

Original Research Article

Action and Justice – A Long Note

Abstract

The write-up attempts to develop a conceptual and theoretical framework on the theme of human action, and successively link it with the actions of justice as a subset of a plethora of actions called governance in a nation. It is devoted to a survey of interdisciplinary, multidisciplinary and cross-disciplinary literature on private and public human conducts. Such an interdisciplinary survey is warranted so as to elaborate the assertion to the effect that uprightness and justice are actions – the effectuations of enterprises of human executions.

The thinking, deliberations and making of judgements and policy are but antecedent and precedent to justice, and not as such justice as it is the act and doing of uprightness and propriety that constitute justice proper. To act towards the action of uprightness and fairness is to accomplish a set of valued hybrid accomplishments and performances in terms of doing and undoing of something that is valued morally, equitably and legitimately by all.

The narrative of the paper begins with the literature on the themes of ordinary human action in general and other specific practices in particular. It is argued that an act of propriety and equity is at the least a specific ordinary, moral, egalitarian and legitimate deeds and accomplishments of the citizenry and public functionaries of the government.

Key Words: Action, ordinary, moral, egalitarian, legitimate, justice, governance

Introduction

The action of treating one another with deserved respect, reverence and veneration and treating one another rather fairly and equitably in the interpersonal interaction is good and righteous conduct. As a set of a host of private, public and mixed human actions, it does entail the exercise of establishing the rightfulness of even-handed-ness. The exercise of removal of wrongness of harms and injuries is an

integral component of it. It is inevitably instrumental towards the private and public action of securing, establishing and instituting uprightness in a culture, society and economy.

The securing of the fair deals for one and all individuals in a society is never a stand-alone activity. It is not a separate and un-entangled action. To think of justice¹ as a set of actions that is in isolation of the wider canvas of actions of governance is erroneous and unrealistic. It is always a component and a crucial part of the larger gamut of activities associated with the directing, controlling and managing of the affairs of a nation. In general in any nation, the attainment of uprightness, fairness and equity is therefore always a constituent of public policy formulation, execution and orchestration of the acts of governing. A nation, where parity and equity in the distribution of some valued thing among the populace does not prevail and where discrimination and harms to individuals abound, is not a claimant of any sorts of accomplishment on the count and scale of measurement of good, effective and righteous stewardship.

With regard to methodology, the verbal and semantic arguments are mostly used to ascertain the relations between justice and governance. The data and information used are mostly from published secondary sources. There is no field survey and visits involved. The content of the thesis is based on the table work of synthesis of theoretical frameworks and systematization of the collated information from secondary sources of data in published literature.

The present paper is divided into four sections on the categories of ‘ordinary’, ‘moral’, ‘egalitarian’, and ‘legitimate’ action in relation to the category of actions of justice. Each section is a progression on the precedent section, leading to formulation of a theoretical perspective, framework and design.

1. Ordinary Action

¹ Justice is an ancient aspiration of human settlements. Such aspiration may be traced in as remote an edict as the Babylonian Codes of Hammurabi. The Roman jurists and medieval Semitic theologians had their own specific religious doctrines and sermons on the theme of fairness and justice. The idea of justice had its journey from antiquity till the dominance of classical liberal philosophy. Classical liberalism, whose foundation was laid down with the European Enlightenment project, construed justice in terms of ‘*individual rights*’ and ‘*legal egalitarian values*’. Being distinct from benevolence, charity, prudence, mercy, generosity and compassion, the notion of justice demands something in excess of, and of course, beyond such values and virtues of human beings. Seekers of justice in all ages have meant various things in the name of fairness and justice – commutative justice, retributive (restitution) justice and distributive justice.

Broadly understood, a human action is a 'bodily movement' (Anscombe, 1957, 2000; Davidson, 1963, 1980). Philosophically speaking, both the bodily movement and 'trying to move' the body constitute a single act. For example, "I try to raise my arm and my arm goes up" constitutes a single event and episode, according to Donald Davidson (1963; 1980). "I try to raise my arm" is the agent's causing of bodily movement, "my arm goes up" is the causal consequence of bodily movement, and these two together constitute an action², according to Jennifer Hornsby (1980; 2004). An action is then an episode. It is an 'event'. It is a series of events that comprises of activities, performances, accomplishments and achievements (Hornsby, 2004).

An action as an episode and an event is however not solely proactive bodily movement. A person may not do anything, and may not prevent thing to happen. On the contrary, a person may rather readily allow things to happen by keeping the body standstill. In such cases, the omitting to doing and allowing things to happen is also an action³. An action is then not merely an event and a happening but also the non-event and the non-happening as well. In other words, the doing, omitting to do and allowing things to happen are all efforts, endeavours and completion of doing, and therefore, these also constitute a human action.

