

Human Rights Debate: An Examination of Amartya Sen’s Countervailing Power: Public Reasoning as a Social Instrument

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Abstract

This study presents an analysis of the empowering countervailing power thesis (e.g. power deriving from union representation) in terms of its theoretical and practical applicability to human rights, which admit that there are some rights that are not derived from the positive law of the states. The theory insists on the reliability of the prior organization of social agents and on the rationality of collective contestation to challenge the classical theories of the popular social movements. The countervailing rational agency power concept employs strategic and instrumental “practical reasoning” to replace the previous industrial relations scholarship as the central point for the analysis of collective non-confrontational action to advance the cause of human rights in all cultures. My study defends Amartya Sen, a Nobel Laureate in liberal economic philosophy, who argues that although subjective theories of instrumental reasoning have their attractions in social scientific explanation, almost all attempts to develop the idea of rational action seek to justify some constraints on what constitutes reasonable beliefs that underlie an instrumental choice in keeping the promise of human rights. To what extent Sen is able to locate power in the third space, which is not a remote neutral center for action but an active agency power, to advance the cause of human rights that have different value-systems with social justice at the core.

Sen’s countervailing power thesis resembles that of John Kenneth Galbraith’s countervailing power, which was presented during the tense condition in the 1950s, as active “resistance” against the prevailing economic power that had little concern for human rights of the general population. His conditions to balance the weaker and stronger powers in a democratic setting, with positive and political freedoms, psychological dispositions, were organized as countervailing power for human rights of the laboring section of society. In contrast, Sen’s concept, coupled with an empirical theory and along with statements, reconstructed by his critics, can well be applied in explanation of certain philosophical and political phenomena within the countervailing power theory, which is likely to enhance human rights for the wider public. To what extent, Sen’s measurement of different categories and elements, reflected in his countervailing power theory, appears to be legitimate.

Notwithstanding important differences between earlier countervailing power and the current interpretation, it is useful to observe how each human rights tradition is initially animated by a different problem.

Key Words: Human rights; countervailing power; Asian values; hybrid cultural practices; “third space;” public reasoning; *Nyaya/Niti* philosophy; and social agents.

Introduction

Following the countervailing power theory of John R. Commons of the University of Wisconsin, who describes industrial workers' rights, not human rights, as the dominant theme in economic relations between the higher and the lower earning groups, others develop the concept as human rights stressing that human rights are basic rights, recognizing that every human being is sacred. The politics of human rights, and of accommodating human rights with other social values and practices, have remained the central theoretical and practical concern (Nickel, 1990, p. 9; Shue, 1996, chs. 1-2; and Donnelly, 2003, chs. 1-2). Despite a focus on human welfare, Galbraith has celebrated countervailing power theory (1952), in which unions bargain for a wage in excess of the competitive wage. This is in contradiction with human rights' worldview because his power theory is more concerned with welfare rather than human rights. Successive three generations of human rights formally created an international human rights framework, modeled on European Enlightenment's concept of rationality and equity, but the declarations did not ensure different members of the citizenry equitable conditions and treatment. The first generation of human rights mandated freedom of speech and the right to a free trial, whereas the second generation, in social terms, granted people the right to work and secure the ability of the individual to support a family. The third generation created a sort of fraternity following the slogan of the French Revolution (1789) and granted the right to economic and social development that adhered to the principle of the common heritage of humanity. In recent decades, the contents of human rights and their limits have been subjected to requirements of public scrutiny and critical reasoning because human rights are no longer treated as "trumps" (Dworkin, 2000), having neither to be justified nor negotiated. Even those, who reject this claim, might agree with Isaiah Berlin to propose "safeguards against intervention by the state, to men who are half-naked, illiterate, underfed and diseased is to mock their condition" (Berlin, 1969). Whereas Dworkin rejects the positivist separation of law and morals, arguing that other standards function as law and are part of law and binding on judges, Nussbaum claims that the Greek/Roman theorists at the source of Western moral tradition held that there was an intimate connection between philosophical thought and political and social practices (Nussbaum, 1994). Expanding the idea, many modern Indian social scientists and philosophers think of human rights as a language that creates a basis for the clear and open rational deliberation based on particular values. This form of countervailing power was expressed in Nigeria, where a Muslim girl, Amina Lawal, having a child out of wedlock, was sentenced to stoning by Sharia practices, inviting secular protest from Amnesty International. Aziz al-Hibri, a professor, University of Richmond, argues that in the aftermath of the Amina Lawal criminal case, the issues surrounding implementation of the Sharia code of justice "must ultimately be addressed theologically," a stance refuting the thesis Fared Zakaria, who argues that the secular Western liberals should undermine excesses in the Sharia personal code (Born, 2006, Winter). The issue is the source of power that has been embedded in a theory predicting a "class of civilizations," and more importantly the methodological approach. It is not a struggle between traditional entities and new scientific knowledge.

In this paper, any miscellaneous bargaining power is interpreted as a countervailing power enabling the abused and the discriminated to resist imposed attempts to maintain the status quo. Working under the relatively undervalued countervailing concept, Sen shows some insights and analytical advantages using various disciplines, including philosophy and political science. He observes that in the Indian context, human rights literature remains with a clear focus on politics and ethnicity. The rational and practical reason, examining the relevance of the de-brahminisation of human rights discourse over the inferior status of the socially untouchable *dalits*, throws a challenge to colonial, nationalist, Marxist and *Hindutva* right wing, and even to the progressive subaltern studies (Kumar, 2008, pp. 93-108). The more seriously the international legal system takes the protection of human rights and the more teeth this commitment has, the more problematic the lack of a credible public justification for human rights. The very success of the institutionalization of human rights makes the issue of legitimacy and therefore of justification, unavoidable. Arguing that the idea of public justification is the theoretical foundation of public reasoning, my study examines the scope and meaning of Sen's "countervailing power" as a significant step toward human rights practices and discourse, opposing social exclusion on moral and practical grounds. Sen's normative but critical reasons are concerned with social facts, such as hunger, famine and patriarchy in generating lower status of women and his analytical praxelogy understands facts in relation to human agency rather than independent of it. His concept of agency, as an idea of a person, is also the idea of an autonomous agent, capable of self-defined choices. There are two versions. The first one, negative and defensive, concentrates on the desire to fend off external interference, whereas the second one, being positive and constructive, concentrates on capacities for self-determination of human rights. Sen's countervailing power relates mostly with the latter, and represents his idea of human rights that exceeds the frameworks of legal or taxonomical consideration of rights and freedoms considering that, as Descartes (*Discourse on Method*) states, the great number of laws often provides an excuse for vice. These assertions about moral education is given teeth by Sen's theory of countervailing power that argues that the normative questions are distinct from, but closely related to, empirical issues about how human rights have come to function as a global standard in the first place and how effectively they work. Sen writes that emancipation of women is an integral part of human rights, not just a "women's issue." Rationalized domains – women, science, environment, formal organization and professional organizations – constitute the core of human rights. All these social institutions, having empowering agency power, carry a source of meaning in the human rights value, and identity (Sen, 2006: 220-250).

Sen is critical of agencies that are active in Indian society. They are not only the military establishment, corporations, the middle class, the rigid unchanging bureaucracy, but also the farmers' lobby (forcing up grain prices during a drought), the public sector unions (demanding high wages and resisting inspection) and left parties (ignoring the poorer casual workers) causing injustice for great numbers of the people (Dreze and Sen, 2002: 5-27). Sen's advocacy is not the curtailment of agency power, but the building of "countervailing" agency on the part of the disadvantaged. Here, both "solidarity" and "assertion" form intrinsic and instrumental values.

