

NITI and NYAYA in Amartya Sen's Theory of Justice: From Institutional Policy to Realized Justice

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Abstract:

This research explores the dichotomy of NITI (Policy) and NYAYA (Justice) within the framework of Amartya Sen's Justice Theory. Drawing inspiration from Sen's seminal work, "The Idea of Justice," the study employs a qualitative analysis to unravel the nuanced relationship between strategic policy formulation and the realisation of distributive justice in the socio-economic and political context of India. The rejection of transcendental institutionalism, the emphasis on freedom and capability, and the introduction of the NITI and NYAYA dichotomy form the theoretical foundation. Through a detailed examination of historical analogies and practical policy implications, the qualitative analysis seeks to discern the intricate dynamics shaping justice outcomes.

The research contributes to academic discourse by providing a comprehensive understanding of the challenges and opportunities in aligning NITI and NYAYA. Furthermore, the study offers valuable insights for policymakers, advocating for a pragmatic approach grounded in reasoned public reasoning, actual social outcomes, and the empowerment of individuals.

Key Words: Justice Theory, Transcendental Institutionalism, Freedom and Capability, Distributive Justice, Inclusive Development

Introduction

In the intricate tapestry of socio-economic and political development, the pursuit of justice stands as a pivotal objective for societies worldwide. India, a diverse and dynamic nation, grapples with the challenge of fostering equitable growth and social harmony. In this context, the dichotomy between NITI (Policy) and NYAYA (Justice) emerges as a crucial focal point, embodying the tension between strategic planning and distributive justice. This research delves into the nuanced interplay between these two pillars of governance through the lens of Amartya Sen's Justice Theory.

Amartya Sen, a Nobel laureate in Economics, has been a prominent voice in the discourse on justice, advocating for an expansive and multidimensional understanding of the concept. His seminal works, such as "The Idea of Justice," provide a comprehensive framework that extends beyond traditional theories, emphasising the importance of capabilities, freedoms, and social arrangements in achieving true justice. As India grapples with the challenges of development, Sen's theory offers a valuable perspective for dissecting the apparent tension between policy formulation (NITI) and the realisation of justice (NYAYA).

NITI, encapsulating policy initiatives and strategic planning, reflects the government's efforts to chart a course for economic growth and societal progress. However, the effectiveness of such policies in achieving justice remains a subject of critical examination. On the other hand, NYAYA embodies the quest for fairness and equitable distribution of resources, ensuring that the benefits of development reach all strata of society. The tension arises as policy decisions may only sometimes align seamlessly with the principles of justice, leading to disparities and social inequalities.

This research seeks to unravel the intricate relationship between NITI and NYAYA, employing Amartya Sen's Justice Theory as a conceptual framework. By analysing specific policy interventions and their impact on justice outcomes, the study aims to contribute to a nuanced understanding of the challenges and opportunities in reconciling strategic planning with distributive justice. In doing so, it aspires to offer insights that can inform policy discourse and decision-making processes, fostering a more inclusive and equitable trajectory for India's development journey. As we navigate the complexities of governance, this exploration promises to shed light on pathways that harmonise the dichotomy between NITI and NYAYA, forging a more just and sustainable future for the nation.

Problem Statement:

The dichotomy between NITI and NYAYA poses a fundamental challenge in achieving a just and equitable society. The problem statement revolves around the tension between strategic policy planning and the realisation of distributive justice objectives. Despite concerted efforts to drive economic growth and development, disparities persist, raising questions about the alignment of policy initiatives with principles of social justice. This research aims to address the specific problem of reconciling NITI and NYAYA, seeking to understand how policy decisions can be better tailored to achieve justice outcomes, and vice versa, in the context of India's socio-economic and political landscape.

Aim and Objective

The overarching aim of this research is to critically examine the dichotomy between NITI and NYAYA in the context of India's socio-economic and political landscape, employing Amartya Sen's Justice Theory as a guiding framework. By delving into the intricate relationship between strategic policy formulation and the realisation of distributive justice, the research aims to contribute to a nuanced understanding of how these two facets intersect and impact each other.

Objectives:

Based on the stated problems and aims, the objectives for this research have been listed as follows:

1. Analyse the complex interplay between NITI and NYAYA using the framework provided by Amartya Sen's Justice Theory
2. Investigate the effectiveness of capabilities, freedoms, and social arrangements in achieving justice objectives.
3. Based on the analysis, formulate recommendations for enhancing the alignment between NITI and NYAYA.

By achieving these objectives, the research aims to provide a comprehensive analysis of the intricate dynamics between NITI and NYAYA, offering valuable insights for both academic and practical considerations in the pursuit of a just and inclusive development agenda for India.

Significance and Scope of the Research

The study will contribute to evaluating the actual impact of policy initiatives on justice outcomes, providing a robust basis for assessing the effectiveness of strategic planning in achieving distributive justice. By applying Amartya Sen's Justice Theory, the research seeks to advance theoretical understanding, offering a nuanced perspective on justice that goes beyond traditional economic frameworks. The findings and recommendations of the research can serve as guidance for policymakers in aligning strategic planning with justice objectives, fostering more coherent and inclusive policy formulation. The research aims to contribute to the academic discourse on the interplay between policy and justice, offering insights that can inform further research in the fields of economics, political science, and development studies. By uncovering disparities and inequalities resulting from policy decisions, the research may contribute to social justice advocacy, empowering civil society and non-governmental organisations to address systemic issues.