In other words, an ordinary action is orchestrated not only by an intention to do but also by an intention to allow and not prevent what is happening. It is then not only doing but also 'not omitting to do' what possibly could be done. The example is articulated by the statement: 'she spoiled the show by not turning up'. To do nothing and to be idle is also a deed since it also determines the course of events. In history, doing nothing about slavery, inequity and unfairness and also not preventing the completion of course of these evils have also constituted an execution and a performance, though such actions have been despised and blamed. It is of course a

² An action may also be conceptualised as a subject matter of practical deliberation, an object of intention, and 'in some basic sense', an intentional doing of something, 'under some description' (Davidson, 1963). In a comprehensive way, an action is 'wanting to do' something, 'intending to do' something, 'planning to do' something, 'in order to do' something, and 'for the sake of doing' something – either one or altogether all.

³ Ludwig von Mises (1998) further remarked:

For to do nothing and to be idle are also action, they too determine the course of events action is not only doing but no less omitting to do what possibly could be done (von Mises, 1998, Part – I, pp. 10-17).

feet of impropriety and partiality that prevails without omission and prevention, for example, of slavery and apartheid.

An action is always intentional. It involves the intentionality of the actor. What a person does rather intentionally and what merely happens - mere occurrence, happening and happenstance - are two different things. An action is an intentional doing of something, and it is also intentionally not preventing what is happening. The events of reflex, fluke and chance are exceptions; these are not deeds, feats and actions. What merely happens, that is, occurrence, happening and happenstance are also not of any concern. The exercises and enterprises of a wanton, amoralist, alcoholic, addict, neurotic, psychopath, lazy, bored, depressed, hypnotized, compulsive and vicious men and women are also exceptions at the borderline.

It is also often asserted that an individual activity of a private human agency is directed at some aim and purpose⁴. An adherent of moral philosophy of consequentialism often adds this feature. It is argued that an execution brings about a change in the state of affairs in the world. It always generates a result – a consequence. With intending, trying and wanting to bring about a change in the state of affairs of the world, howsoever infinitesimal, it is then always “intentional” and ‘purposive’. In other words, the doing of something to qualify as an ordinary action, it must be intentional as well as purposive.

On a deeper reflection, performing a doing does not however always strictly require the actuality of the events or obtaining the state of affairs⁵. The observation is that it needs not always fructify into achievements. Some accomplishments do not produce an outcome at all.

Being purposive, aimed and intentional, a normal ordinary conduct is in contrast to and altogether quite distinct from the so-called ‘preordained ‘divine’ and ‘destined’

⁴ In moral doctrine of consequentialism, the ‘idleness’ and ‘non-doing’ of a thing do not constitute an action. And, therefore, justice as ordinary action is not either ‘idleness’ or ‘non-doing’. Justice is never preordained, divine and destined; rather, it is intentional and purposeful doing of something by a plethora of human actors in a society.

⁵ Ludwig von Mises (1998), an Austrian economist, in his classic work entitled “Human Action: A Treatise on Economics” remarked on human action:

Human action is purposeful behaviour acting man chooses, determines, and tries to reach an end Action therefore always involves both taking and renunciation To consume and to enjoy are no less action than to abstain from accessible consumption and enjoyment (von Mises, 1998, Part-I, pp. 11-19).

(fatalism) ones (the religious texts abounds in details of the latter deeds). Since an act is someone's act, a practical performance - in addition to being an event - is the fundamental feature of a human life and distinguishing characteristic of a human agency. The carrier of an activity is the human agency. An ordinary action involves a human agency. An action involves the rationality of the human actor. A human conduct presupposes rationality⁶. Each ordinary execution and completion of work is important, and an each ordinary actor is also significant.

A human accomplishment is a distinctive defining feature of both private individual agency as well as public collective agency. There are private conducts of individual citizen, and there are doings of the public functionary. There are as well the hybrid and mixed (social) performances of the members of the civil society and the public bureaucracy in association and conjunction with each other.

An action of governance exemplifies such hybrid human action. While a private operation is the doing by an autonomous and free citizen in private capacity, a public working is considered the doing on behalf of the supra-organization called the public agency, the public administrative machinery and the State. A private individual action is a matter of free will. A public action is however a bit different genre, which is undertaken and performed by disciplined and rules-bound functionaries of bureaucracy, executive and various organs of a State.

Both justice in the narrow ambit and governance in the wider framework are ordinary events and episodes. These are essentially private ordinary endeavours and exercises in the course of interactions of individual citizens with each other. These are as well the public performances of the government in a social setting. These are unfailingly intentional and often purposive events, which do produce results and outcomes in a society.