Sen Positions are: (A) Focusing on economic productivity can help politicians redefine the debate about human rights. In the words of a British liberal William Corbett, in industrial relations, the privileged workers become “tax eaters.” (B) Being dissatisfied with orthodox model of bargaining, Sen tests the validity of decentralized traditions in defense of power that is located in a fluid condition in what Ed Soja calls the “Third Space,” eliminating polarity to emerge as the others of ourselves. Sen’s theory of the location of power differs from that of Homi Bhabha, who continually moves space in generating power relationship and shifts the balance in favor of the underprivileged, demanding an appropriation of key elements of human rights. (C) The human rights industry is alive but deeply divided. A closed-door consultation between EU and NGOs and the Beijing rulers was overshadowed when a feisty new York-based, Human Rights in China, was kept away recently. He agrees with critics to argue that the ultimate victims of death sentences in US are the backward, the minorities and the weak. (D) Even in environmental conservation, Sen argues that the study need not be done in isolation from the human world. In concurring with Henry David Thoreau’s “in wilderness is the preservation of the world,” environmentalists need a new countervailing power approach that does not consider only average results. One of the messages of the anthropocene is that piecemeal actions can quickly add up to planetary change. Nature and its environment as a whole is explicitly activated in the discourse on human rights. (E) His concept in countervailing power is not an attack on international human rights concepts, because his discourse in various disciplines becomes a social tool avoiding the postcolonial language of domination, exploitation and alienation, and supports a kind of global justice, with substantial regional rights. He argues that there are certain times and places of sense, discourse, governability, and polity that function in and through the ambivalent social actions generated in the social and discursive act in splitting and giving rise to countervailing power that stands as a strategic social choice theory in defense of human rights. If human rights are simply social construction, Sen suggests, their remedial practical reasoning is a social construction as well. Sen argues that there can be an understanding of the whole of the history of humankind, from its earliest beginnings to the recognizable process of total acculturation, in the current world, is the ultimate, but unattainable goal toward which all its efforts are directed. Conventional wisdom argues that universal civilization as a genre was invented by Herodotus or by Ephorus. It is worth observing that craving for pepper, incense and silk makes no world history, just as the Crusades were not undertaken for spices alone. The desire first of small groups, then of broader strata, for the attractions of a more agreeable life, is certainly an important factor in historical change. A symbol of the universal character of their empire is the title which Kaniska the Second, one of India’s early rulers, bore according to epigraphic sources. The historical evolution, as a passage from originally separate deeds to their inter-wovenness in one world, eventually rendered it necessary that European History, or Asian History, taken not in the geographical but in a cultural sense and including Russia and the America, can become World History. It was, in fact, a secular process, and within it, as Sen argues, some selected aspects only, deserving scrutiny, has been the thesis of Sen’s Asian values discourse favoring early globalization to cement geographical distances for values in rights. This

secular culture in global culture is testified by his narration of Indian popular tale about the isolated well-frog, the *Kupamanduka*. To reinforce his stance for global justice, he provides historical instances that testify that Asian values defended human rights in the same spirit as in the West. Western humanist such as Grotius was not different from the Mogul Emperor Akbar (1556-1605), who was not a democrat, but did put various human rights, including freedom of worship and religious practice, at the heart of his program in a way that could not have been found in Europe of that time. Akbar, a Muslim, with deep interest not only in Hindu philosophy and culture but also in Christianity, Jainism and the Parsi religion in India, presided over an imperial system that provided elementary human rights. The standard polar contrasts, in short, are descriptively crude and therefore invariably out of focus in their normative evaluations. Even if a number of component parts came together in the European Enlightenment in a highly influential way, it does not follow from this that the Enlightenment had no non-Western sources, nor that its parts had no non-Western parallels (Nussbaum, 1997, pp.143-44). Thus, Sen writes, “this home [India] of endless spirituality has perhaps the largest atheistic and materialist literature of all the ancient civilizations.” He adds that Buddhism was agnostic, the *Carvaka* and *Lokayata* philosophies of the atheist schools generated extensive arguments about materialism (Sen: Spring 1997). He repeatedly argues that problems arise when an attempt is made to make generalized statements without taking into account all the intervening variables and the situational contexts. It is unscientific to draw up a universal list of positive and negative cultural values for economic development. Advocates of special values grossly overstate the wonders of the Asian economies and helplessness of the West (Pye, 2000). Sen’s eventual argument is that we would do well to adopt the broadest possible definition of “reason,” which as reasonability can be conceived as a state of mind marked by suspicion toward received authority, a commitment to continually refining one’s own understanding, a receptivity toward both new evidence, an alternative explanatory schemes, and a dedication to logical consistency. He concludes that rationality is not unique to any culture that relies heavily on geographical biases. Even India, the cradle of much “eastern” religion, was not isolated from their spirit of rationality. This is especially evident about mathematics, the clearest form of reason, and the grounds on which the ancient Greeks staked their own claims of being a rational people (Lewis and Wiggen, 1997). “All knowledge of cultural reality is always knowledge from particular points of view.” In other words, reality is so infinite to grasp it at all, and these compromises arise out of the observer’s situation. It presents with an infinite multiplicity and coexistent emerging and disappearing events (Weber 1949; Scott and Skocpol 1995; Bhabha, 1996).

Asian Values and Human Rights: Countervailing Power

Judged by his words and pronouncements, Sen appears to be impartial or neutral as he observes that Asian values can be presented as values that do not directly counter those of the West, but positively explain that Asians had been in the past conscious of human rights of various forms. The entire argumentation for him is about Asian social and cultural values that stand mostly for first and second generations of human rights, which are covered in the “International Covenant

on Civil and Political Rights.” Interestingly, the Czech jurist Karel Vasak at the International Institute of Human Rights in Strasbourg initially proposed the division of human rights into three categories in 1979. The three generations are expressed in some of the rubrics of the “Charter of Fundamental Rights of the European Union.” In that case, Western, which are mostly European, human rights are of fairly recent origins, one of the basic arguments of Sen. He is correct in concluding that human rights had been part of Asian, especially Indian, norms in fraternity and global justice. He avoids the methodological problem that arises from the consequences of the political divisions of the Cold War.

Sen’s cultural orientation and social relations contest the structures of geographical domination. The creation of norms and social relations of dominations and resistance are located in the social realm, and in this context, the Asian value debate, for him, has been so far about “we” and “they,” generating a controversy not only in upholding related values and practices attached to human rights as we know of today. This language is an “evacuation,” or his splitting moment, a “representation.” A kind of “enunciative” (Bhabha) disturbance throws the process of interpretation or identification into flux. Here, two contradictory and independent attitudes inhabit the same place, contested for respective values. On takes account of reality and the other remains under the influence of instincts, which detach the Freudian ego from reality? The result is the introduction of multiple but contradictory cultural belief systems. Bhabha’s “enunciative moment” then becomes both a defense against anxiety of difference, but it remains productive of differentiations. In other words, crossings between knowledge and ethical value are both moral and epistemological. Sen’s argument is not difficult to fathom, as he claims that the authoritarian readings of Asian values, championed in some political quarters, do not survive scrutiny by public reasoning, a reasoning offering no new insight. He argues that human rights discourse does not belong to vulgarism of cultural relativity, which has unfortunately been one of important contributions to social reconstruction of rights during the twentieth century. Recent trends toward increasing economic interdependency, tourism, and other global connectivity have increased the prospect of value transfer from one region to another, Sen argues. In his *The Argumentative Indian*, he observes that the tendency of parts “of the communitarian movements to push us in the direction of fragmented isolationism suffers,” exposing a “serious epistemic weakness,” in addition to normative difficulties. He observes that cultural relativism has taken up the views that anything goes, everything is relative in human rights, cutting across “universalism” in his theory of social justice. In his classical writing, Karl Mannheim (1960) maintains that functional rationality has increased historically, but substantive rationality has declined. Those, including Sen, argue that those lacking in substantive rationality feel that important ingredients are missing in their personal lives. What Max Weber has not realized that rational solutions to identifiable problems have not reduced the sense of incompleteness and mystery in human rights abuses? Sen argues that there is a need to recognize diversity not only between nations and cultures, but also within each nation and culture (Sen, Summer, 1997). Deborah Limstadt (1993) shows some of the problems of the postmodern emphasis exclusively

on subjectivism. The atomization of the masses creates the unwanted separation and detachment (Durkheim 1951; Schuetz 1960; Neal 2005; Kornhauser 1959; and Neal 2007).