The study will primarily focus on policy initiatives and justice outcomes in India over the past decade, providing a contemporary understanding of the challenges and opportunities in aligning NITI and NYAYA. The research will examine policies across various domains, including economic development, social welfare, and governance, to capture the multidimensional nature of the NITI and NYAYA dichotomy. While the primary focus is on India, comparative analyses with experiences from other developing nations may be considered to provide a broader perspective on policy

and justice dynamics. The study's theoretical framework will predominantly draw upon Amartya Sen's Justice Theory, emphasising capabilities, freedoms, and social arrangements as essential components for evaluating justice outcomes.

Amartya Sen's The Idea of Justice,

Amartya Sen's book 'The Idea of Justice' provides a critical analysis of existing ideas of 'justice' and presents his perspective on the concept of social justice. According to Sen, it is necessary to assess societal inequalities using logical reasoning and justified explanations (many foundations). Policy actions may only be adopted to minimise social injustice and advance justice based on a reasoned understanding of its origins. Sen has vehemently criticised the line of thinking known as transcendental institutionalism, which is associated with thinkers such as Locke, Rousseau, Kant, and Rawls. He argues that it is impossible to establish a single social system that is absolutely right. He rejects the idea of a transcendental thesis that a specific set of institutions would automatically achieve social justice. According to him, it is optional and sufficient for a theory of justice to be workable. He had a strong preference for comparative analyses of justice that were centred on actualisations, such as those proposed by Adam Smith, Marx, J. S. Mill, and Condorcet. This approach is grounded on the social manifestations that arise from tangible institutions, genuine behaviours, and other influential factors. The primary emphasis of the latter approach lies in rectifying blatant unfairness within society rather than in identifying optimal social structures and selecting ideal institutions.

Sen has utilised historical analogies and other illustrations to establish an analogy for a public reasoning process that is based on arguments and may be implemented to determine rankings of alternatives. The concept of 'social choice theory', formulated initially by Condorcet and then expanded upon by Kenneth Arrow in the mid-20th century, is fundamental to the field of analysis. Amartya Sen supports the use of reason to investigate the issue of ethical objectivity. He believes that examining this issue from various perspectives through reasoned scrutiny is crucial for achieving objectivity in ethical and political beliefs.

NITI over NYAYA in Sen's Idea of Justice

Sen argues that the concept of a perfect model of justice is redundant because he believes that all transcendental systems of justice are flawed. These systems need to prioritise the reduction of injustice and instead focus on the advancement of justice without considering that the existence of multiple demands prevents the establishment of a perfect justice system. Sen argues that the existence of correctable unfairness may be more closely linked to behavioural violations rather than deficiencies in institutions. Justice is fundamentally intertwined with the trajectory of individuals' lives rather than solely being determined by the characteristics of the institutions that encompass them (Rawls, 2001a).

Professor Sen drew inspiration from early Indian jurisprudence to elucidate the distinct notions of justice, 'NITI' and 'NYAYA'. The concept of NITI encompasses both organisational decorum and ethical soundness. At the same time, the latter, NYAYA, focuses on the outcomes and processes, specifically the actual lives that individuals are capable of living (Wacks, 2013). It is essential to evaluate the functions of institutions based on the level of inclusivity they demonstrate. This evaluation should consider the more significant viewpoint of NYAYA, which refers to the actual world that arises rather than being limited to the institutions we currently have.

Sen provides an illustrative instance to demonstrate the distinction between NITI and NYAYA. Ferdinand I, the Roman Emperor during the sixteenth century, famously declared: "Fiat justitia, et pereat mundus," which might be interpreted as "Let justice be done, even if it means the destruction of the world." This is an example of a stringent type of NITI that promotes even the occurrence of a disaster without taking into account how justice will be served if the world were to be destroyed. Professor Sen argues that adopting a realisation-focused perspective facilitates a better comprehension of the significance of preventing blatant injustice in the world rather than pursuing absolute justice (Satz, 2011). He provided an additional example that the movement against slavery throughout the 18th and 19th centuries did not succeed due to the mistaken notion that the abolition of slavery would result in an entirely fair society. The eradication of slavery became a priority due to the profoundly repugnant and unjust nature of the institution (Satz, 2011). While the arrangement-centered viewpoint of NITI is frequently understood in a manner that assumes the mere existence of suitable institutions is sufficient to meet the requirements of justice, the broader

perspective of NYAYA suggests the need to assess the actual social outcomes produced by those institutional foundations (Sen, 2015). This system can facilitate the integration and adaptation of differing perspectives. Sen proposes a comprehensive framework for justice in the contemporary world that transcends narrow-mindedness and tackles the pressing issues of global inequality.

Sen's concept of justice has sparked a discussion on the old legal concepts of *niti* and *nyaya*. In Sanskrit, these phrases have a restricted definition that refers to "justice." However, when considering their interpretational values, both terms emphasise two distinct approaches. Prior to proceeding, it is essential to elucidate the ethical and jurisprudential significance of both of these phrases.

"Niti" might be defined as the "theory of State" or political sagacity (Gautam, 2021). This exercise is abstract and, when put into practice, would lead to the highest level of public welfare and justice. *Niti*, according to Sanskrit ethics and concepts, primarily concerns itself with the establishment and enforcement of rules and institutions. *Nyaya*, however, refers to the all-encompassing notion of justice that has been achieved. *Niti* must be evaluated based on *Nyaya*, which is inherently connected to the actual world that unfolds, rather than solely focusing on the institutions or regulations that exist. It is crucial to assess the extent to which institutions embody inclusion by considering the broader perspective of *Nyaya*, which focuses on the actual reality rather than just the existing institutions. Sen argues that the differentiation between *niti* and *nyaya* can be observed in European philosophy. Hobbes, Locke, Rousseau, Kant, and Rawls primarily emphasise the creation of proper institutions, while Adam Smith, Wollstonecraft, Bentham, Marx, and Mill adopt a more comprehensive perspective, considering social outcomes that are undoubtedly influenced by institutions as well as other factors, such as human conduct (Sen, 2008).