In the succeeding sections below, the argument is built up to the effect of assertion that these are the specific characteristics of ordinary actions of being also moral,

⁶ Richard Brandt (1979) has a theory of the rationality of desire that considers a person's desire, aversion and pleasure 'rational' if it could survive or be produced by careful cognitive psychotherapy for that person, and cognitive psychotherapy is the process of confronting desires with all available relevant information, by repeatedly representing it, in an ideally vivid way, and at an appropriate time (Brandt, 1979, p.113). The psychological make-up and history of an individual determine what it is rational for that individual to want and to do. In 1983, Richard Brandt published his 'The Concept of Rational Action'. Brandt required then that the rationality of actions be "*assessed not just by their promise of satisfying actual desires at the time*" but instead take into account and make some ruling about transient emotions that influence wants, and also "*longer-term fluctuations of interests*" (Brandt, 1983, pp. 157-8).

legitimate and egalitarian in nature as well that make such conducts as distinguished as the doings of uprightness, fairness and justice.

2. Moral Action

Within the large set of ordinary human endeavours and exercises of doing, undoing, not omitting and preventing to do and allowing things to happen rather intentionally and often purposively by human agency, a moral action is a distinct class of action. It is specific norm-guided event and episode. A moral conduct involves morality, and morality⁷ is an act of 'socially-beneficial' 'ought-abidance' on the formal as well as material criteria of guidance to conduct. A moral conduct and feat is distinguished from the ordinary action as it involves a normative theory.

An ordinary moral deed is a specific category of practical episode as morality is considered something 'practical' in the sense that it is something that is considered 'action-guidance' for agency. Morality⁸ is action-guidance, and the ordinary moral doing is valued obligatory practical enterprises in the society. Within the class of ordinary enterprises, a distinctive moral one generally serves the purpose of distinguishing the valuable things from mundane things and ventures in terms of the good⁹ and the bad, the right and the wrong, and the expedient and the obligatory in human life. It involves issues of accountability and moral assessment. In moral

⁷ In philosophical literature, there have been a number of phrases which have been in use, in addition to morality as moral principle; for example, 'moral point of view', 'moral law', 'moral principle', and also 'moral obligations'. The test of a definition and the understanding of the moral and morality is not its correctness or incorrectness but rather the purpose it serves in human life (Whiteley, 1959-60, pp. 21-2). In common parlance, the terminologies of 'moral belief', 'moral consideration', 'moral duty' and 'moral reason' are frequently used as substitutable phraseology for 'action-guidance'.

⁸ Joan Robinson (1962), a Cambridge economist, has gone to the extent of remarking that the moral categories of conscience, altruism and shame are nearly ingrained in and certainly part of the biology of human beings. The sense of shame is 'natural and universal', but just what it is that causes shame depends upon convention (Robinson, 1962, pp. 4-9). It must be added that unfairness and injustice is principal catalyst of guilt, shame and anger.

⁹ In ancient Greek philosophy, goodness has been the property of the objects of the world. In a system introduced by Cicero, the Roman jurist, in western philosophy, it is an end in itself. "Summum Bonum" is a Latin expression meaning the "highest good". In hedonist philosophy, simple "pleasure" is the ultimate good. In utilitarianism, virtue ethics, deontology and rational Eudemonism, the highest good is the "maximum happiness for maximum number of people", "flourishing", "duty", and a combination of "virtue and happiness" respectively. The concept of goods in philosophy is a broad concept dealing with happiness, charity, life and justice, and is contrasted with "evil" as well.

performances, the evaluation of good/bad, right/wrong and obligatory¹⁰ ones are always involved, and an actor is always guided by an ideal, a rule and a norm.

In common parlance, an ordinary action to qualify as a moral one often invokes certain moral principles, and such principles are to be characterized on most counts, as rational, impersonal, objective, impartial, critical and universal. A moral principle indicates some factor which is generally relevant to what ought to be done. The morality¹¹ of principles requires adherence to and compliance with a rigid code of conduct and deeds creation principles.

Each and every private as well as public ordinary practice that is intentional and purposive involves some common-sense morality, that in turn, refers to a certain kind of 'conduct', a sort of belief about conduct, and quite often, a 'principle' of good conduct. There are certain things that each of us ought to try to achieve with a normative justification. It is mostly agreed that each one of us has a view about the nature of morality.

With regard to an ordinary conduct the question "Why a person did something" is relevant. With regard to moral action and practice, the relevant question however is: "Why a person ought to intend, want and try to do something". It is a question which is the focus of normative analysis. It is the focus of normative analysis, because it searches for justifying reasons of action. Moral reasons are ought-abiding reasons that play a conduct-guiding role in moral performances. In an appraisal, assessment and evaluation of human conduct, morality is not an exercise in positive analysis as the matters of morality ('right and wrong') are distinguished from, and often contrasted with, the matters of taste or preference, and matters of convenience or expediency.