Like other branches of knowledge, social understanding involves give and take, and an exchange of cognizance and wisdom. The sharing of social facilities of basic education, in which some parts of Asia have a long tradition, can also offer something of great interest to Europe, to learn a little from the human development basis of economic and social progress of Japan and East Asia. There are gains to be made from greater integration of social investigations across regional boundaries. For a long time, human rights have remained a debatable issue between the presumed Western technically superior scientific culture and “spiritual East,” remaining stagnant in upholding values of human rights, transforming into a debate over issues of cultural relativism and universalism. In short, Asian values debate, for Sen, relate to human rights that belong to each culture according to local variations. In sum, He argues that Asian values debate amounts to selecting reading of history that conveniently sets aside a progressive march toward inner truth and “freedom” through complexity and heterogeneity, and through consensus and conflict. It is natural human desire to learn by comparison and contrast. It is a web to cooperate with each other, to meet, to meet and fuse, in order to construct a wide web of associations. Regarding the impact assessment on human rights, Sen disagrees with (Tambiah, 1994) that the utilitarian interpretation of value good and development of regional or personalized ethics by way of negotiation and comparison among multiple qualities of human well-being fail to get the spirit of comparison, but concurs with Nussbaum (2001) who argues that “emotional intelligence” can become ethics. In this sense, Asian emotional appeal has some validity. However, Sen fails to recognize that people living on the other side of Huntington’s Confucian connection have suffered political humiliation and economic stagnation for centuries. Under such conditions, vigorous social movements based on identity and culturally distinctive values must derive strength and responsibility. In South East Asia, the miracle economies represent cultural appeals of the new rise, but new rise has more inner strength that is recognized. As Rabindranath Tagore (*The Home and the World*, 1919, p. 10), Asia’s premier intellectual and the first Asian Nobel Laureate in literature, affirms, there is a difference between devotion to motherland and cultural nationalism. Unfortunately, the Western value oriented critics do not make that difference in examining the elements of human rights.

Third Space in Countervailing Power: Strength of De-centered Value

The main reason for Sen’s going into the philosophical foundation of human rights is related to the evolution of the idea of human rights itself and to the broadening of their content by virtue of the inclusion of cultural and social rights that can constitute countervailing value. The interpretation of human rights is, thus, a moment of philosophical reflection comprising two factors: (a) identification of the initial philosophical context, which gives its meaning to those rights; and (b) research on the development of those rights in philosophical and cultural contexts from which they will be reinterpreted. He recommends, “Asymmetric power in one domain can

be checked” by a different configuration of counteracting “forces in another domain’ (Dreze and Sen, 2002, pp. 20-23).

Constructive “public policies,” in “basic education, health care, social security, nutritional support, environmental protection, gender inequality, among others,” generate a new power base. Disparate thinkers, such as Isaiah Berlin (1954), Thomas Nagel (1978), Bernard Williams (1993), Amartya Sen (1970), and Joseph Raz (1986) demonstrate respect for diversity and plurality of approaches to desired objectives. However, there are deficiencies in the merging power base. No doubt, trade unions in the public sector tend to block public scrutiny in India, the solution does not lie in dismantling trade unions, but lie in developing and reinforcing “countervailing institutions that give greater voice to those who have “stake in the efficient provision of public services.” Countervailing actions are two-way hybrid remedial measures with varied motives and means. Varieties in social movements raise the question of prioritization. Bhabha, through his moving third space de-prioritizes the class dynamics in his sophisticated account of spatiality. Bhabha’s third space, forming a middle power base, favors the responses of autonomous social movements, and localized strategies of development, rather than radical overturning of western-dominated geopolitical relations by the state, as was proposed by earlier dependency theorists. He argues that an emancipation possibility exists because criticism of the mainstream can translate into viable alternatives (Escobar, 1984). Sen adds that geographers must pay significant attention to local dynamics to represent a view against a fixed central position that lack plurality. Social movements need a “territory” in which the disadvantaged can largely conduct their affairs, but they also operate in a region, a territory, which is often a political construction for sustainability. The struggle for territory or space is thus an interpretive hybrid cultural struggle for autonomy, which is similar to Sen’s concept of “autonomy,” which, as agency power, can be located in a community or a person.

However, Sen ignores that there are two different kinds of conflicts between desires of two or more groups. In conflicts of one type, desires compete for priority or position in a preferential order. The influential factors are not conscious. The numbers produced by the wheel or the dice are irrelevant. In cases where an answer must partly be determined by guess or *Nyaya*’s “intuition,” the suggestive prompting of such salient inputs is very powerful. Even if “you try to resist it, you may fail, as is shown in an experiment with the real estate agents, whose estimates of a reasonable buying price for a house” may turn out to depend significantly on “what they are told was the asking price.” (Kahneman 2011). Thus, this becomes an issue of anchoring effect and eventually, our question is: Which desire to satisfy first. A related conflict is whether a desire should be given any place in the order of preference at all, whether it is to be endorsed as a legitimate candidate for satisfaction, or whether it is to be rejected as entities, entitled to no priority whatsoever. In the words of Davidson, it is clear that whenever a desire functions as an effective motive for intentional action, it is also true that the agent is disposed to treat the desire as providing a justification for action. In the conflict of interests between small farmers and organized farmers in India, for instance, a resolution demands that small farmer’s economic interest is not ignored.

Despite the idea of the existence of a third space, geographical or philosophical, Sen projects a picture of “totality,” similar to Franz Fanon’s notion of “totality,” which is constraining (Fanon, 1967). Both Sen and Fanon maintain that the countervailing power’s two-way hybrid interaction provides opportunities for the individual to engage with another to share opportunities on an equitable basis. In Fanon’s terms, sufferer’s social, cultural, and political liberation involves a strong comprehension of self to totality that means interdependency with the other, who accepts Fanon’s “assumption of his manhood” and the need for acceptance and “love.” Fanon draws from Jean-Paul Sartre’s philosophical process in the formation of selfhood in its relation to otherness. In the process of identification, two types of being or self are distinguished: that of “in-itself” and “for-itself.” Being-for-itself, human being or human consciousness is fluid, characterized by lack of determinate structure, by openness toward the future, and by “potency.” “Being,” in Sartre’s model is trans-phenomenal, which means that its nature is not fully revealed in the totality of manifestations. Fanon disputes Sartre’s assertion of the “transitory nature of self” (Sartre, 1956; Prabhu, 2007: ch. 7). Sen agrees with Fanon, but adds that an individual’s agency, inspired by only political needs, is not sufficient to oppose a fixed structure, because ethical values in human rights are part of interactions with others. There is need for a common factor in ethics. Ethics provide a justification for community’s assumed social authority and practical needs, all of which turn out to be Sen’s countervailing power base to enhance the prospect for human rights. Of course, he admits that ideas of moral responsibility and social desirability, being complex, are not easy to get. In opposition to Cranston’s doubtful possibilities, which suggest that there are too many people and problems in India for a limited budget to cope with, Sen argues that if a country is able to introduce democratic political reforms, it can be concluded that human rights are being strengthened.

Sen’s stance in countervailing power’s shifting position is testified by field research scholars in the subcontinent of South Asia. Several instances drawn out from South Asian field researches support his thesis in countervailing power: value for human rights resides in varied places and groups. At times, state also can be the depository of society’s countervailing power. A study conducted by Alam (1996) on corruption and countervailing actions in Pakistan demonstrates that protest, as an instrument of direct “countervailing action,” is not related to the nature of the corruption *per se*. Other reports suggest that countervailing protests are more common when corruption is collusive, whereas in Bangladesh, the opposite is true. Naved Ahmed and his associates argue that if corruption is collusive in nature and victims of injustice are unknown, even government reports and actions are likely to constitute “countervailing actions,” thereby developing a healthy reverse countervailing power in government even if it is controlled by a particular political party as in Bangladesh.