Sen uses the example of Ferdinand I, a Roman emperor in the 16th century, who proclaimed "*Fiat Justitia, et perat mundus*", meaning "Let justice be done, though the world perish," to demonstrate the distinction between *niti* and *nyaya*. This is an example of a severely strict form of morality that encourages causing catastrophe without considering the consequences of the entire world's destruction on the concept of justice. According to Professor Sen, adopting a realisation-focused approach simplifies the understanding of the importance of preventing apparent injustice in the world rather than striving for absolute fairness. The divide between *Niti* and *Nyaya* bears a remarkable resemblance to another well-recognised differentiation in Western legal thinking: the dichotomy between law as written and law as practised, as formulated by American attorney Roscoe Pound (Sen, 2015). While the divides may not possess identical significance, they do exhibit noticeable and captivating resemblances. This occurrence serves as an illustration of one of Sen's several principles: showcasing the fact that ideas that are seen as innovative in the Western world had already exerted influence in other regions of the world throughout ancient times. Generally, the notion of justice is not entirely unfamiliar, as it has been deliberated about throughout various civilisations throughout history.

The concept of *Nyaya* is founded upon the incorporation of humanitarian ideals such as compassion and inclusivity. This is in opposition to *Niti*'s approach, which involves selecting institutions for the fundamental framework of society and establishing a political understanding of justice (Kant, 1796). Sen exemplifies the compassionate nature of the *nyaya* philosophy by citing the case of Gautama Buddha. According to him, when the young Gautama Buddha departed from his affluent residence in the Himalayan foothills to seek enlightenment, he was profoundly moved by the presence of death, sickness, and physical weakness in his surroundings, which greatly disturbed him. Sen argues that the suffering experienced by Gautama Buddha can be comprehended without difficulty and that it is feasible to "acknowledge the significance of human existence in logical evaluations of our world." (Sen, 2008) According to him, this is a fundamental attribute of the conventional Indian viewpoint on '*Nyaya*' (justice) in contrast to '*Niti*' (rules). Therefore, Sen prioritises "*Nyaya*" as the core principle of his justice paradigm.

Undoubtedly, social analysts have had a longstanding fascination with the essence of the lifestyles that individuals are capable of pursuing. Although numerous commonly used economic indicators of progress, as evident in a wide range of easily accessible data, have tended to prioritise the improvement of non-living commodities (such as gross national product (GNP) and gross domestic product (GDP), which have been extensively studied in relation to progress), this focus can only be justified based on the impact these commodities have. The justification for utilising direct measures

of life quality, well-being, and freedoms that individuals possess is becoming more evident. The creators of quantitative national income estimation, despite the widespread focus and support for the concept of justice, have emphasised that their primary concern lies in the overall quality of human existence. It is worth noting that their measures have garnered significant attention, while their underlying motivations have received less scrutiny (Sen, 2015). Sen Attempts to convey that the Nyaya-centric approach to justice is both ancient and foreign. It has permeated even the theories of contemporary economics.

Sen recognises the significant role that institutions play in developing our ability to critically examine the values and priorities we consider. Democracy, as an institution, is evaluated based on public reasoning. The effectiveness of a democratic institution should be assessed by the extent to which diverse voices are able to express themselves and be heard rather than simply by its formal existence. If a democratic institution fails to provide representation and the opportunity for people to voice their opinions, it becomes meaningless.

Freedom and Capability

Sen has expanded upon the social choice theory by emphasising an achievement-oriented concept of justice that is rooted in the freedom and potential of individuals. He believes that the recognition of social potential not only empowers individuals but also generates ethical obligations. Sen argues that the significance of how we live outweighs the specific circumstances of our existence. Therefore, the significance of liberty and the ability to make choices is considered one of the esteemed elements of existence. Increased freedom affords us more significant possibilities to pursue our life goals. This facet of freedom pertains to one's capacity or aptitude. Another facet of freedom is intricately connected to the act of making choices. This also contributes to enhancing worries and commitments towards social life. Here, he diverges from the utilitarian method and formulates his capability-based approach, placing particular stress on 'niti' and 'Nyaya'. Niti refers to the principles and guidelines that govern organisational propriety and behavioural conduct. On the other hand, Nyaya encompasses the broader notion of justice that is actually achieved and realised. Sen has contended that the evaluation of niti should be based on nyaya in order to achieve a thorough understanding of justice.

Sen has skillfully referenced examples from The Bhagavadgita to shed light on the contrast between niti and nyaya. Specifically, he explores the thought-provoking conversation and predicament between Krishna and Arjuna at the beginning of the Kurukshetra war. Arjuna, who follows the consequentialist philosophy, is greatly troubled by the deadly effects of the conflict. On the other hand, Krishna, who adheres to deontological principles, is encouraging Arjuna to disregard the outcomes and fulfil his duty as a warrior. In this context, Sen examines the social ramifications of the differentiation and comparison between deontological and consequentialist approaches to justice. He has vigorously advocated for the 'comprehensive outcome', which encompasses the processes involved, rather than solely emphasising the 'culmination end', which only focuses on the final consequence, as a method of achieving social justice.