Of an ordinary action, there is often a causal-explanation¹² and there is also mostly a reason-explanation¹³. What abounds in the corpus of theorizations on human conducts

¹⁰ In moral philosophy and ethics, there is a contest, and often contradiction, between the morality of the good and the morality of the right. Right from the writings of Plato to the writings of the present time, the belief has withstood that '*duty cannot be reduced to interest*', and that morality may '*require the agent to subordinate all considerations of advantage*' (Gauthier, 1967, p. 235).

¹¹ Philosophically speaking, morality is often used as a term of approval. Moral and morality is also used as a classificatory term. In a classificatory scheme, it is used to distinguish good/bad, right/wrong, privilege/obligation. Morality may refer to a certain kind of 'conduct', belief about conduct or 'principle' of good conduct.

¹² Ludwig von Mises (1998) in his classic work entitled "Human Action: A Treatise on Economics" remarked:

is the explanatory theory – a positive analysis¹⁴. A person does however commit something for a reason and his/her efforts and endeavours is a link in a causal chain which is understandable by reference to the causal working of the world. But, men have multiplicity of conflicting pictures of ideal images and forms of a human life. Such ideal images and forms of human life are not agenda of a positive analysis.

A moral conduct and practice involves essentially and unfailingly a normative¹⁵ concern regarding human practice. It is a concern regarding whether human agency has an active role in the performance, and whether a justification exists in terms of autonomy and responsibility of agency participating in the practical execution of task. Philosophically speaking, the metaphysical conception and its event-centered explanation of conduct is one thing and the ethical concern regarding the role of freedom and responsibility of human beings in activities is another. An ordinary

Human action is necessarily always rational In this sense, we may say that causality is a category of action. There are for man only two principles available for mental grasp of reality, namely, those of teleology and causality Causality leads to a regressus in infinitum which reason can never exhaust. Teleology is found wanting as soon as the question is raised of what moves the prime mover..... the subject matter of praxeology is human action (von Mises, 1998, Part – I, pp. 17-19).

¹³ In the framework of theorisation by Max Weber as well as Peter Winch, an action is purposive and intentional doing of something when it follows a rule. The rule-following in human action, preceded by theoretical and practical reasoning, set a pattern, regularity and a commonality. An action of justice is also a flexible rule-following by human agents, in terms of which a theory of explanation of action of justice can be advanced.

¹⁴ Stephen Ziliak in an entry in the International Encyclopaedia of the Social Sciences, 2nd Edition, remarked about the ‘positive’:

One way to define it is to name what its diverse advocates claim it is not: positive social science is not old school metaphysics, and it is not a normative branch of science, such as welfare economics or applied ethics. Positive social scientists are united in their attempt to understand and explain the sensory world in objective, logical, factual, and value-neutral observational terms And only axiomatic and value-neutral statements about the facts of the world would count as science.

¹⁵ Stephen Ziliak in another entry in the International Encyclopaedia of the Social Sciences (2nd Edition) remarked about the ‘normative’:

The word normative descends from the Latin norma, meaning a carpenter’s T-square, a rule, or a prescription. In ordinary English, a norm is what is expected, what is customary, what is habitual. In mathematics, the norm is a standard unit. normative conflates the Latin norma and the ordinary English norm, yielding something like, as Keynes put it, a “regulative science a body of systematized knowledge discussing criteria of what ought to be” Normative and positive continue to figure prominently in social science discourse and education. But the distinction rests on the so-called fact/value dichotomy, long collapsed (p. 535).

accomplishment is required to be explained but a moral action is one that is assessed and justified. It is justified in terms of consideration of values - a normative 'justification'

In moral action, a human actor speaks the language of morality to appeal to the considerations of interest, advantage and the good (beneficial). A human actor does also often speak the language of morality to impress upon his/her fellows to remind them of their duties and obligations, and urge them with appeals to what are considerations of privilege, obligatory and right (correct). A moral practice reflects all such concerns, and attention to such concerns and considerations to make an ordinary conduct a moral one.

A public conduct is judged both positively as well as normatively, in the same way as a private one is assessed. A positive evaluation of a government is premised on answers to the question: what it does and what it does not. There is however not merely an issue of positive¹⁶ analysis of empirically deciphering the modus operandi of the public regime and the state but also a normative problem of judging the public practice. The normative assessment is premised on answers to the questions: what it ought to do and ought not to do. The principal question has ever been a crucial one: how do a state and its organs do what they do?

