

REFERENTIAL TREATMENT: A MEANS OF SOCIAL JUSTICE

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Abstract: The main objective of this paper is to explicate and examine the pros and cons of the most debatable issue known as preferential treatment from the perspective of India. Those who oppose preferential treatment would conceive it as 'reverse discrimination' - a form of injustice. Those who support it would conceive it as 'affirmative action' in terms of compensation. In this regard, the views of justice of two great modern thinkers, namely, Rawls and Amartya Sen, have been examined. At the end, this paper favors preferential treatment from the concept of 'justitia' of Amartya Sen and in this regard, the character of Arjuna of Gita of Mahabharata has been chosen as a model (representative) of social justice.

There is no question of doubt that everyone finds himself, herself secure in a just society, or a *just state* based on the trio-concepts, such as, *liberty, equality and fraternity*. Even Ambedkar, the founder of Indian constitution, once remarked that liberty, equality and fraternity are the chief trio-concepts of a just society. In fact, Ambedkar was the leading campaigner of an “ideal’ society”¹ or a ‘casteless society’² or a society based upon the ‘principles of justice’³. Even though India as a secular democratic state has constitutionally promised to ensure liberty, equality and fraternity to the people of India, but simultaneously we notice disgrace, ignominy regarding some Indian constitutional provisions. There are some constitutional provisions where preferential treatment has been promised. However, what is preferential treatment? Preferential treatment, broadly speaking, is an *affirmative action*, which literally refers to “job or employment preference given to someone who is of the right race, ethnicity, or gender.” It is defined in

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¹Ambedkar, B.R. 1989. ‘Annihilation of Caste with a Reply to Mahatma Gandhi’, in *Dr Babasaheb Ambedkar: Writings and Speeches*, vol. 1, compiled by Vasant Moon, Bombay: Education Department, Government of Maharashtra, p.57.

²Ibid.p.80.

³Ibid. p.25.

each government's approved list of the historically disadvantaged. Sometimes, preferential treatment is conceived in terms of compensation of the underprivileged or previously neglected. In this regard, preferential treatment is premeditated to redress or to leave out past discrimination against those underprivileged groups through measures to improve their economic and educational opportunities in terms of affirmative action. The strategy of this paper is to address *for and against* preferential treatment with special reference to India and will be classified into three sections. In the First Section, I address arguments *for and against* of preferential treatment. In the Second Section, I evaluate and examine, with critical outlook, the *pros and cons* of preferential treatment with special reference of two contrasting approaches of justice developed by Rawls and Amartya Sen respectively. In the Third Section, I shall make clear my position regarding the existing form of preferential treatment as witnessing in India.

I. Arguments for and against of preferential treatment

There are various parameters or positions based on which preferential treatment as witnessing in India at present can be evaluated. These are:

- (i) It is unconstitutional because it violates rights protected in the Indian Constitution.
- (ii) It is legally recognized by the Indian Constitution, but it violates a person's moral rights.
- (iii) It is legally recognised by the Indian Constitution, but it is a morally appalling idea as the costs outweigh the benefits.
- (iv) It is legally permitted by the Indian Constitution, and it is morally a good idea because the benefits outweigh the costs.
- (v) It is legally permitted by the Indian Constitution and it is morally obligatory because social justice requires it.

Of these five positions, there exists a serious dichotomy in (i). Of course, the preferential treatment, I think, has been implemented according to the provisions of the Indian Constitution (already pre-existed or modified in course of time). Now, it is a general perception that the relevance of the constitution of any government or state whatsoever is to ensure the rights of the people. India as a

secular democratic country has emphasised a lot on the constitutional provisions for securing the fundamental rights of the people of India. Thus, prima-facially there seems a dilemma in adopting (i). I think (ii) is very relevant in the context of this paper. Preferential treatment is an affirmative compensation arising from the initiatives of the government of the state. The same happens in India as well. However, those who disagree with preferential treatment would like to say that it would violate persons' moral rights. Position (ii) leads to (iii), because it cannot be supported even from consequential perspective where the outcome of a moral action is judged in terms of its consequence. Position (iv) is a reverse interpretation of (iii) as it has been accorded with the constitution and also stands at par with the consequential approach where the outcome of a moral action is judged in terms of consequence. Position (iv) leads to (v) because it stands with the entwinement of constitutional provisions, moral rights and social justice. Thus, out of these five positions, (i), (ii) and (iii) stand, to me, in favor of anti-preferential treatment and (iv) and (v) actually stand in favor of preferential treatment.