Some recent studies in U.K. conform to the thesis of Sen, who presents his countervailing power with his usual civility. Robin A Naylor of Warwick University develops a theoretical model in individual labor supply in which the “canonical model” (Galbraith’s fixed model) does not fit. The competitive labor market emerges as a special case. Stewart and Swaffield (1995, 1997), show that neither minimum wage nor maximum hours regulation, each on its own, is

likely to be of benefit to workers. They add that only when they are combined, they are likely to raise the welfare of the low-paid working hours. Like sub-cultural studies, as in the case of the studies about the untouchables and religious minorities in India, as well as feminist cultural theory, Sen's controversial "patriarchy" frame of inferior status of Indian women (Saha, 2012), articulates the margins, or what is projected by Sen as marginal. It is a matter of taking hold not only on actual power, but also of the languages, systems of metaphors and regimes of images that seem designed to silence those whom they embody is representation. Thus, Gayatri Chakravarty Spivak argues the need for the "careful deconstruction" of the very structures of dominant and the marginal.

Counter value is generated at de-centered stations. An important aspect of agency power in law is the complex web of legal rights and restraints, which are adjudicated by judicial bodies. Constitutionally guaranteed individual access to the judicially mediated legal rights has become in India the primary mechanism of individual human rights, rather than the usual democratic ways of voting, civic work and political mobilization. Uncharacteristically, passive Sen gets involved in advocacy of human rights protesting against a judicial judgment in the case of "state versus Binayak Sen" in Bihar state, a case generating wide attention of human rights activists in India and abroad. Mostly at Sen's urging, at least forty-two Nobel Prize winners from several countries appealed to the New Delhi government protesting against the judicial violation of individual human rights for political reasons, or on caste demands. Binayaka Sen, a human rights activist and a well-known philanthropic child doctor originally from Calcutta, Amartya Sen's "city of joy," has been wrongfully given life-imprisonment for what Sen calls so-called "sedition." Sen's argument is that the "legal process [was] not divorced from human reasoning" (Staff Reporter, *The Hindu*, 2011). In this case, politically inspired and court-administered injustice failed to inspire confidence, and consequently, there developed a public forum for countervailing power against judicial injustice. This unusual judicial decision explains another aspect of Sen's theory of power relationship. Sen accepts the thesis that there is an implicit guarantee of right that allows people to be different, and not discriminated against for being so. This is not only the necessitous circumstances that lie within the domain of liberalism and Indian constitutionally guaranteed secularism, but also an entitlement of human rights. A legal system becomes a supportive pillar of that position when it accepts human rights that are at a neutral location. A judiciary must not be overly or covertly over-identified with or appropriated by state or even a community, in this case, higher castes with financial advantages. He believes that using the law, as an instrument of social is perverse. In theory, the law is not supposed to discriminate in anyone's favor. Thus, Sen argues that a state favoring human rights is more than one that tolerates difference. Enlightenment liberals and Fabian Indian socialists do not only value of universality in law, they also have the strategy of centralizing political power, breaking conditions in human rights (Verma, 2001). Interestingly, even the conservative brahmanical *Manusmriti* legal texts hold that "the king [was] created as the protector of the classes and the stages of life that are appointed each to its own particular duty in proper order." This implies that communities created society and the ruler was adjudicator only (Larson, 2001). In

Binayaka Sen's imprisonment, Sen observes not only judicial injustice, but also a breakdown of rules in human rights. Again, he is aware that India is one of the few countries that incorporate social and economic rights into constitutions, and use the courts to enforce those human rights. Laws record, argue Daniel Brinks and Varun Gauri, is mixed, but on balance it is much better for the poor than conventional wisdom suggests. For Sen, the explicit recognition of a judicial-political linkage is clearly suspect in today's India, not only because the British judicial tradition rejects such practices, but also because law is often spread thinly over a cauldron of potential social unrest.

Normative Skepticism: Methodology of Constructive Destruction: Nyaya/Niti Logic

In framing a theory of social justice, which is at the core of his discourse over countervailing power in human rights, Sen asks should we begin by deciding what ideally justice is and then decide how in practice society can be made more just so that healthy conditions for human rights may prevail. He suggests that a synthesis of Eastern and Western ideas and means is not only possibility, but also highly desirable. Drawing on the ancient Sanskrit literature on ethics and jurisprudence, he makes a distinction between *Niti* and *Nyaya* (Sager, 2001; Sen, 2009)). They contain different notions, but both can be translated as rules for human relationship. *Nyaya* is broader and more inclusive concept that looks to the world that emerges from the man created institutions, although it does not directly focus on the institutions themselves. *Niti* refers to correct procedure, formal rules (Raju, 1971). Hobbes, Locke, Rousseau and Rawls look to the establishment of correct institutions for social justice, whereas Adam Smith, Wollstonecraft, Bentham, Mill and Marx take a comparative approach, looking at social realizations that obviously are the product of institutions, but also other factors, including human behavior and psychology. Sen's countervailing power, being skeptical of the current mainstream literature about functions of social agents, raise questions about justification of norms of varied regions and perspectives. Skeptics tend not to believe or accept things but to question them in order to find reality. One can be skeptical about the existence of God, but one can still believe to being good and live a deeply moral life.

Critics argue that Sen's broad treatment of human rights is deflationary, arguably reducing them to important ethical rights that have special rhetorical force. His metaphysical modesty and non-committal approach, it is argued, to the actual lists of human rights may play into the hands of the skeptics, who may deny that there is anything particularly special about human rights that lack the sanction of positive law. The argument goes to claim that Sen holds not only that there is trade-off between human rights, at times human rights conflicts, but that sometimes other ethical prerogatives or obligations can take precedent over obligations coming from them. Likewise, activists ask how Sen's account supplements their actual fieldwork for human rights. In this criticism, Sen's idea of social justice appears to be minimalism about human rights. Is Sen discarding the second generation of human rights by following ancient moral rules, mostly from Sanskrit texts? Other critics argue that Sen has not asked himself the right question, or at any rate, not addressed it in his book, *The Idea of Justice* (2009). It is alleged

that he “plays” on the distinction between *Nyaya* and *Niti*, widely speculating on how the noted ancient diplomat and minister Kautilya’s *Niti* might have laid the foundations of Buddhist Emperor Askoka’s *Nyaya* welfare ideas about people’s moral rights as citizens. Critics here suggest that if used outside a theistic context, *Niti* and *Nyaya* lose any ethical meaning. *Niti*, it is claimed would mean “crafty policy, or a religious value that can bring only personal salvation” without any benefit being provided for the wider community. *Nyaya* would mean laws in empirical experience. “The enemy of your enemy is your friend” (Kautilya’s advice to the Prince) becomes a statement of *Niti* and “might is right” becomes a statement of *Nyaya*. In this criticism, *Nyaya*, which Sen uses to justify his social justice theory for human rights, does not apply to the human rights discourse (Sager, June 2010; Brown, September 2010). Their arguments are: (A) Sen’s use of *Nyaya/Niti* logic is misleading because he does not understand the difference between the two. Some even argue that he has not read the sacred text, the *Gita* that is the foundational core moral value in Indian ethics. (B) Critics claim that Sen provides some mythical stories, including tales, to provide examples for norms. (C) Sen’s logic, it is argued, is irrelevant as he defends Arjuna’s practical sense of consequences of war, and avoids the duty-ethics of Krishna. There is a common criticism that Sen is obsessed with rights. (D) It is alleged that Sen, being sympathetic to the leftist political ideology, drawn from Cambridge and Calcutta, “foolishly” ignores that human rights violations are widespread in the states of Bengal and Kerala, two provinces with “talented” people.