In philosophical ethics¹⁷, moral philosophy and ethics, human agencies and persons are posited either to follow their aims (goals) to achieve and maximize the goods in the conduct of life or/and to show a concern about protection of their claims and furtherance of their rights in society. The moral theories are therefore typically characterized as either theories of the right or theories of the good: deontology and teleology (Goodin, 1993, p. 241), and features of moral doings emerge from such theories and paradigms. In such a theory¹⁸, it is argued that it is through execution of a

¹⁶ In the national and international literature, while positive analysis of the concepts of 'governance regime' and 'governance paradigms' and public actions of 'governance', 'good governance', and 'good enough governance' are important preoccupations, there is lack of clarity on the 'content of governance' as public action.

¹⁷ The academic discipline of philosophical ethics is both a descriptive as well as normative science. Ethics as a normative science is in contrast to the science of positive analysis.

¹⁸ Ethics is a normative science of human conduct, behaviour and voluntary actions. In ethics, the description, analysis and study of human conduct is undertaken by expressing an opinion about its value, and a judgement is made about its goodness, fairness and rightness. There are the descriptive sciences of the disciplines of psychology and anthropology which must be contrasted with the normative science of ethics.

feat that either the goods are attained, preserved and promoted or the rights are held, exercised and restored.

In contrast to ordinary action, a moral person involved in moral action learns to resist and control one's always present self-regarding tendencies. The moral evils are often projected to be practices of the self-interestedness, favouritism and partiality. The moral dictum is: *'each does what, of the acts available, best achieves one's moral aims'* (Parfit, 1986, p. 50-8). It is to such an understanding that a famous passage of the English philosopher, David Locke, is often quoted:

'But God has not been so sparing to men to make them barely two-legged creatures and left it to Aristotle to make them rational He has given them a mind that can reason without being instructed in methods of syllogising'.

In other words, a moral reason – a practical reason involving a common-sense morality – pervades ordinary human exercise with a purpose; if it does not pervade, it ought to pervade. The aim of morality and normative science is not merely to know, explain and understand an activity, enterprise, institution, or system.

In the contemporary mainstream political and moral philosophy literature, the principle of rationalist morality and a monist conception of liberal justice have been authoritative and dominant. John Rawls, Derek Parfit and John Searle subscribe to the principles of rationalist morality, and the works of these philosophers are often revisited while addressing the problem and agenda of transitional justice as moral action.

One of the recent statements that formalize the attributes of an action-guiding (normative) principle is that of Derek Parfit (2011). Combining Kantian deontology, consequentialism and Scanlonian contractualism, a statement of 'Triple Theory' as a guidance to moral reasoning and deeds of rational individuals in a society was put forth by Derek Parfit (2011, p. 25) recently. This 'Triple Theory' of Derek Parfit (2011 p. 25) states that:

Everyone ought to follow the principles whose being universal laws would make things go best, because these are the only principles whose being universal laws everyone could rationally will and which are not reasonably rejectable.

In the rule-consequentialism-contractualism perspective of Derek Parfit, the balanced and level playing may therefore be considered as a set of ordinary practices of moral

persons that produce the result of making things go best and it is also a set of right praxis that are universally willable and not reasonably rejectable.

An act is wrong just when such acts are disallowed by the principles that are optimific, uniquely universally willable, and not reasonably rejectable.

In the moral contrast between right and wrong activity, this Theory further states that a moral person who is also a rational person ought to follow the supreme principles of morality, that is, the *optimific* principles - principles whose universal acceptance would make ‘*things go best*’ – an example of moral action.

Derek Parfit (2011) devotes chapter after chapter to underline that it is the conception of an object-given, value-based practical reason and rationality postulate that informs the supreme principles of morality – the *optimific* principles. One of the profound and analytical statements about what human reasons and human rationality is all about is however that of John R Searle (2001). He defines rather quite broadly, and puts forward his profound remarks about reasons as follows:

All reasons are propositionally structured entities: they may be facts in the world such as the fact that it is raining, or they may be propositional intentional states such as my desire that I stay dry. They can also be propositionally structured entities that are neither facts nor intentional states, entities such as obligations, commitments, requirements, and needs.

An agency, whose practical efforts are directed towards performance of moral accomplishments, and thereby, the attainment of uprightness on the basis of abidance to optimific principles is desirably a person who is capable of responding to a reason and in whose action the reason and the value necessarily resonate. A moral conduct of a person is endowment of both reasons and values of human life.