Features of Sen's Capability Approach

The capability approach can be characterised by three distinct features, which are focused on opportunities rather than just achievements, concern about the difficulty of measuring capabilities, and the importance of valuation and public reasoning. These are further elaborated as follows:

1. *Going Beyond Achievement to Opportunity*

Capability refers to the range of operating options available to a person, encompassing all possible combinations of choices. If the selection is determined by attained performance, then the ability to make choices is forfeited. Freedom possesses solely instrumental value. Consider the scenario when a wealthy individual voluntarily decides to abstain from eating for political or religious reasons while they have the option to eat. In contrast, a person living in poverty is compelled to fast because they lack access to food and are experiencing hunger. The attained functioning is identical in both circumstances; however, the former example grants a high capacity by allowing individuals to choose numerous kinds of living within their reach.

2. *Fear of Non-Commensurability (Measurability)*

Capabilities are incomparable because they are inherently diverse, unlike usefulness and GNP. Non-commensurability occurs when many aspects of value are not able to be reduced or compared to one other. Nevertheless, in practical situations where we must choose between non-comparable options, such as going on a vacation or seeking medical treatment, we still make rational decisions.

3. *Valuation and Public Reasoning*

Public reason serves as the foundation for assessing comparative importance rather than just quantifying based on utility values. Public debate has a crucial role in providing valuable information and solid arguments for social evaluation, especially in policy fields. With public discourse, the availability of such information and arguments may be significantly expanded. The application of public reasoning has been valuable in challenging the notion of a rigidly defined work schedule for women. This facilitates the emergence of novel and intriguing inquiries. There is no basis for pre-established weights. The presence of pre-established weights may help the assessment of injustices. The primary objective is to ensure accuracy in the process of comparison assessment.

Capabilities, Individuals and Communities

Equating the capabilities approach with methodological individualism would be an erroneous assumption. One can discuss the capabilities of various communities, such as tribal communities and Muslim communities. Indeed, each individual is inherently interconnected with society. The capability perspective necessitates increased public involvement in various matters that result in human misery but is rooted in societal conditioning. The concept of an impartial spectator highlights the significance of society in the process of evaluation. This social assessment aligns with the concept that it is individual persons who engage in cognitive processes, make decisions, and take action. A crucial aspect to consider is that individuals own many identities as members of various social groups rather than just one. Therefore, comprehending an individual's choice and action requires considering their various identities and affiliations rather than relying solely on methodological individualism.

Sustainable development, environment and global justice

Sen has demonstrated the significance of environmental sustainability in maintaining and improving the overall quality of life, therefore expanding the potential of human beings. Simultaneously, the process of empowerment through education and other means can create a conducive environment for individuals. An illustration of environmental sustainability is, after that, suggested to advocate for the extension and perpetuation of freedom. Furthermore, a crucial aspect supporting the case for competence is the significance of human lives. Sen has recently discussed a comprehensive perspective on global justice. Once again, he emphasises the repetitiveness of the transcendental institutional approach as an idealistic concept that needs more practicality with the existence of a comprehensive global institutional governance or framework. Sen argues that the call for global justice and institutional reforms aims primarily to eradicate instances of apparent injustice, such as apartheid and slavery, rather than striving for an entirely equitable global society.

From Sen's understanding of social justice, we can deduce a few objective principles that have policy implications. Primarily, policy development at the conceptual phase should be grounded in a comprehensive comprehension of the difficulties and problems that exist at the grassroots level, both in social and tangible terms. It involves doing a logical examination using public reasoning and identifying and prioritising practical alternatives. Simply adopting a transcendental perspective in policy-making to attain an idealistic vision of social justice would be ineffective in achieving intended goals. The goal of achieving universal elementary education through the implementation of the Sarva Siksha Aviyan policy by the Government of India has largely been unsuccessful due to a lack of awareness of the actual conditions on the ground, such as the demand for education, the availability and distribution of teachers in schools, and regional and social inequalities.

Furthermore, it is essential to view policy perspectives not only as a conclusion but also as a whole process. The method of achieving a socially desirable goal through policy has significantly more consequences than solely focusing on the outcome. As an illustration, we discuss the massification of higher education in India in relation to the significant increase in the Gross Enrollment Ratio (GER), which is the outcome. However, upon closer examination of the process driving this increasing Gross Enrollment Ratio (GER), it becomes evident that it is primarily driven by a rapid increase in the number of private Higher Education Institutions (HEIs) in India, without sufficient regard for essential factors such as quality, access, and equity. These factors are of greater significance and are critical for achieving socially desired outcomes.

Furthermore, Sen has extensively elaborated on a capability-based approach in his theory, which focuses on empowering individuals by granting them the flexibility to make choices about their lives. This method aims to foster a more equitable and fair society. Viewing social realisations in terms of capacities rather than utility or happiness would enhance individuals' empowerment and responsibility. This represents a significant deviation from the conventional utilitarian mindset that underlies the development of any public policy formulation technique. A welfare state should prioritise granting its residents greater autonomy and agency in their decision-making processes, rather than solely focusing on establishing effective administrative structures, in order to foster a thriving human society.