I think those who favour preferential treatment abundantly rely on (v). Why is it so? Because it relies on social justice or social justice requires it. According to this position, preferential treatment is morally and ethically obligatory owing to rectify past discrimination or unfairness. Nobody can deny that in India certain groups, certain castes or communities were discriminated against in the past due to their race, class or sex. In fact, they are, by any means, even at present, near to those people who were not discriminated in the past. Therefore, it has been suggested both morally and constitutionally that preferential treatment should be provided for them on two accounts. Those being (a) as compensation and (b) as a social and economic right. Preferential treatment is the appropriate form of compensation. Those who have been deprived socially and economically must desire preferential compensation in order to overcome their present distress of economic and social conditions. Thus, preferential treatment in the form of compensation is necessary for overcoming the negative consequences of past injustices perpetuated upon those unprivileged communities.

However, those who deny preferential treatment would like to say that preferential treatment in terms of compensation is undeniably still to pay to those who were discriminated against by those who did the discrimination. However, in India the reality is somehow different as the settlement of preferential treatment actually benefits those who themselves have not been victims of past

discrimination. It does not even benefit those who have, in fact, suffered from discrimination in the past as has been suggested. It is, in fact, a general perception of the younger generation that compensation, in terms of preferential treatment, actually punishes those who have not been and are not at present, perpetrators of discrimination. In brief, it has been claimed the preferential treatment in terms of compensation actually fails to penalize the actual perpetrators of past discrimination in India. Moreover, the programs associating with preferential treatment have been disparaged as both *over-inclusive* and *under-inclusive*. It has been criticised as *over-inclusive* because it incorporates those people who perhaps should not be included under preferential treatment. It has equally been criticised as *under-inclusive* as it has failed to include those who should be included. Therefore, if preferential treatment is at all relevant in India, then definitely the objective of such treatment has not yet been fulfilled. Since independence, the benefits and burdens are not well distributed, as it ought to be the case.

I think that the argument as raised above against preferential treatment has been over-simplified. It is true to say that the cultural and economic development of a particular family or a particular community is not the outcome of one generation, rather it is the outcome of many generations. Accordingly, it would be wrong, if a person who presently enjoys affluent social and economic privileged position claims that he is no way responsible for those people who have been struggling for their daily bread and butter. It is, in fact, true to say that economically privileged persons have acquired advantages through inheritance just as the economically disadvantaged or unprivileged have inherited their disadvantages from their ancestors. Who would be responsible for future or incoming generations? Definitely, the present generation would be responsible for future generation. Therefore, the fate of the present generation measuring in terms of socio-economic perspectives is intimately linked with the fate of the past generations. Those who have been exploited in the past inhumanly, because of some extraneous unscientific reasons handed down, have literally been given nothing in terms of education, economic stability, to their incoming or succeeding generations. On the contrary, those who occupy affluent economic, as well as social position, actually continue to benefit from the wealth of their families. Therefore, it would be wrong to suggest that the present generation, who enjoy privilege and social position, is no way responsible for the exploitation committed by the previous generation. Consequently, preferential treatment in terms of compensation is justifiable in offsetting past injustice. Past injustice may be such

that those who currently benefit from it nevertheless owe compensation to those who were harmed by it. This holds true even if those who currently benefit from it did not perpetrate the injustice themselves.

Preferential treatment is the way to restore fair competition, provide a 'level playing field', by giving minorities a hand up. It is a kind constitutional block before the privileged so that they cannot rob the minimum opportunities available for the unprivileged. It equally promises many beneficial consequences as it will provide positive role models; it eliminates stereotypes and more importantly, it will bring economic success and professional services to groups who need them most. In India, preferential treatment is being given to Scheduled Castes (SCs), Scheduled Tribes (STs), Other Backward Classes (OBCs), physically handicapped persons and women in different forms. Take for example, in case of National Eligibility Test (NET) conducted by UGC, preferential treatment has been given to the candidates belonging to SC, ST, and OBC by fixing lesser percentage of marks as qualifying marks. The same happens in other entrances as well. What then will happen if such preferential treatment has been ruled out to those groups of people? Definitely, hardly a few candidates would be qualified and in most cases, it would be nil. Even after more than 50 years of independence of India where preferential treatment has been the course of action, the representative of many backward communities in India is almost nil in many prestigious jobs. At least, statistic suggests that in most of the prestigious jobs, the representatives of the majority of people of India are very low in terms of percentage. If preferential treatment would not be implementing over the years then it would be nil in most prestigious jobs. Therefore, preferential treatment is necessary, as it will bring economic success to groups who need them most. Even at times, the benefits of preferential treatment outweigh the costs. Preferential treatment is also needed for other practices, such as, vigorous recruitment, inducements, and improvements in welfare. Thus, the proponents of preferential treatment would consider it as 'affirmative action' in the form of social justice.