Sen admits that there is “object failure” obtaining when the objects of valuation treasured by a certain traditional value system becomes more difficult to sustain because of material changes. Reasonable designs often collapse, because the criticism of culture A by culture B, once known, becomes a part of the internal reality of culture A. (Nussbaum and Sen, 1989: 299-326). He is obviously critical of the methodology of Parsons, who is concerned with social reality and agents. Assumptions about reality has several subdivisions, including fluidity or stability, conflict or integration, materialism or idealism, and the individual or the group. Blumer disagrees with Parson that there is a long-standing degree of order in the social world, and contends that stresses that the ever-changing nature of social reality and see the social order as in a state of becoming (Blumer, February 1954: 3-10; Parson, 1949). Sen makes it clear that sets of assumptions serve as paradigms, to appropriate Kuhn’s terminology (Kuhn, 1962) of frameworks within which social scientists proceeds to formulate or test their substantive generalizations. The assumptions not only influence the analyst’s choice of research methods but affect his interpretations of the data as well. Being critical of the cultural methodology of Geertz (1984) and Parsons (1947). Sen draws on a pragmatic social theory to reject the teleological choice of ends theories that equate culture with values. The current literature in human rights discourse leaves a power vacuum. Philosophical misunderstanding, not overblown analyses, is a problem with the narrative. What is fairness? In the slums of Calcutta, infectious diseases routinely claim the lives of the young. Society needs to develop rules to manage diseases; it needs to find ways to ensure that they are better equipped to make moral judgments other than the existing ways. This question becomes skepticism about “practical reason,” which means doubts about the extent

to which human rights is or could possibly be directed by reason. One form that skepticism takes is doubt about the impact of rational and philosophical considerations on the actions of deliberation and choice. Doubts are about whether formal principles have any content and can give substantive guidance to choice and actual action, directly and indirectly related to areas of human rights. First, there is content skepticism and second, motivational skepticism. Normative standards applying to conduct comes from many sources, including traditional morals, but the only standard that comes from reason is that of effectiveness in the choices of means. He subjects philosophical norms standards of rationality and public reason and asks how they can be aggregated in a normatively salient way. In his essay about Asian values and human rights, he follows Wend and others to argue that collective cognition regarding rules and norms constitute identities and are in turn constituted by them. The importance of norms lies how they become a guide for the behavior of actors and standard against which this normative behavior is evaluated. Sen uses the concept of *lokayats* (“This Wordly”), one of the six major philosophical schools of Hindu logic (including *Nyaya* Logic) to submit that the rigid system in the orthodox Vedas has three faults of untruthfulness, internal contradiction, and useless repetition, and yet demonstrates the strength of pure argumentation in reasoning. Sen makes use of the *Nyaya* logic in testifying to the relevance of philosophical roots as one of the standard by which a social countervailing power may be assessed. It is furthest from truth that Sen is a moral relativist. Allan Bloom, in his conservative book, *The Closing of the American Mind* (1987), legitimately attacks moral relativism with an example from Hindu *suttee* wife burning,” but we can aspire to a more complex synthesis that admits the presence of protests within, and our sense of human rights. The best Sen can do is to question the deeper motives of the conservative Hindus and ourselves. It is a dense of any stance; it is the methodology of analyzing social reality. This is exactly what Sen, who present *Nyaya/Niti* rules for social justice, do. This is his methodological way of knowing things. As a poet predicted, the center cannot hold. Yet, it is not because both the right and left are tearing at it equally. In an age in which defenders relativism and one-dimensional punditry are exploited by the demands fixed and false equivalency, it is time to speak the truth: both are partial to the extent of making judgment on issues that carry norms of different varieties.

More importantly, thus, critics do not get the meaning of the term, *Nyaya* that has several meanings. It denotes a school of philosophy committed to the use of evidence-based methods of inquiry, including observation, inference, and five-step pattern of demonstrating reasoning. In a different sense, *Nyaya* refers to a set of heuristic principles to guide practical reason. It is in this sense that Sen in his *The Idea of Justice* that has useful chapters about human rights principles. For the profound logician/philosopher Raghunatha Siromani (1460-1540 A.D.), an evidence-based critical inquiry becomes the means to obtain realities. It is reality reached and reason saved (Ganeri, 2011). From Levi-Strauss to Rodney Needham, reality is shown to be something of distance, and what is not so uncontroversiality beneficent, a foundation view of mind. That is a view, which sees it like the means of production or social structure or exchange or culture, signifying the meaning of reality, the sovereign term of explanation, the light shines in the relativist darkness. Sen cites Abu Fazal, a great biographer (*The Ain-i-Akbari*, a sober history of

medieval India), who argues that the philosophers should handle nothing but proof. Proof came from Emperor Akbar himself, who in 1563 hosted a series of multi-religious theological French style salon as an opportunity to demonstrate rhetorical skill (Sen, July 1997). The *Nyaya* scholars configured themselves to be able to offer a robust answer to the Buddhist renunciation philosophy about the other world. In skepticism, there are two ingredients in maintaining of an indexical, the content and character. The content of an indexical is the object it refers to on any given occasion of its use. The content seeks truth-value. Content varies according to local systems of commendation that make sense of it as something of value, while its character, saying what we believe to be true remains constant. In this way, Sen avoids the methodological problem of cultural relativism. The *Vaisheshika* categorization (*padartha*) is about reality, and is chiefly concerned with questions of logic and how we can know anything. A major theorist, Gautama Akshapada (150 B.C.), the author of the fundamental *Nyaya-Sutra*, argues that reality is open to observation (Puligandla, 1975). The *Navya-Nyaya* (New Logic) stipulates that one's true belief should have been arrived at by a reliable method that includes perceptions, cognitions and understanding the structures and operations of logical steps. Secondly, concepts such as *kartavya* (*karmic* duty), *Niti*, traditional moral code and *sadacara*, good conduct, etc. are implications of ethical rights. This ethical stance differs from Dworkin's account of the initial equality of resources, and Rawls's institutional justice. For *Nyaya*, cognition is not self-aware but requires a subsequent cognition to reveal it. This rejection of reflexivity is consistent with the insistence that we are primarily aware of a world outside the mind, and not our idea. The constructive identification of principles of justice with correct answer to the stated question is therefore unsustainable both because it treats justice as sensitive to fact. The identification of principles of justice with the optimal set of principles to liver by is incorrect, because the optimal principles are optimal and therefore not considered from the point of view of justice alone (Cohen, 2008). Third, *Nyaya* focuses upon our knowledge of perception and reality and in that sense it anticipates many later Western concerns, for instance with the problem of distinguishing true from misleading perceptions, with induction, and nature of knowledge via testimony. Gangesa Upadhyaya (14th century A.D) changed the direction from epistemological to concerns that are more formal. The philosophy is self-model in phenomenal consciousness, where presence is transparent to consciousness. In other words, Ganges argues that the *Mimamsa* logical theory assumes more than is warranted by facts. We may indeed know an object without knowing that our knowledge is true. The function of knowledge is to reveal its object, to show what the case is, but not *ipso facto* to reveal its own truth (Matilal, 1971: 90-91). Metzinger argues that the "self," built out of the interaction of consciousness and world, is not a legitimate type of selfhood, thereby exposing weaknesses in metaphysical analyses. That experimental evidence suggests that, as Freud suspects, conscious reasoning makes up a comparatively small part of the activity in human brains, with most of the work, taking place where we cannot tap into it. People act based on simple, unconscious rules that they can, sometimes produce completely irrational results. However, Metzinger is at most denying particular conceptions of selfhood, which requires "an individual" in the sense of philosophical metaphysics (Ganeri,

2011:200-14). As Ram-Prasad argues, there is a “subject-self,” which directly grasps those objects because it has the “determinative quality of consciousness.” Hume’s account of the origins of justice rests on the premise that human beings, facing practical problems of social interaction demanding cooperation, are capable of solving them not, as Hume argues, by seeking some imposed solution from the outside, but by the formation of common intentions and by taking action on those intentions (Postema, 1995: 351). Countervailing moral power stipulates that “human dignity” is not only a classificatory express, an empty placeholder that lumps a multiplicity of different phenomena together, but also the moral source from which all the basic rights derive their meaning (Habermas, Jorgen, 2010).