Justice as action is ordinary human accomplishment. It is but necessarily moral practice and performance. To conceive it as doing of the virtue, the good¹⁹, the right,

¹⁹ Justice is a concept of moral goodness and rightness at the core of which lies a deep concern for a sort of equality/equity – fairness. Both Aristotle and Plato had considered justice neither “the first virtue of society” (Serge-Christophe Kolm, 2005) nor the second virtue but rather the third best option. It is much later, almost after two thousand years of the pioneering of philosophy and ethics by the Greeks that John Rawls (1971) considered justice as the first virtue and bring forth the idea of justice as mutually agreed upon value of fairness in the rights perspective. Major theories of justice have been expounded since 1950. The renaissance of theories of distributive justice began with the publication of “The Theory of Justice” of John Rawls in 1971.

the taking of care in the framework of hybrid morality²⁰ and to conceive it as undoing of the affront, the harm, the injury and the indignation as well, it is the intentional and purposive event and episode. By virtue of being moral action, uprightness is socially beneficial ought-abidance as it prescribes material as well as a formal criterion. The claims regarding impartiality, fairness and level playing that are devoid of morality are neither fair nor upright²¹. It is in the course of securing, imparting and rendering justice that the governance itself is also ordinary moral conduct and performance of composite actors and agencies in a society.

3. Egalitarian Action

An egalitarian action is that genre of ordinary but moral conducts and performances which abide by and follows either the principle of parity or equity or equality with respect to the entity of human worth (to speak of deontology) or generates the outcomes of parity or equity or equality in matter of distribution of valued material resources of external world among human beings (to speak of teleology).

In such an execution and performance, either there are the people who are treated the same in some respect and in some dimension, there is an attempt at equitable distribution of something valuable among human beings in the society. The maxim of egalitarian ethics is that human persons have equal fundamental moral status. There is equal moral worth of persons. There ought to be equal entitlement with regard to control, use and ownership of something valuable among all persons.

An ordinary and moral action which is also egalitarian is characterised by adherence to either of the two principal distinguished paradigms: teleological and deontological. A proponent of the telic egalitarianism believe that it is in itself bad if some people are

²⁰ A hybrid morality combines the thoughts of deontology (championing the cause of the morality of the rights and intrinsic worth of human values) and the ideology of consequentialism (extolling the morality of the goods and instrumental worth of objectives and actions) to put forward the action-guiding principles and norms justified by human practical reasons - reasons of action. It is the synthetic morality that distinguishes the commendable, praiseworthy and upright action from blameworthy, culpable and outrageous action on the basis of initial conditions as well as the advantageous, beneficial and worthy action from the disadvantageous, harmful and disgraceful action on the basis of outcome of human action rather simultaneously and assigning symmetrical moral significance.

²¹ In the European Enlightenment tradition, justice has been considered a provision of maintaining people in their perfectible rights, and distributing these rights rather equally among the people.

worse-off than others; intrinsic badness is here the core of the idea that inequality is bad. The telic egalitarians do give value to equality rather intrinsically, and they value equal outcomes and for intrinsic reasons in terms of intrinsic properties.

There are the deontic egalitarians who do afford value to equality for some other moral reason. The principle of equality propounded by deontic egalitarians is that we should aim for equality, not to make outcome better, but for some other moral reasons. The other moral reason is that inequality is not merely bad, but unjust exercise (since it involves wrongdoing).

In the deontic view, unfairness is a special kind of badness involving wrong-doing and the inequalities are unjust not only because they have been produced in the wrong way but also that inequality undermines procedural fairness, and it is therefore inconsistent with the ideal of fair equality of opportunity. It is construed that the deontic egalitarians do think that the principle of equality²² and egalitarian practice based on such principle is valuable for instrumental reasons (Derek Parfit, 2002).

An egalitarian practice is also one that is concerned with the equity, and not merely equality. To go into deeper history, so far as the notion of equity is concerned, it is in the Greek philosophy and ethics that the earliest attempt to chalk out the meanings of egalitarianism and egalitarian feat was made. The egalitarianism was championed there as the equity principle, which originated with Aristotle's proposition that people are motivated to restore the ratio of outcome to inputs for two persons as equal, and it is with reference to desert (incorporating contribution and effort). The equity is a phenomenon that is concerned about commensurate and proportionate allocation, division and distribution of something valuable, in addition to equal liberty²³.

In egalitarian practice, the equity principles that guide efforts and practices towards the fair allocations across individuals are proportionate only to the inputs they control. The equity formula is an entitlement formula. This principle works in association with

²² A version of egalitarianism as a doctrine calling for totalitarian forms of social control is that of Gracchus Babeuf's Procrustean doctrine for his Conspiracy of Equals (quoted in Lukes, 1975, p. 155). Such extreme position set aside, David Miller (1992) finds that there is '*potentially always an ambiguity*' in the case of equality. There is a doubt (Miller, 1992, pp. 559-60).