Comparative Justice in the Theory of Justice

According to Amartya Sen, Nyaya is a perspective that facilitates the recognition of the imperative to prevent apparent injustice in the world. He characterises this as being in opposition to Rawls' conception of a utopian or just society. Sen constructs his concept of justice based on the oversimplified representations of the aspects that Rawls' "Theory of Justice" fails to address (Wicks, 2013). Rawls discusses transcendental institutional and justice, emphasising the principles of fairness and the cultivation of "reflective equilibrium" and "overlapping consensus" (Rawls, 1971). To fully grasp Sen's model of comparative justice, it is imperative to examine Rawls' theory of justice, as Sen's model is built upon critiques of Rawls' theory for its excessive focus on "niti-centric" aspects. Rawls defines justice as "justice as fairness." In this context, Rawls presents two fundamental principles of justice. Rawls drew upon Kantian deontological ethics as a source of inspiration while developing the concept of justice. Kantian deontological ethics is a moral framework that is primarily guided by rigid moral principles and maxims that have the quality of being universally applicable (Kant, 1796). Rawls' concept of justice is deontological. Rawls employs the metaphor of the 'veil of ignorance' in this context to articulate his notion of justice as 'justice as fairness' (Rawls, 2001a). In addition, he employs the term 'impartiality' to characterise his notion of justice as 'justice as fairness.' However, fairness in all assessments necessitates the avoidance of bias, vested interests, personal idiosyncrasies and prejudices, as well as consideration for the concerns of others. The term 'fairness,' in this context, refers to the requirement for unbiased treatment, as determined by his notion of the 'starting position.' Rawls considers the original stance to be essential in his argument for 'justice as fairness'. The initial position refers to a hypothetical scenario when individuals are oblivious to their identities or interests within the community. It represents a state of equality and justice (Rawls, 2001a). According to Rawls, the representative must decide between 'full preferences' and a 'veil of ignorance,' which is a hypothetical state of deliberate unawareness. The notions of justice are universally embraced due to their wide-ranging appeal. "The original positions establish the appropriate initial status quo that guarantees the fairness of the fundamental agreements achieved within it," Rawls asserts in this context (Rawls, 2001). The phrase 'justice as fairness' was coined to explain this phenomenon.

Rawls ultimately presents two concepts of justice that will gain widespread acceptance from the outset. The book "Political Liberalism" outlines two principles, the Liberty Principle and the Difference Principle, which pertain to social and economic inequities. Rawls acknowledges the possibility of a conflict between these two primary concepts. Rawls offers a collection of 'Principles of Priority' as a solution to this issue. This priority is referred to as 'lexical,' indicating that the first condition must be fully met before the second one is assessed. The first principle of justice supersedes the second, and the principle of fair equality of opportunity supersedes the principle of difference. Therefore, it is essential to prioritise the equality of fundamental freedoms and rights, especially the equitable value of political liberty, over any other considerations (Sen, 2008).

Sen argues that the most significant weakness in Rawls' theory of justice is its reliance on transcendental institutionalism. Rawls' renowned theory, rooted in the social contract tradition, sought to elucidate a set of principles that would facilitate the establishment of equitable public institutions in a fair society. Sen's criticism of Rawls is direct yet impactful. 'He asserts that a theory of justice, which can be the basis of practical reasoning, must encompass methods for evaluating how to diminish injustice and promote justice. This is in contrast to the prevailing approach in contemporary political philosophy, which primarily concentrates on defining ideal just societies.' Therefore, Sen's primary objection to Rawls' theory lies in its endorsement of the perfection theory. Rawlsian political theory lacks practicality as it neglects to address significant societal injustices such as the Bengal famine of 1943, resulting in the deaths of millions, and the catastrophic earthquake in Haiti in January 2010, which claimed the lives of over 150,000 individuals and displaced more than two million people. Sen argues that the most effective approach to addressing calamities such as these is to focus on preventing starvation and improving people's quality of life rather than seeking out hypothetical and perfect institutions (Sen, 2015). The achievement of this goal can be attained by firmly asserting that preventing famines is morally correct, regardless of our differing opinions on the organisation of Haiti's government or international development aid.

The distinction between the niti-centered technique and other approaches to justice, such as social choice theory, is evident. The latter approach would analyse the impact of social institutions and public behaviour patterns by considering the social outcomes and achievements they generate. This analysis also takes into consideration the inherent significance of specific institutions and behaviour patterns within the social outcomes being evaluated.

Sen's criticism of Rawls' theory can be summarised in three main points. There are three critical factors to consider. The first is the undeniable significance of actual actions or conduct. The second is the alternatives based on contractarian principles. Moreover, the third is the importance of taking into account global viewpoints. Sen argues that Rawls aligns with the prevailing paradigm in Western social philosophy, which prioritises institutions above individuals' lives. This tradition assumes that by designing and implementing just institutions, practical justice may be achieved. However, institutions alone do not embody justice, and it is not appropriate to view institutions as the exclusive manifestation of justice. Instead, we should actively seek out institutions that actively promote justice rather than adopting a narrow perspective that considers institutions as the ultimate source of justice. Although institutions play a valuable role in addressing injustice, their effectiveness depends on other social, economic, political, and cultural variables that are often disregarded in modern conceptions of justice.

Sen argues that conventional Western social and political theory has neglected the significance of real human lives and social behaviour in the pursuit of justice, as well as the practical consequences of different actions and decisions. Justice must take into account both institutional institutions and actual human behaviour. There is a reciprocal relationship between the need for institutions to improve the pursuit of social justice and the support given to reconsidering behaviour based on social justice principles. Successful institutional adjustments necessitate modifications in tangible social conduct, as these factors are inherently interconnected.