The opponents of preferential treatment, however, suggest that the cost of preferential treatment *actually overshadowed the benefits or consequences*. Preferential treatment, they suggest, has harmful consequences as well. It increases tension between groups in society. India bears witness to a myriad of social conflicts arising out of the past injustices of preferential treatment. It also perpetuates myths of inferiority, creating doubts in the minds of those who are given preferential treatment. More importantly, it decreases quality or

productivity in schools and the economy as well. Preferential treatment ignores merit, talents, competition and at the same time insists or encourages those who are in general *ailing in merit*. Preferential treatment, the opponent argues, violates individual moral rights, such as, right to be judged on one's own merit. It equally violates the right to be judged as an individual, not as a member of a group and more importantly, it violates the right not to be excluded because of one's race, class or sex. In fact, institutional justice always prefers individual talent, individual merit. Accordingly, it would be injustice to ignore individual merit relating to education and employment. It would be detrimental on both accounts as in one sense it would damage individual autonomy and freedom by neglecting or by negating his merit and talent and in other sense it will impose a burden to the ill-talent candidates who are not in a position to handle the job. Thus, those who oppose preferential treatment would consider it as 'reverse discrimination' or 'reverse racism'.

II. Two contrasting forms of justice: Rawls and Sen

So far, I have analysed and examined the arguments and counter-arguments relating to preferential treatment witnessing in India. In this section, I we examine preferential treatment in terms of social justice with special reference to John Rawls and Amartya Sen. There is no question of doubt that Rawls is a leading proponent of the idea of justice. Rawls interprets his idea of justice as 'justice as fairness.' However, in what sense would justice be fair according to Rawls? What are the criteria of conceiving justice as 'justice as fairness'? In this regard, Rawls gives us two basic or fundamental principles of justice. While developing the idea of justice, Rawls was influenced by Kantian deontological ethics, a form of ethics predominantly guided by stringent moral maxims and principles, which are *universalizable* in nature. Thus, the idea of justice as expounded by Rawls is deontological in nature. Rawls in this regard uses the metaphor 'veil of ignorance' as a measure of conceiving his idea of justice as 'justice as fairness'. He also uses the term 'impartiality' as a measure of conceiving his idea of justice as 'justice as fairness'. However, what is fairness? Fairness is a form of demand of avoiding bias, vested interests, personal priorities in terms of eccentricities and prejudices and concerns of others in our evaluations. In this sense 'fairness' is a demand for impartiality based on his idea of 'original position'. In a Kantian sense, 'fairness' can be judged on the basis of the dictation arising out of *Categorical Imperatives*.

Thus, for Rawls, original position is central to his theory of 'justice as fairness'. Original position is an *imagined situation, an idealized form of justice* of primordial equality, when the parties involved have no knowledge of their personal identities, or their respective vested interest, within the group as a whole. Their representative, Rawls opines, have to choose under this 'veil of ignorance, an imagined state of selective ignorance what Rawls terms as 'comprehensive preferences'. It is such comprehensive preferences upon which the principles of justice are chosen unanimously. Rawls in this regard says, "...the original position is the appropriate initial *status quo* which insures that the fundamental agreements reached in it are fair. This fact yields the name 'justice as fairness'." ⁴ Rawls, then, introduces two principles of justice that will emerge in the original position with unanimous agreement. In his *Political Liberalism*,⁵ Rawls outlines these principles:

- (i) *Each person has an equal right to a fully adequate scheme of equal basic liberties, which is compatible with a similar scheme of liberties for all.*
- (ii) *Social and economic inequalities are to satisfy two conditions. First, they must be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they must be to the greatest benefit of the least advantaged members of society.*