It is alleged that *Nyaya* in Sen’s formulation is something that cannot be known and cannot be acted upon in a reliable manner. If so, then Sen’s idea of *Nyaya* is meaningless for practical purposes in human rights and duties. It is further alleged that Sen includes that philosophy of *Nyaya* ethics in his concept of freedom and development that can be prerequisite for human rights in education and health. “This particular silliness of Sen’s interpretation worked out well; for him because interpersonal comparisons” of utility, freedom, development, and exclusion “crew things up” in the case of rights. Criticism of this type misses the arguments of Sen, who has worked out the appropriate paths to both interpretation and substantive human rights. Critics are correct in arguing that the *Nyaya/Niti* ethic is not conducive to the recognition of individual rights, although the feeling for the other is constant (2005: 139). Indeed the Indian worldview of ethics has never accorded individual rights as an absolute category, or that a person’s reality must be recognized unconditionally and necessarily. What critics do not realize that the moralistic world-view provides the necessary tools for the realization of an ethic of human rights as it necessarily implies one’s relation with the others. The *Nyaya* doctrine, which is ingrained with limited tolerance, promotes and actualizes the possibilities for a dignified life. Pointing to Indian psyche, Sen incisively submits that Emperor Asoka (1556-1605) allowed his counselors to speculate about knowledge, whereas Europe was burning (1600 A.D.) Giordano Bruno at the stake for his heretical views on astronomy. These examples refute the argument that Sen is “banging the drum of justice and Human Rights,” creating uncertainty (“Poetry as Socio-proctology,” July 27, 2010).

In this context, Sen is well aware of the need for parameterization. i.e., long careful consideration of realities of public good with objectivity. Skeptics do not deny that the highest good is achievable but disputes the possibility of understanding the ways of gaining knowledge, and thus rejects the academic claim that the study of philosophy is required on conceptual grounds. The “New Reason” of *Nyaya* conceives of itself as a system of investigation. Seventeenth-century *Nyaya* thinkers achieved a separation of philosophy far more than their European thinkers, with even the topic of *mukti* or liberation treated mainly as an exercise in the logical negation. Realities are at the core of public good debate. Recent studies show that around 90 percent of people refuse the utilitarian act of killing one individual to save five. What no one has previously inquired about, though, was the nature of the remaining 10 percent. Bartels and Pizarro, in their study of trolley logic, find a strong link between utilitarian answers to moral

dilemmas (push the fat guy off the bridge) and personalities that are psychopathic, Machiavellian or tended to view life as meaningless. Utilitarians, this view suggests, may add to the sum of human happiness, but they are not very happy people themselves with an insight because they ignore parameterization. John Stuart Mill and his qualified supporter Sen would argue that the best way to attain happiness is not to make happiness our direct end, but to fix our mind on something else. In his capability approach, Sen, in contrast with the Rawlsian fairness, expands the idea that happiness is the incidental by-product of pursuing some other worthy goal. Sen rejects objectivism and champions a cognitivism that “human capabilities” are objective and the source of value. Buddhism, in its understanding of the nature of true cognition, emphasizes the importance of the harmony or correspondence of cognition with its object. In contrast, the *Nyaya-Vaisesika* has a pragmatic outlook as it holds that cognition is in correspondence either its object and so is true in so far as it leads to the attainment of its object. Jainism holds that true cognition is naturally directed toward desirable objects and tends to avoid undesirable ones. We are not sure whether the truth of understanding of cognition has any bearing on the understanding of the criterion of truth, but countervailing power seeks this cognition as reasoning power by referring to varied and at times contradictory cognition to get to the truth of an action. Cognition remains an undercurrent power of knowing. The doctors’ implied power rests on their professional prestige rather than managerial acumen, for which they are neither selected nor trained. Yet, it is this power that they wish to keep. The doctors’ capability is prestige, a phenomenon not easily traced but constitutes power.

Indeed, Sen’s *Nyaya* rule is interpreted as a hybrid culture. The most productive theories of hybridity are those that effectively balance the task of inscribing a functional-instrumental version of the relation between culture and society with that of enabling the more lopsided collective image of countervailing power. He celebrates his hybridity through multiplicity and difference. On his view, a critical reasoning toward human rights introduces skepticism into the idea that agency of the abused thrives. He brings skepticism regarding synthesizing processes that can inscribe his Indian roots. Determining what basic traditional value is not simple, because no culture is fully static. Sen argues that there is the problem of valuation dynamics and evolution, and the issue of centrality is not independent of that problem. This is methodological skepticism and thus, he adds that much of the discussion about rights and values is concerned with methodological, rather than substantive issues. He argues that *Nyaya* and *Niti* cannot be fully implemented in real life, because the state and society have diverse forces, interests and values at play. Nevertheless, he admits that *Niti* (equitableness) and *Nyaya* (law) do apply to social and political life, and have become relevant in defense of certain kinds of human rights.

Sen’s methodology is what Gayatri Chakravarty Spivak calls, “strategic essentialism,” which follows the *Nyaya* rules in the middle between neo-liberalism and utilitarian alternatives. There is clear a Buddhist warning that the single moral evaluation may quickly lead to censorship. Policy evaluation and design are important parts of the public policy subfield, and both require normative criteria to provide standards by which to evaluate actual or potential policies (Dryzek, Honing, and Phillips, 2006). This is Sen’s “methodological conservatism,”

which can be well conceived at the conceptual level (Sen. 1996, p. 119). He agrees with Karl Popper (1959: 55), contending that metaphysical reasons are “certainly philosophical,” which can follow appropriate “methodological rules.” It is intellectual practices of the Indian core social sciences and psychology, constituting the Indian “self” as object of study (Inden, 2000). Sen’s interpretation of *Nyaya*’s “rationalism” is built-in “essences” into metaphors. Different arrangements from standpoint of different agents with different purposes are always possible (Collingwood, 1933: 49-50). Sen agrees with Bhaskar (1979: 1-28) that Kant’s position should be reversed. The knower does not transcend the world that he takes as object. On the contrary, the reality in which the knower is positioned transcends him. What Sen states is that indexical cultural terms are terms whose reference varies according to determinate aspects of the context of use? This is Skinner’s skeptical “contextualism” with a study of intellectual cultures, although it might not be fully adequate for the new context for all kinds of countervailing power.

Sen’s defense of morals is indicative of the current social view of human rights. The view of the greatest archer Arjuna, who refuses to go to impending war against the godly advice of Lord Krishna, who is the pilot of Arjuna’s chariot, an inferior position. Arjuna and now Sen think of the consequences of the greatest war (The *Mahabharata*, especially *Gita*) that would last for seventeen days causing deaths of thousands of innocent Indians, a reality that is the worst side of human rights abuses. In this sense, there is no “just war.” Arjuna is a moral skeptic in defense of people’s right to live. *Gita*’s hero is Arjuna, not Lord Krishna, as the conventional Hindu faith claims. Sen’s reading of the Krishna-Arjuna dialogue and debate about consequences of war has made him to shed light about arid skepticism and relativism. Sen is aware that the *Mahabharata* as a whole is passionately against war, vividly aware of the tragedy of war, despite many statements that violence is necessary. Gandhi uses the principles of Arjuna in support of arguments for peace. It seems to Sen that it is impossible to counter moral skepticism. No form of skepticism, whether epistemological or moral, can be shown to be impossible. The best Sen can do is to “raise its costs,” by showing how deep and pervasive are the disturbances of thought which it involves. Countervailing power, as skepticism, first states an intrinsic fact about an object, and secondly, states an observer-relative fact about the same object. Intrinsically speaking an object is a stone, but observer relative position states that object is a paperweight. The moon causes the tides but the moon is beautiful. It is about Sen’s probability.