Philosophy of Nyaya as Sen's Model of Justice

A method based on Nyaya (law in action) is superior to a niti (law in books) approach because it enables the examination of consequences. Nevertheless, it would be erroneous to equate Nyaya with a strictly consequentialist perspective on ethics and justice. Arjuna's occurrence in the Gita serves as a prominent example of a repeating topic in the text. Additionally, a nyaya approach encompasses the examination of processes, tasks, and responsibilities. Sen emphasises the use of the word 'comprehensive outcome' to refer to the entirety of the processes involved, and it should be separated from the term 'culmination outcome' (Sen, 2008). In his works on Economics, Lon Fuller, the renowned American lawyer, has cautioned against separating means and goals in social and legal analysis. Sen affirms that such a separation diminishes the effectiveness of ideas of justice. Put, a Nyaya method does not necessitate consequentialism, while it does consider the outcomes. Conversely, a nyaya approach explicitly acknowledges the incorporation of an anthropological element in the notion of justice.

Sen's work prioritises the human element, which is evident in the abundant anecdotes he uses to exemplify and elucidate different ideas. These narratives encompass both historical and contemporary accounts, comprising a mixture of factual and fictional stories, all centred on individuals. Admittedly, they do provide colour to the book, but they serve a much greater purpose. Sen's conception of justice incorporates anthropological discernment: 'The endeavour to formulate a theory of justice is connected to a similar inquiry: What is the human experience like?' (Sen, 2008) While it is true that comprehending human nature alone is not enough to address all the inquiries posed by a theory of justice, Sen highlights the significance of recognising that many of the conflicting notions of justice are rooted in a common perception of what defines a human being. The primary components of this shared vision are the willingness to oppose injustice and the inclination to do so through active engagement in meaningful public discourse involving reasoning, debating, disagreeing, and reaching consensus.

An emphasis on realisation in the Nyaya philosophy allows for a clear understanding of the importance of preventing apparent unfairness in the world, such as *matsyanyaya*. This perspective discourages indulging in fantasies of building an utterly fair society or implementing flawless social systems. Slavery abolitionists of the eighteenth and nineteenth centuries held the belief that the abolition of slavery would not lead to a state of complete justice in the world. Instead, they argued that a society founded on slavery was entirely immoral and required immediate abolition. The anti-slavery movement considered the pursuit of their cause as a paramount obligation, driven by their assessment of an intolerable wrong. The recognition of intolerable injustice inherent in slavery prompted the urgent pursuit of abolition without requiring consensus on the precise characteristics of an ideally just society (Sen, 2015).

Sen stressed that his conception of justice extends beyond mere outcomes. His conception of justice encompasses a comprehensive perspective that considers both the methods and results. To illustrate his point, he used the renowned dialogue between Krishna and Arjuna in the Bhagavad Gita. Arjuna, a celebrated warrior, experiences hesitation on the eve of battle despite being aligned with righteousness and justice, as he is unwilling to bring harm to his cousins who are fighting on the opposing side. Krishna compels Arjuna to fulfil his obligations regardless of the consequences. This argument is commonly presented as a clash between deontological and consequentialist viewpoints, with Krishna embodying the former and Arjuna embodying the latter.

Nevertheless, Sen argued that Arjuna is not solely a consequentialist, as he is not only concerned with the number of casualties in the fight he is deliberating but also with the act of killing individuals he holds dear. In the Gita argument, Krishna emphasises the fundamental principle of completing one's duty, whereas Arjuna both questions and opposes this principle. Arjuna questions why he should kill so many people, even if it seems to be his duty and queries regarding the ethical principles of the society that would arise from the battle (can a morally upright planet be built via widespread killing?). Sen's preference is prioritising the consequence discussions arising from our ancient literature rather than engaging in debates centred around *niti* (Sen, 2015).

Essentially, Sen's point is that within the comprehensive framework of Nyaya, we cannot only delegate the responsibility of justice to some social institutions and regulations that we consider to be flawless and then cease any further evaluation of their societal impact. When seeking justice, it is necessary to investigate the current state of affairs and explore possibilities for improvement.

Sen elucidates his conception of justice by employing the philosophical framework of *nyaya*, with particular emphasis on the narrative of Indian democracy. India serves as a prime example of the significant successes and unique shortcomings of democracy, which can be attributed to a lack of effective utilisation of democratic institutions. There is a strong argument for transitioning from electoral initiatives to democratic justice or governance through a "government of discussion".

Therefore, Sen's concept of justice is centred on Nyaya. Drawing from his personal experiences, including surviving the Bengal famine in 1943 and conducting thorough research on the subject, Sen argues that our prior thoughts and considerations of justice shape our understanding of justice as human beings. By delving into the root causes of injustices and human behaviour, it is possible to achieve justice and address the resulting consequences.

Flawless institutional frameworks need to indicate how we may make progress; the most suitable institutional configurations that represent a push towards more fairness would rely on specific conditions. Sen's thesis posits that by recognising this, we may shift our attention away from the pursuit of perfect institutions and instead concentrate on utilising them to tackle certain societal injustices and issues. We prioritise finding solutions based on individual capacities rather than imposing institutional structures or implementing changes from (e) Utopia (the ideal location) to Eudaimonia (flourishing), and this can only be accomplished by the application of justice, as per the principles of Nyaya philosophy.

Analysis and Interpretation

Amartya Sen's "The Idea of Justice" offers a profound and nuanced perspective on justice, departing from traditional theories and emphasising a capability-based approach rooted in freedom and social arrangements. This analysis will explore critical themes from Sen's work, such as the rejection of transcendental institutionalism, the centrality of freedom and capability, the features of the capability approach, and the dichotomy of NITI and NYAYA.