²³ Quite early in history, Christianity contained an idea of equality and favoured it. John Locke argued that each person has a moral right to have equality of natural rights – principally, the right to self-ownership and the right to private property. Immanuel Kant and his followers claimed that all humans are alike in the capacity of rational agency. The 'democratic citizenship' ideal of eighteenth-century held that all adult property-owning males should be equal citizens with a right to vote and to stand for office in free elections. In the course of time, the property qualification was subsequently removed, and women were made also entitled to full citizenship rights.

the attribution theory that say that people infer causes of events, and are motivated to assign responsibility to agents for those events and episodes. People hold an agent-actor accountable only for those factors that the agent can influence. The accountability principle is a percept of justice based on the distinction between factors one can influence, or the discretionary variables, and those one cannot, or the exogenous variables. The desert is directly related to the bearing of individual responsibility for the accomplishments of contributions and efforts to the outcome generations.

In addition to parity, equity and equality, an egalitarian action is also concerned with the virtue of conduct of impartiality. With egalitarian practical effort and endeavour, there is also the question of the role of impartiality. Is the notion of impartiality essential for the conception of equality and egalitarian conduct? Yes, it is. In a broad sense, a just moral conduct is based on fair and equal treatment of all in the backdrop of guarantee of individual liberty. The impartiality is to be complemented with the rationality, and together these have to ensue in principle of equality so as to lead to completion of work of balance and harmony as fairness. In meta-ethical literature, impartiality is the most central characteristic of morality–action guidance. Impartiality is one of the normative points of views (others are ‘self-interest’, ‘law’ and ‘religion’). The impartiality is a defining characteristic of either an act or a person. A right doing is an impartial one, and one of the features of an egalitarian feat²⁴ is that it is often an impartial deed by an impartial person.

An impartial carrying out of a work is agent-neutral in nature. It is often context-neutral as well. The impartiality requires not only independence from the constraints of specificity of place and time, but also the independence from the identity of persons. An impartial thing is applicable anywhere, anytime and in case of any person. The Kantian impartiality²⁵ as an imperative does not respect the notion of a particular “person” (Thomas Nagel, 1991) – distinct from all equal persons.

²⁴ Tom quote the leading philosopher, Ronald Dworkin:

..... every human being, every human creature, with a life to lead, has a valuable life, valuable in the sense, that it matters and matters objectively, and matters equally whether that life succeeds or fails. one person must be given prime and exclusive responsibility for the success of that life and that is the person whose life it is. These are two principles – the first a principle of equality, the second a principle of liberty – that we must respect jointly in any theory of human rights (Dworkin, 2015, pp.17-18)

²⁵ It is often argued that sympathy and compassion – motivating factors - are dispositions of persons. Bernard Williams (1974) finds it that the reasonable partiality is revealed through the sympathy, compassion, and care. Compassion, empathy and disinterestedness are all sometimes appropriate motives. Partiality towards family and friends are inherent in human psychology. Professional

An egalitarian action is however not so clean a category but a difficult feat. An egalitarian conduct and deed is characterised by equality but the notion of equality involves either equality in self-ownership of person or/and equality in ownership of resources of the world, and the problem is that there are variety of ownership, and therefore, a variety of equality²⁶. In addition to a variety of equality, it is mostly the operation of the notion of equity that is an essential feature of an egalitarian execution of enterprise. As the notion of equality and equity has varied meanings and interpretations in the literature, there are possibilities of a myriad of actions that do go forward in the name of egalitarian exercise and practice as the right and the upright in the literature.

An egalitarian action invariably involves searching answers to quite significant but multiple questions²⁷. These questions are: what is equalizing? which equality? what is that which is to be equalized? which human worth and capability is to be equalized? what are those goods that ought to be equalized? what are those rights that ought to be equalised? There are various schools of thoughts with regard to the choice of objects of equality, and also with regard to the extent and degree of equality to be pursued in an egalitarian action. There are extreme left – the strict egalitarians, there are extreme right – the libertarians, and there are some falling - the liberals and the Rawlsians in the middle in matter of advocacy in matter of the extent and degree of equality (refer to table – 1).