Now let me evaluate preferential treatment with regard to Rawlsian principles of justice as cited above. The first principle of justice gives priority on liberty for each person subject to similar liberty to all. It acts based on universal rules. Thus, it would perhaps exclude preferential treatment. However, the second principle of justice can be taken into account in evaluating preferential treatment. The first part of the second principle of justice is concerned with the *institutional requirement* of making sure that public opportunities are open to all without anyone being excluded or handicapped based on race, ethnicity, caste, or religion. The second part of the second principle is called the 'Difference Principle:' that concerned with *distributive equality* as well as overall efficiency. In the 'difference principle', Rawls judges the opportunities without taking into account the wide variations they between them. A disabled person, for example, can do far

⁴Rawls, John. 1971. *A Theory of Justice*, Oxford University Press, p.17.

⁵Rawls, John. 1993. *Political Liberalism*, Columbia University Press, New York, p.291.

less with the same level of income than can an able-bodied human being. A pregnant woman needs more nutritional support than another person who is not bearing a child. Such instances, at least, suggest that Rawlsian ‘*difference principle*’ of justice could be the pointer of favoring preferential treatment.

I think that except the second part of the second principle what Rawls termed as *difference principle*, his idea of justice does not allow the so-called preferential treatment we are taking off in India. His idea of justice is deontological as well as contractarian in nature and in this regard, Kant influenced Rawls. The deontological approach of Kant is based on absolute moral principles and maxims. Such moral principles are universalizable in nature. A maxim, for Kant, is a principle upon which we act. Kant says, in his *Groundwork of the Metaphysics of Morals*, “Act only on that maxim through which you can at the same time will that it should become a universal law”.⁶ A law is said to be universal if it is valid for all rational beings and a categorical imperative arising *from within* bids us to act in accordance with universal law. In the very similar manner, Rawls gives importance on the original position and in this regard, he brings the concept of impartiality that can be conceptualized in terms of ‘veil of ignorance. Thus, Rawls’ idea of justice emphasizes more on ‘just institution’ rather than ‘just societies’ and thereby ignores preferential treatment in more general sense. Accordingly, it can be said that preferential treatment as witnessing in India cannot be justified and defended on the basis of Rawls’ imagined idea of justice as ‘justice as fairness’. Rawls applies the idea of a hypothetical social agreement to argue for principles of justice. These principles apply to decide the justice of the institutions that constitute the basic structure of the society. Accordingly, individuals and their actions are just insofar as they conform to the demands of just institutions. Rawls in this regard says that the basic structure of society is ‘the primary subject of justice’⁷ His deontological form of justice in the strict sense of the term is conservative in nature as it aims to preserve and protect the established order of the society. In short, I can say that the imagined and idealized form of justice as has been outlined by Rawls as ‘justice as fairness’ does not accommodate the so-called preferential treatment we are envisaging in India.

The question then arises: can preferential treatment be defended on the basis

⁶Kant, Immanuel. 1964. *Groundwork of the Metaphysics of Morals*. translated and analysed by H.J.Paton, Harper and Row, London, p.30.

⁷Rawls, John. 1971. *A Theory of Justice*, op. cit. pp.7-9.

of the idea of justice as has been developed by Amartya Sen. There is no question of doubt that Amartya Sen was highly influenced by John Rawls. In fact, Prof. Sen confesses his indebtedness to Rawls in developing his own idea of justice. However, Sen differs from Rawls on many important aspects. Rawls emphasizes 'just institution,' whereas Sen emphasizes 'just societies'. Secondly, Rawls introduces a deontological approach to justice, whereas Sen advocates a prudent consequential approach to justice. Rawls, being a deontologist, emphasizes moral principles (*niti*), whereas Sen, being a prudent consequentialist, emphasizes (*nyaya*).

