). Suppose today farmers of U.P decide to protest against the central Government's decision to regulate the prices of sugarcane. Very recently a big rally was organized to demonstrate their opposition to such a move. The decision to go on a rally or strike is not an activity of individual. Rather it symbolizes the power of the collective. Collective action results from three possible characteristics-challenge, uncertainty and solidarity. Challenges to authorities threaten costs and erupt in dramatic and often unruly ways. Their power results, in part, from their uncertain outcomes and from the possibility that others will join in. Internal solidarity supports the challenge and hints at the possibility of further disruption. Opponents, allies and bystanders respond, not only as a function of the sharpness of the challenge and uncertainty that it evokes, but from the solidarity they see in the protest.( Tarrow, 1994) It is very clear that when we prepare a list of capabilities there is little scope for these kinds of things to shape up. In the next chapter I have also argued that even in Sen's analysis of capability approach, there is hardly any scope for collective action. But he has deliberately left it open so that it can be filled up according to the new requirements. But in Nussbaum's case, we have not found any significant space for collective action. The result is that critics look at the understanding of Nussbaum as very elite oriented or state centric. The problem as we can see with Nussbaum is that Nussbaum tried to evoke Rawlsian 'overlapping consensus' while speaking about a list of capabilities. This is not necessary at all. Even though overlapping consensus is a much better formulation yet the idea still is not very sensitive to the

aspirations of the collective. Another thing, which comes to our mind that Nussbaum tries to work within the broad parameters of liberalism. That is why she is obsessed with invoking Rawls. What can be argued here that even liberal societies with values of tolerance and pluralism fail to accommodate the principles of Rawls. India is a classic example of such a paradigm where we have toleration, pluralism yet people at many places fail to arrive at a consensus. Even there is no unanimity among the members of a particular religious community. All Hindus may not agree to the idea of caste-less marriages. All Muslims in India may not be sharing the idea that a new Mosque should be built around the disputed Ayodhya site. All Christians in India may not agree on the agenda of religious conversion. So the point that we are trying to make here is that people cannot be forced with a bunch of ideas. Rather, autonomy of the individual should be respected to the maximum extent possible.

Fifth, let us the case of family as a social institution and Nussbaum's debate on the institution of family in the Indian context. Nussbaum attempts to offer a critique of prevalent understanding of mainstream political approaches that treat family as a private sphere existing by nature and women as having the natural capacity to give love and care. She argues that family is also subject to the laws of the state and it is state's responsibility to ensure that, justice is done inside family. Indian feminists began their journey with the same idea but latter on changed the position when they realized that the state is not just a neutral or mediating institution. Rather they viewed state as representing the aspirations of the dominant interest groups. The minorities including women are excluded from the public space and hence Indian feminists increasingly began to see state with suspicion. It is in this context, we have to understand Nussbaum's stand that the state has the responsibility to ensure justice in and outside the family. Interestingly, Nussbaum's views regarding

dowry is very problematic. Nussbaum argues that dowry is illegal and hence it should be banned. What is new in this equation? The institution of dowry was made illegal from the day India got its freedom. "The problems have had to do with implementation, loopholes in the law, the overwhelming pressure of patriarchal family ideology-all factors that have to do with power and politics, rather than lack of reasoned debate."(Menon, 2002) In fact there is another way to look at this problem. Dowry can be justified on the ground that women do not have access to their parental property after marriage. Hence, they take this much of share with their marriage. Hence, banning dowry means we have to replace it with a new legislation which ensures that women have access to resources of their parental family. This line of argument is entirely Indian. This kind of argument is entirely different from what Nussbaum believes that the institution of dowry can be thrown away by means of legislation. She does not intend to go to the deeper understanding of Indian society.

I have argued so far that Nussbaum's idea of preparing a list of capabilities is not acceptable at any cost. A number of reasons have been outlined as to why Nussbaum does not provide a sound understanding of Indian context. If we accept Nussbaum's version of capability approach then capability approach will lose all its attraction. To make things worse, in Indian conditions of social existence, Nussbaum's proposition goes in a wrong way. Indian diversity, the hidden power structure embedded in our society and the biasness of the state does not allow any social scientist to formulate laws on a universal scale. Nussbaum in her attempt to universalize the list of capabilities lost the moral ground to discuss the Indian conditions of diversity. I have given examples like problems in the implementation of Uniform Civil Code and others and how these attempts have not yielded desired results. Hence, there is

every reason to set aside the proposition given by Nussbaum.

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