1. Rejection of Transcendental Institutionalism: Sen challenges the idea of establishing a single, ideal social system that can guarantee absolute justice. His critique of transcendental institutionalism aligns with his belief that justice cannot be achieved through a rigid set of institutions. Instead, he advocates for a pragmatic approach that recognises the diversity of human experiences and values reasoned public reasoning over predetermined, idealistic structures.

2. Freedom and Capability: Sen's emphasis on freedom and capability provides a distinctive lens for evaluating justice. The notion that individuals' capabilities are integral to justice challenges traditional utilitarian perspectives. He argues that focusing on opportunities and freedoms, rather than just achievements, is crucial. Sen's departure from a strict utilitarian mindset underscores the importance of empowering individuals and fostering a society that prioritises autonomy and agency.

3. Capability Approach Features: The capability approach, as outlined by Sen, exhibits three key features: a focus on opportunities, concerns about non-commensurability, and the importance of valuation and public reasoning. These features contribute to a comprehensive understanding of justice that goes beyond traditional measures of utility. The emphasis on public reasoning aligns with Sen's broader call for reasoned scrutiny and logical examination in the evaluation of ethical and political beliefs.

4. NITI and NYAYA Dichotomy: Sen introduces the dichotomy between NITI and NYAYA, drawing inspiration from Indian jurisprudence. NITI, representing organisational propriety and behavioural conduct, is contrasted with NYAYA, which encompasses broader notions of justice realised in actual lives. Sen argues that evaluating NITI should be based on NYAYA to gain a comprehensive understanding of justice. The example of Ferdinand I's strict NITI illustrates the need to consider real-world outcomes, emphasising the importance of NYAYA.

5. Evaluation of Institutions: Sen recognises the pivotal role of institutions in shaping values and priorities. However, he critiques the effectiveness of institutions solely based on their formal existence, highlighting the need for institutions, particularly democratic ones, to facilitate public reasoning and diverse voices. This evaluation goes beyond structural considerations and emphasises the practical functioning of institutions in promoting justice.

6. Sustainable Development and Global Justice: Sen extends his capability approach to address issues of sustainable development and global justice. He emphasises the significance of environmental sustainability in enhancing human potential and underscores the importance of empowering individuals through education and other means. Additionally, Sen argues against a rigid, idealistic vision of global justice, focusing on addressing clear instances of injustice rather than pursuing an unattainable, perfect global society.

7. Policy Implications: Sen's capability-based approach has direct policy implications. The emphasis on understanding grassroots realities, prioritising public reasoning, and viewing policies as processes rather than just outcomes reflects a pragmatic and context-specific approach. The analysis of specific policies, such as the Sarva

Siksha Aviyan and higher education massification, highlights the importance of considering the actual conditions on the ground for effective policy formulation.

8. NITI Over NYAYA in Sen's Idea of Justice: Sen argues against the pursuit of a perfect model of justice and favours addressing correctable injustices over an idealistic vision. The distinction between NITI and NYAYA becomes crucial, emphasising the need to evaluate institutions based on the inclusivity they demonstrate and the actual social outcomes they produce. Sen's approach advocates for a comprehensive framework that addresses the practical challenges of global inequality.

Sen's rejection of transcendental institutionalism sets the stage for understanding the dichotomy. Sen argues against the idea of a single, perfect social system that can achieve absolute justice. This rejection implies that there are inherent complexities and variations in societal structures that cannot be universally defined, thereby supporting the existence of a dichotomy.

Amartya Sen's exploration of the dichotomy between NITI and NYAYA through the lens of his justice theory offers a rich and multifaceted understanding of justice. Sen's departure from transcendental institutionalism, his focus on freedom and capability, and his application of the capability approach to diverse contexts provide a comprehensive framework for analysing and addressing societal challenges. The practical implications for policy formulation underscore the relevance and applicability of Sen's ideas in the pursuit of a just and inclusive society.

In conclusion, based on the arguments presented in the article, there is a clear establishment of the dichotomy between NITI and NYAYA in the context of Amartya Sen's Justice Theory. The rejection of a universal social system, the emphasis on real-world outcomes, and the critique of institutions solely based on their formal existence all contribute to the acknowledgement of this dichotomy. The nuanced approach presented in the article supports the idea that justice involves a complex interplay between policy formulation (NITI) and the actual realisation of justice in people's lives (NYAYA).

Conclusion

Sen's approach to justice involves the rejection of dogma, not only in terms of institutionalism (because the state is an institution, which relates to the previous problem with the niti method), but also in terms of exclusion. At least two factors hinder domestic local viewpoints on justice. The nature of injustice in our world is often global, and looking at it solely through the lens of national legislation is too limited for studying and analysing it, as well as for effectively fighting against it. Furthermore, a narrow focus solely on national law disregards international perspectives, limiting the legal domain to a narrow-mindedness that hinders progress in addressing injustice. Sen's focus on expanding comparisons and repeated allusions to the 'impartial spectator' are relevant to this argument. Sen advocates for the incorporation of a more extensive range of comparative, international, and particularly transnational perspectives in legal education, potentially leading to a significant overhaul of Western legal education (Priya, 2022).