I propose Sen's prudent consequential approach of justice can be taken as an effective tool for defending preferential treatment witnessing in India. Sen calls for *welfare economics* and equally emphasizes on *development ethics*. He tries to interpret welfare economics in on the face of utilitarianism and consequentialism. According to Sen, utilitarianism is more than 'welfarism'.⁸ His understanding of welfarism and consequentialism within utilitarianism assigns values to states of affairs and it equally claims that the correct basis of assessment is welfare, satisfaction, or people getting what they prefer. The other component of this theory is consequentialism, which claims actions are to be chosen based on the states of affairs, which are their consequences. I believe Sen's understanding of utilitarianism is a combination of both. In one hand, it counsels a choice of actions based on consequence. On the other hand, it gives an assessment in terms of welfare. In this regard, Sen's understanding and interpretation of utilitarianism has been labeled *welfare consequentialism*, which emphasizes individual welfare or utilities to assess the consequence. He eventually terms his own understanding of consequentialism as *Prudent Consequentialism*, and in this regard, he refers to the character and roles of Arjuna of *Bhagabhatgita* of *Mahabharata* as a model of prudent consequentist.

Then Sen distinguishes between *Niti* and *Nyaya* of *Bhagabhatgita* of *Mahabharata*. According to Sen, there are two forms of justice, such as, *niti*-based form and *nyaya*-based form of justice. Rawls' idea of justice is *niti*-based (Rule-oriented) form of justice and Sen's idea of justice is *nyaya*-based form of justice. *Nyaya*-based approach of justice is a mixture of both utilitarianism and consequentialism what Sen has termed as *welfare*

⁸Sen, Amartya and Bernard Williams, 1999. *Utilitarianism and Beyond*. Cambridge University Press, p.2.

consequentialism. However, Sen does not advocate *mere-consequentialism*; instead, he advocates prudent consequentialism. The question is, “How does consequentialism become prudent consequentialism? In this regard, Sen refers the character and role of Arjuna of *Gita* of *Mahabharata*. According to Sen, Rawlsian idea of justice is at par with the role of Krishna of *Gita* of *Mahabharata* and his own idea of justice is at par with the role of Arjuna of *Gita* of *Mahabharata*. Consequentialism tells us that the worth of a moral action is determined because of its consequence. However, mere consequentialism may vitiate the objective of justice. Sen therefore calls for *prudent consequentialism* where the outcome of moral action would be attributed as prudent in the context of the demand and need of the society.

For Sen, *niti* means moral wisdom or justice in general, and *nyāya* means special aspects of justice as administered or realized. To illustrate the clear distinction between *niti* and *nyāya*, Professor Sen takes an example from the Indian epic, *Mahābhārata*. In the particular part of *Mahābhārata* called *Bhagavadgītā* (in short *Gītā*), there is a story of battle. On the eve of the battle, the unconquerable warrior Arjuna expresses thoughtful doubts about taking part in a battle resulting in so much killing of relatives and superiors. His mentor, Krishna, tells him that he, Arjuna, must give precedence to his duty, i.e. to fight, irrespective of the consequences. As far as *niti* is concerned, Arjuna, being a warrior, should take part in the battle and as far as *nyāya* is concerned, he should think of the consequence of this battle. Thus, considering the two forms of justice at random, Arjuna falls in a dilemma or *dichotomy*.⁹ Prof. Sen here makes a beautiful comparison by characterizing Krishna as a deontologist and Arjuna as a prudent consequentialist. Krishna, being a deontologist, emphasizes on moral rules and principles (*niti*) which are universal and supreme. On the contrary, Arjuna, being a prudent consequentialist, thinks about the outcome of this war. Prof. Sen says, “The famous debate is often interpreted as one about deontology verses consequentialism, with Krishna, the deontologist, urging Arjuna to do his duty, while Arjuna, the alleged consequentialist, worries about the terrible consequences of the war.”¹⁰

The question then is which one, between *niti* and *nyāya*, is acceptable to us? Both *niti* and *nyāya* stand for justice in classical Sanskrit. According to Sen, *niti* is

⁹Sen, Amartya. 2009. *The Idea of Justice*, Penguin Books, p.22.