Sen’s countervailing power theory rests on two divergent streams, generating skepticism that views a common trait in power theory to incorporate norms from the East and West. In Cambridge Sen lived with an “inner quiet” engaging with scholars from different sides of the ideological divide between Keynes’s disciples and the rest, but without giving up his skeptical way of looking at social justice. While his mentor Joan Robinson’s Marxian ideology had an appeal for a student from leftist Calcutta, Sen remained skeptical of the Marxist analysis that was haunted by contradiction. He allies with the Marshall’s demonstration that capitalism advances not by immiserating the poor, but by boosting productivity. Both Marshall and Schumpeter argue that capitalism’s recurrent crises actually made it stronger, but Sen remained skeptical. His constant touch with freed modern India demonstrated to him the perils of extreme democracy.

With a sociological footstep in discovering and rediscovering India's traditional roots to modernity, he argues that popular "clash" diagnoses stand to be misunderstood for a basic reason. They are a selective reading of history and culture that conveniently sets aside a progressive march toward human freedom through complexity and heterogeneity. Eventually to be known as "an economic genius," he has devoted his life work to thinking about the elimination of the most dramatic form of want: famine, the worst candidate for human rights. His first argument has its origin in John Rawls, his mentor, who argues that because unreasonable doctrines threaten the normative stability of liberalism, especially its democracy they need to be contained like wars and disease. In certain circumstances, if containing unreasonable doctrines is a legitimate objective for a liberal democracy, then this may provide a justification for infringing the rights of unreasonable citizens. He recommends that (a) each person should enjoy a full array of basic liberties; (b) public policy should rise as high as possible for the social and economic well-being of the poor. Rawlsian principle could embrace a conservative policy, say, a cut in taxes on capital gains income. Robert Nozick (*Anarchy, State and Utopia*, 1974) argues that Rawls's basic principles of justice are in irreconcilable conflict, because attempts at redistribution to correct for inequality are bound, Nozick believes, to infringe on personal freedoms. Sen argues that pursuing justice is actually about making comparisons, a methodology in locating values for human rights.

Sen's concept stands for reason that depends on a constant supply of material from our pre-rational, animal nature, from perception, in which *hetu* (reason and cause) and natural desires remain side by side. For Hume, human reason cannot inform us what to desire, so no desire can ever be against reason. As Jonardon Ganeri of Oxford University argues Sen follows the cultural indexical ways to be "our own way" in calculating the paths to reality of knowledge. Sen goes further to argue that cultural context is not free from scrutiny. The *Nyaya* methodology does not imply knowing by simple reference only. Knowing requires "sincerity," an evaluation according to circumstances (Williams, 1995). Attention to the way to "sincerity" is understood in a variety of circumstances; it is part of the way to understand the concept of power itself. Bernard Williams argues that "sincerity" should become values according to circumstances. For Rousseau of the European Enlightenment, "sincerity" means authenticity and confession, revealing the secrets of one's heart, whereas in the great epic *Mahabharata*, "sincerity" takes thirteen forms, including impartiality, self-control, toleration and non-violence. In his "positional objectivity," Sen argues that if we understand the human rights by starting from the law of mechanism and institutions (John Rawls), we forget that social justice precisely involves (according to Kohlberg) the perception of cases and conditions in which it is ethically necessary to infringe the law. This is a means in the ways of gaining knowledge for an appropriate action. The task of Western logic is exclusively the investigation of logical relations between various thought-forms regardless of their content. The Western argumentation draws a sharp distinction between deductive, formal, and inductive, empirical inquiries, whereas the Indian including the *Nyaya* regards deduction and induction as two inseparable aspects of one and the same process of reasoning to reach the truth. *Nyaya* argues that although the conclusion is reached by

deductive reasoning, it could not have been done were it not by the universal proposition. (All men are mortal). (Puligandla, 18082; Alvarez, 2010: 1-2; Ganeri, 2011: 70-773; Sen 1993: 463-483; Kaplan, 1989). As interpreted by Sen, *Nyaya* is a secular approach to reasoning. He argues that an emotion or sincerity as if Adam Smith's sympathy or Rousseau's pity is good, but it is still egoistic for "one is pained at other's pain," such as seeing a child tortured, and the pursuit of one's own utility is "helped by sympathetic action." Thus, he proposes "commitment" as a better option because it "does not make you feel personally worse off," but you think it is wrong. There must be something to stop the wrong. Following this approach, he writes that even Emperor Akbar used the contrast to argue that the acceptance of even received traditions cannot be independent of reason and that we have to subject all propositions, even traditional beliefs, to reasoned scrutiny. This is the *Nyaya* rule in identifying knowledge about reality of power, a kind of skepticism in the mode of anti-establishment. Sen's critics do not realize that Sen uses the *Nyaya* rule in conjunction with other Indian philosophical ideas. By Indian logic we mean not only logic as formulated by the *Nyaya* school but also logic as conceived and practiced by the various other Indian schools. The goal is to provide the public and analysts with a set of values, as part of countervailing power, which contributes to human dignity. In this, "frame alignment" is a strategy by social agents of rendering events of "occurrences meaningful" to "organize experience and guide action, whether individual or collective" and frame resonance is interpretive work and the ability to influence wider public understanding (Hilgert, 2007). Sen questions virtually every facet of contemporary thought of philosophy and economic, claiming that its roots in social choice theory, not on social contract (*The idea of Justice*, 2009, chs. 2-6). His concern is with a comparative justice that focuses on actual outcomes, instead of "perfect justice" that mainly examines institutions (Rawls). Thus, he returns to the distinction between *Niti* and *Nyaya* and reiterates the importance of taking into account actual outcomes instead of concentrating on just institutions or principles. This has reference to Sen's theory of countervailing power.

Beyond his use of philosophical argumentation, Sen's countervailing power is also capacity building to have rights to education, health and human development areas, which are good for material improvements of the underprivileged. Sen's recommendation is not always effective. Capacity building countervailing power within the traditional family system at times becomes problematic because it fails to balance conflicting interests. Sen observes that in India, for instance, each year of schooling adds a roughly similar amount to an individual earning power, the more education, the better. There is nothing new in this interpretation of agency power that happens to be a "capacity" building countervailing power to have education, working against typical fatalism-based family depression and economic stagnation. However, Sen miscalculates a point that by putting all their investment in the "best" child; they ensure that their other children never find what they are good at. In this instance, capacity, as countervailing power, is generated by an educated child earning more, but family, as an agency, cannot counter the economic miseries arising out of family discrimination. One counter measure with good

education of a gifted educated child does not compensate the loss of the entire family income. As Nagel says, not everything that drives us to action need be desired end (Nagel, pp. 20-22).

First, institutional strategies for facilitating collective social capabilities are as important to the expansion of human rights as sustainable formal logic and ethical substances. Second, the contention of the essential know ability of reality in the *Nyaya* context means that the structure of knowing and the structure of reality are located in the sense that the real has to be rational, and as *Nyaya* does not accept the notion of an unknowable thing-in-itself, there is difference between phenomenon and reality. Is it mere idealism? In other words, can something be knowable without being nameable and vice-versa? Almost everybody, who has written on it, has used the term “realism” to describe the *Nyaya* position. Can something be knowable without being nameable and vice-versa? Last, one solution in our current situation is to agree with Braudel (1994, p. 17) that in early culture there is a germinal state, but in civilization, they prosper in clear form. Braudel, like Huntington, makes use of culture to provide a slight perspective on civilization by arguing that it is “a space” or cultural space, which Sartre, Harvey, Fanon, Bhabha, and now Sen view a rotating space seeking values from which people are able to locate the power base.