The primary concept here is that achieving global justice does not necessitate the establishment of a worldwide governing body. Due to the absence of a reliable worldwide authority in the foreseeable future and the urgent and immediate nature of injustices, this approach is characterised by a sense of hope and optimism. Nevertheless, in the absence of a global state, democratic discourse can persist. Indeed, global democracy is currently being implemented, albeit to a certain extent. Nevertheless, this optimistic perspective can only be rationalised if we embrace a noninstitutional Nyaya concept of democracy, wherein "democracy is no longer exclusively defined by the aspiration for public voting, but rather, more comprehensively, by what John Rawls referred to as "the practice of public reason".

The nyaya-concept method has gained recognition in India through multiple rulings by the Indian Judiciary. The recent significant ruling in the case of *Puttuswamy versus Union of India*³⁶ draws upon Sen's democratic-Nyaya approach by affirming that the elements of development, such as political liberty and democratic rights, are essential. Thus affirming the opposing decision made by Justice Khanna in the case of *ADM Jabalpur vs Shivakanth Shukla*. This demonstrates that law encompasses not only ethical principles but also the administration of justice. The Nyaya-centric approach involves the implementation of law in a manner that is fair and equitable. The ideals of dialogue and justice

serve as a criterion to measure the unfairness of law enforcement. Part IV of Amartya Sen's book "Idea of Justice", titled "Public Reasoning and Democracy", was referenced in Pradeshiya. The case of Jan Jati Vikas Manch and Others v. State of UP and Others played a crucial role in safeguarding the civil and political rights of Scheduled Tribes and ensuring their representation in local governance—the case of B.K. Pavitre v. Union of India referenced Amartya Sen's work, Merit and Justice, as a valuable resource for comprehending the role of merit in establishing social structure and mitigating economic inequality.

Consequently, the Court concluded that providing reservations to S.C.s and SCTs did not contravene the principle of meritocracy. The Supreme Court ruled that merit should not be confined to inflexible standards like test scores but should instead aim for societal equity. These instances demonstrate that Amartya Sen's concept of justice when applied in practice, can withstand scrutiny based on actual justice served rather than perceived justice.

Sen's concept, based on extensive literature, boils down to a simple fundamental point: There are cases of severe injustice that demand immediate action, and the pursuit of the perfect idea of justice may not be helpful in the short term. Therefore, in order to summarise Amartya Sen's philosophy, one can examine the character of Pip from Charles Dickens's novel and discover that "what motivates" us, reasonably enough, is not the realisation that the world falls short of being completely just, which few of us expect – but that there are clearly remediable injustices around us which we want to eliminate." Thereby, the conclusion is to reduce injustice in the world rather than strive for justice.

References

- Commers, R. (1984). Marx's Concept of Justice and the Two Traditions in the European Political Thought. *Philosophica*, p. 33.
- Cressey, D. R., & Dill, W. R. (2013). Prison organisations. In *Handbook of Organizations (RLE: Organisations)* (pp. 1023–1070). Routledge.
- Gautam, P. (2021). A Comparison of Kamandaka's Nitisara and Kautilya's Arthashastra: Statecraft, Diplomacy and Warfare. *Focus*, 15(3).
- Jewkes, Y., Crewe, B., & Bennett, J. (2012). *Handbook on Prisons*. Taylor and Francis.
- Kant, I. (1796). *Project for a Perpetual Peace: A Philosophical Essay*. Vernor and Hood.
- Kant, I. (1964). *Groundwork of the metaphysics of morals: Translated by H. J. Paton*. Harper & Row.
- Krishna Iyer, V. (1987). *Justice VR Krishna Iyer on the Muslim women: Protection of Rights on Divorce; Act, 1986*.
- Kukathas, C. (2013). On Sen on comparative justice. *Critical Review of International Social and Political Philosophy*, 16(2), 196–204.
- Mulgan, R. G. (1968). Defining 'Democracy.' *Political Science*, 20(2), 3–9.
- Priya, A. (2022). *Nyaya before Niti—The cornerstone of Amartya Sen's Idea of Comparative Justice*.
- Rawls, J. (1971). *Theory of justice*. Cambridge (Mass.).
- Rawls, J. (2001a). *Justice as fairness: A restatement*. Harvard University Press.
- Rawls, J. (2001b). *Justice as fairness: A restatement*. Harvard University Press.
- Roemer, J. E., & Trannoy, A. (2015). Equality of opportunity. In *Handbook of income distribution* (Vol. 2, pp. 217–300). Elsevier.
- Satz, D. (2011). Amartya Sen's The Idea of Justice: What approach, which capabilities. *Rutgers LJ*, pp. 43, 277.
- Scott, D. (2012). The changing face of the English prison: A critical review of the aims of imprisonment. *Handbook on Prisons*, pp. 79–102.
- Sen, A. (2008). The idea of justice. *Journal of Human Development*, 9(3), 331–342.
- Sen, A. (2015). The idea of justice: A response. *Philosophy & Social Criticism*, 41(1), 77–88.
- Sharma, N. (2022). MEANING, DEFINITION AND CONCEPTUAL ANALYSIS OF THE TERM 'CRIME', 'PRISON', 'PRISONER' AND 'ADMINISTRATION OF CRIMINAL JUSTICE.' *Galaxy International Interdisciplinary Research Journal*, 10(7), 1–9.
- Sills, D. L. (1968). International encyclopedia of social sciences, 17 vols. *International Encyclopedia of Social Sciences*, 17 Vols.
- Wacks, R. (2013). *Privacy and Media Freedom*. Oxford University Press.
- Zalta, E. N. (2015). Available online at <http://plato.stanford.edu/archives/sum2015/entries/well-being/>. Retrieved September, p. 21.