¹⁰Ibid. p.23.

an organizational property and behavioral correctness, whereas *nyāya* stands for ‘a comprehensive concept of realized justice.’¹¹ Following Sen, I can say that *niti* (i.e. principles) is set for judging institutions and rules, but *nyāya* is a matter of judging the societies themselves. *Niti* is set for institutional and political justice whereas *nyāya* is set for social justice. Sen in this regard recalls the early Indian legal theorists’ metaphor *mātsyanyāya*, i.e. justice in the world of fish, where a big fish can freely and greedily swallows a small fish. Therefore, we must go against *mātsyanyāya* to make it sure that the ‘justice of fish’ is not allowed to invade the world of human beings. According to Sen, realization in the sense of *nyāya* is a matter of judging the societies themselves and if a big fish goes in oppressing a small fish *at will*, then it must be a patent violation of justice as *nyāya*. This is where the relevance of preferential treatment lies. We must be careful about the big fish that can swallow the small fishes at his own will. Preferential treatment will create a bar before the big fish so that he will not enter to rob the basic needs of small fishes. The present situation of India is just like this. Preferential treatment in terms of reservation actually creates a bar before the privileged classes and because of this bar, the meritorious, talented and privileged cannot enter to rob the basic needs of the unprivileged, both economically and socially, people of India. Following Amartya Sen, I insist that as far as social justice is concerned, we do not require *mātsyanyāya* from one who can do anything according to his will. Rather, we have to make a bar before the *mātsyanyāya* so that one can resist greed over his needs.

I think that *nyaya-based* approach of justice of Prof. Sen is particularly relevant in understanding preferential treatment witnessing in India. His understanding of *welfare consequentialism* is predominantly concerned with social justice where the relevance of preferential treatment counts the most. Even though it neglects of a person’s autonomy and to a great extent is the lack of interest in a person’s integrity, but for the sake of interest of the greatest unprivileged majority, welfare consequentialism as a model of preferential treatment is well justified because it is linked with social justice. Professor Sen, while developing his welfare consequentialism through utilitarianism, actually brings back the relevance of social justice implemented through preferential treatment in India. In this regard, he has chosen the character of Arjuna of *Gita* of *Mahabharata* as a role model of welfare consequentialist. Thus, he differs from

¹¹Ibid. p.20.

Rawls mainly on the issue that Rawls over emphasizes the *just institution*, whereas Sen over emphasizes the *just societies*. Rawls prefers¹² *justitum* instead of *justita*, whereas Sen prefers *justita* instead of *justitum*.

III.

The concluding section illuminates my position regarding preferential treatment. At the same time I propose this explication also brings something new by means of which the readers of the philosophical community in particular, and others in general, would be benefited. I think preferential treatment in India is still a debatable issue. The most negative aspect of preferential treatment is that it ignores *individual merit and talent*, which cannot be justified scientifically. From a general perspective, it would be very disheartening to know that irrespective of caste, creed, sex etc., a comparatively talented candidate cannot get an opportunity, because of the very fact he or she belongs to a particular caste. As well, it is very questionable that *an ill-talented candidate*, by virtue of preferential treatment, would get better consideration. Consideration that he does not deserve, as far as merit or talent is concerned. I myself very often have experienced such grievances out bursting from my few research scholars. I have tried to convince them by referring the relevance of preferential treatment from the perspective of social justice. I think this paper brings a new message directed to the question why should we prefer preferential treatment. There is no question or doubt – India is a country where special attention has been given due to preferential treatment policies. In fact, I think, preferential treatment is not a new phenomenon. The same has been witnessing all over in the world. However, in many countries, preferential treatment has been modified and even in some states, it has been nullified or boiled down within a stipulated time period. Serious debate is going on even in country like California. Even in India, the same question has been raised by the opponents of preferential treatment. Their point is that preferential treatment should not be an ever-unending process. It must be re-examined constitutionally at some point. For them preferential treatment in the form of social justice actually is a form of injustice as it robs individual talent and merit, it neglects person's autonomy, freedom of the will to a great extent, it hampers person's integrity, commitment, innovation, creativity. The indifference to the

¹²Sen, Amartya. 2009. *The Idea of Justice*, op. cit.p.74.

separateness and identity of individuals, and consequently to their aims, plans and ambitions, and to the importance of their agency and actions, contributes to this neglect.