Countervailing Power as Human Rights: Problems

It is doubtful whether the doctrine of countervailing power is an adequate explanation for the growth of unions, such as teachers union, or of their present operations. Limits to abuse of union power can be found in the inter-feud competition and the needs to keep cohesion within the union (Miller, 1954: 15-25), and thus, Galbraith’s countervailing union power loses its legitimacy in the context of rights. Countervailing power, as presented by Galbraith as well others, appears to be power that is exercised by particular interest groups. The bargaining power of the unions does not always operate in the public interest (Hunter: March 1958), and as such, cannot be instrumental in enhancing human rights. The power relationship is often twisted at the local level for political reasons. As Sudipta Kaviraj, a sociologist, observes, the rural peasants in India share some sociological features with the communist proletariat, but with significant differences as well. Political scientists and sociologists, unsympathetic to communism, conventionally point out that the success of communist politics is often based surreptitiously on caste mobilization in cases of Andhra and Kerala states under the thin veer of class assertion. In Indian villages, countervailing power becomes “anti-politics” creating socio-political rivalries and “dada culture” (archaic, big brother) in in-fighting. Sen and Jean theorize that local socio-political institutions, such as the Indian *gram sabhas* (village councils) can check “asymmetric power” and keep a balance in sharing of social and economic benefits that are usually available to the privileged minority at the center (Kaviraj, 1997). Tadeusz Buksins argues that as the new role of “sub-politics” increases, it creates “a new political class,” unsettling the balance of power. Despite lacking formal rights, the new class at the decentralized spaces influences the decisions of political authorities, who are not always helpful to the cause of human rights.

In the context of the space of power, countervailing power is practicing, being a counterforce against organized party-oriented politics, creates huge concerns for monopolies and larger political parties. The issue becomes center versus regions. In the theories of unequal exchanges, there is an interesting cluster of human rights that reside at both the center and the regions (Bukasinki, 2001). However, at the provincial level in India, the locally elected the *Panchayats* (village councils) manage economic and social programs to distribute the benefits to the lower strata of society, but inevitably face formidable obstacles, which are imposed by popular but ideology-based ideas (Marxist Party, CPM) in West Bengal. As Atul Kohli, a social scientist, affirms, the leftist regime in West Bengal “channel some of the developmental resources directly to the rural poor, as well as to mobilize them for occasionally fulfilling political “ideologies” (Mallick, 1993). At the same time, regional development projects become sources of corruption and internal discord. They respond and adapt to the pressure of political modernity, but serve individual gains. Despite promising rewards, caste politics in India, contrary to high expectation, creates conflicting interests. The pressure from the more assertive among the vast lowly placed groups in India has come through caste forms rather than class ones. The weights people assign to outcomes are not uniformly proportional to probabilities because the relation is much more complicated, Sen asserts. In this situation of “tempered universality,” an overlapping consensus gives human rights multiple grounds for preventive measures (Donnelly, 2006). Tempered universal normative values are found within webs of power and meaning, which extend beyond one center of power; this is the real essence of Sen’s theory of countervailing power in human rights. Transforming into the hybrid culture into the struggle between the collective universal and historical autonomous units creates an uncertainty about relationship between “self” in one hand, the community, society, and state, on the other.

Conclusion: Interpretation

Amartya Sen’s countervailing power theory is interpretive as he points out that no type of the logic of Galbraith’s exchange relying on gain-benefit calculations can explain the collective action of the newer unorganized groups seeking identity, autonomy and recognition. However, does Sen’s countervailing power, being hybrid social and economic values represent a victory of the subaltern over the hegemonic units. Power’s ethical and material engagement to undo wrongs does not justify Fanon’s revolutionary urge. Sen, instead, profitably invokes the Indian philosophical statement of “self” to claim that the *Upanishads* realized that there must be a link between energy of human beings and that of the universal force. Behind our world of distinct and separate objects, there must be a fundamental unity. The word *yoga* comes from Sanskrit root *yui*, “to yoke,” in the sense of yoking one thing to another, the point being to merge or unite the *atman* (self), the “soul,” with the *brahman*, possessing “universal essence.” *Brahman*, as interpreted by Jack Donnelly, is a universal power of the “prince, the common people, and the serfs” (Donnelly, 2009). Within totality there is Sen’s de-centered multiple countervailing powers that can easily be compatible with Bhabha’s ideas of constant negotiation, although with some uncertainty. However, Sen’s ethics that guide such a project in reducing human rights

abuses and their origin seem to sit less comfortably with Bhabha's hybridity, which moves constantly, creating an unstable new identity that again needs relocation depending on circumstances. The Eriksonian perspective argues that the identity domains are composed to the internalized knowledge of self-concepts, which follow Mead's emerging "generalized order" that is trans-contextual understanding of personal and social concepts (Levine, 2005). Adhering to this line of reasoning, Sen offers the hybridized reading of interaction among the subalterns as identification, in which "rationalized reason" binds the people together with a mission. In his landmark Romanes Lectures, 1998, delivered before the University of Oxford, he argues that social identity is a matter of "discovery," rather than a process in choice. A rational choice in democratic countervailing power demands of what Parfit calls "concern," which demonstrates "weakness" of will (Parfit, 1984). The contrast between the "weak will" and "strong will" is resolved by the integrated and the motley identification views, despite an appearance of contradiction of interests, even in democracy. Commitments may falter synchronically or diachronically in any given moment, as in the motley view of our interests of different interest groups. Their goals converge in a cohesive identity that exists already, but is only now being discovered.

Adhering to the non-competitive multi-faceted power theory under the "Kroeber-Redfield Model" (Kroeber, 1948) which has both a "societal structure" and a "cultural structure," Sen examines the quality of recognition in structure. Improving on the model in Kroeber's cultural/historical approach, Redfield begins with the socio/historical approach. In essence, Kroeber, a cultural anthropologist, sees the task of cultural exchange as essentially a history of culture, with social structure and social organization subordinated. Sen's countervailing social power deals with the tension between value homogenization and value heterogenization. The homogenization argument has subsections in either an argument about centralized imposed utilitarian agency, or social oppositional but compromising construct. The normative dynamics of the latter approach come into vogue when other modes fail to provide a synthetic acceptable version. Utility model in finding out the best model in achievement, argues Sen, may be "partial, inadequate and misleading." Whereas the central legislature and provincial legislatures are packed with criminals, local political elites often control local village *panchayats*, highlighting local abuses in India. This requires a hybrid midway. Within the framework of "consequential evaluation" of countervailing power, applicable to human rights, Sen insists on the relevance of the distinction between doing and allowing. His commitment to a "situated evaluation," distinguishes his position from J.S. Mill's traditional consequentialism (Sen, 1982 and 1983). Describing social action, Sen represents George Orwell's attempt to deal with two contradictory things at the same time without either crossing or resenting the contradiction, and this is the essence of countervailing power in the human rights field. Nothing changes in a linear form; there is no action-reaction type of phenomenon. Social movements are the crucibles of experimentation and change for more of human rights. The debate has an expected utility theory, which is the foundation of the Sen's "rational-agent" model, being an important theory in social sciences. Expected utility theory is not expected as a psychological design; it is logic of

choice, based on primary rules of rationality. Logically argued, if you prefer an apple to a banana, then you also prefer a 10 percent stands for any probability. Economists adopt expected utility theory in the dual roles. Logic prescribes “how decisions should be made and how Econs make choices” (Kahneman 2011). In other words, unlike Econs, human beings need help to provide that help. The working of human mind in accepting basics of human rights remains an uneasy interaction between two options, and no particular stance is superior. Following the Kantian-Rawlsian two-step procedure facing a diversity of ends and values, Sen stays away from abstraction to legitimately discover that there are some common basis in hybrid Asian values for evaluation and moral rules.

However, there is a lacuna between theory and practice, and to get into agency’s power in human rights, analysts would need to go into a closer examination of internal structures (ethnicity, etc.) of societies that are so varied.

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