Truly speaking, the negative impact of preferential treatment is huge in India. Nobody can deny it. However, when talking about social and economic justice, we have to minimize this so-called negative impact in favour benefitting the greatest number of unprivileged people. Those, who were badly and inhumanly exploited in the past, are still are crying for redressing their basic needs. India, being a secular democratic country, must ensure the basic needs of her people. We should not forget that the genesis of India is that it preserves, at any cost, unity and harmony among diversity. Racial, cultural, religious and even political diversity is the genesis of Indian democracy, and we must honour it as ardent citizens of India. How can we do this? In this regard, we must take lesson from our greatest epic, such as, *Gita*, *Upanishad* etc. We must embody the teachings and lessons from our greatest humanists, such as Vivekananda, Amedkar, Gandhi, and Jawaharlal Nehru. We can do this by ensuring social justice. Therefore, in order to bring back the relevance of social justice, we have to compensate ourselves, even in terms of merit and individual talent; otherwise, the big fish of the pond (i.e. *matsyanaya*) would indiscriminately swallow *all* of the small fishes in the pond. In such a situation, we overlook and even ignore the genesis of Indian democracy, which hinges on the slogan 'unity among diversity'. Preferential treatment in India, of course, negates individual merit and talent, but it does not hamper the basic needs of the privileged. On the contrary, preferential treatment ensures the basic rights of the unprivileged, the exploited, and the distressed millions of people of India, who deserve far more humanity and compassion than anything else. Thus, keeping the relevance of social justice in mind, I do prefer preferential treatment in India in particular and the whole world in general, where the basic needs of the millions of distressed and unprivileged people can be protected and in this regard, I think, the concept of prudent consequential approach of justice of Amartya Sen would be effective.

Preferential treatment is a *humanitarian form of justice* and rational human can deny it. From a cosmopolitan or global perspective, nothing is wrong in preferential treatment. Preferential treatment can equally be defended based on Rawls' second part of the second principle of justice. Preferential treatment had been practiced all over in the globe in the past; it is being applied at present, and it will apply in future as well. As it belongs to the purview of social justice,

society in course of time, will take different forms and accordingly the modality of preferential treatment will take different shape. In India, Government takes different measures to identify people under different schemes of preferential treatment. However, the negative side of preferential treatment in country like India is political biasness. In India, every decision of government is in some sense or other politically motivated and biased. People of India feel ashamed when they hear on television the slogan in parliament against our honorable Prime Minister. Recently, an event happened in Rajya Sabha, where the opposition members attacked our honorable Prime Minister by calling him a thief. Even though India is a secular democratic country and it is, indeed, the privilege of all Indians without any reservation. Unfortunately, it is the grave disquiet in narrow politics that would hamper the objective of preferential treatment. In many countries including India, preferential treatment in the past has been implemented in terms of caste, creed, and color of the skin. In the era of Nelson Mandela, a political reformer of South Africa, we have noticed national conflict in terms of the color of skin. The white-black conflict is a global conflict even in these days. A resolution was passed mandating at least two members from the black community must be included in the National Cricket team of South Africa. This was a glaring example of preferential treatment in the game of cricket in South Africa. Since independence in India, preferential treatment is being implemented based on caste. A group of people belonging to a particular caste enjoys the benefits of preferential treatment. I have hardly observed any serious grievance in India in the implementation of preferential treatment in terms of food, cloths, medicines, house building, etc. There are many central schemes of preferential treatment that are now functioning in India in the name of many great politicians and social reformers.

However, at the same time, we have noticed many agitations in terms of fasting, in terms of committing suicides when preferential treatment had been implemented in jobs and in admissions in educational institutions by forfeiting the merit of a particular caste or community. In India, preferential treatment is now being implemented based on caste. As a result, a few castes enjoy better placement in job and admission in school, colleges and universities, even if they are inferior in merit than the other castes who do not enjoy preferential treatment. Thus, in the case of placement in jobs and admission in education, merit has been forfeited which I think is a great negative aspect of preferential treatment. As the preferential treatment in India is caste-oriented, it has been applied collectively,

instead of distributively. Rawls was skeptical about the concept of distributive justice. However, considering the gravity of preferential treatment, the concept of distributive justice would be an effective method of preferential treatment. Preferential treatment is the sample of social justice. Therefore, it should remain in the society, in the community, in the state or country so long the people of the society, or community or the country fall short of enjoying the basic human rights or basic needs. However, instead of caste and the color of the skin, economic issues are far more relevant in implementing preferential treatment. In this regard, Professor Amartya Sen favors the *welfare economy*. The government of India in particular and the globe in general, must address the welfare economy while implementing preferential treatment. In this regard, I too believe that distributive justice would be treated as an effective criterion of implementing preferential treatment both in the West as well as the East, including India.