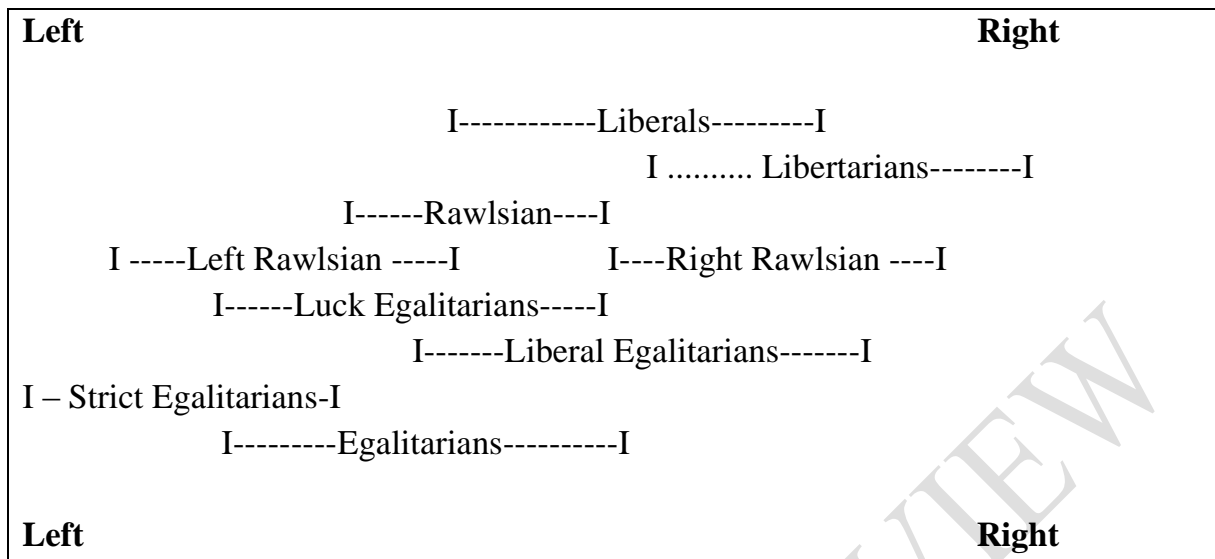
Table – 1.

Commonness and Differences among Left Egalitarians to Right Libertarians

partiality if reasonable is necessary for social impartiality. There should be motivational pluralism. Impartial principle should be limited and corrected by partial principles.

²⁶ To trace the origin of the conception: the theories of equity and desert are the intellectual progeny of two philosophical traditions: the distributive justice theory of Aristotle and the natural law/desert theory of John Locke. The political philosopher Robert Nozick occupies a position at one extreme in this class of theories (Konow, 2003, pp. 1206-7).

²⁷ In each theory of equality, a space is seen as having a central role and equality is sought in that 'space' - a variable, for example, income, wealth, utilities. In another space, equality may be sought in other spaces, for example, rights, liberties or human capability but these may be seen by others as anti-egalitarian claims (Sen, 2009, pp. 291-5). At a deeper academic philosophical theoretical level, the normative issue for economic and social egalitarian action of private individual and government functionary is: how ought we as rational and reasonable agent-actor to live the life - efficiently or equitably?



Source: Reproduced from Vallentyne, et al., 2005, p. 215

In one paradigm, all human persons are alike. They are alike in being equal members of the human species since humans have capacities of rational agency (Arneson, 1998, p. 124). Regardless of whether the egalitarian is a realist, an antirealist, or a constructivist about attributes and properties, the egalitarianism does require one to point to a morally relevant property that one ascribes equally to all the beings covered by one's egalitarian theory so as to qualify to be a theory of justice as ordinary, moral and egalitarian practice. Over the resources of external world and the welfare these generates, each rational agency has equal claim, and these welfares need to be equalized among all persons.

With regard to an egalitarian action, a presumably controversial notion is to the effect of asserting that it ought to produce an outcome where no person possesses more useful goods than any other. It is undoubtedly a contentious and debatable notion. A moderate version of egalitarianism demands 'moving towards more equality' rather than absolute equality. It proposes that in an egalitarian impersonal functioning, 'no such good is distributed in such a way that it can be passed on to one's own children while being unavailable to the children of other' (Greengarten, 1981, p. 80). On the other hand, elite egalitarianism in America however has just been content with the formal equal opportunity and protection before the law.

In modern times, the ideology of social democracy requires it that the democratic state regulation of the economy as ordinary moral enterprises is directed towards achieving the egalitarian goals. A more or less settled idea in modern times is however that there

ought to be equal distribution of rights²⁸ - both as a matter of deontology as well as teleology, and that the idea of responsibility is at the core of discussion of the theme of rights – an important aspect of egalitarianism. In the concrete society that we live in, explicit egalitarian policy proposal has however been with regard to the demand for the fair shares, wage supplements, distribution of social goods and it has all been against the institution of inheritance of privileges/dispossessions.

In short, there are both private as well as public egalitarian practices involved in a course of ordinary moral action. A move towards an egalitarian effort, endeavour and venture requires not only considerations of principles of equality and equity with respect to standing and worth among human person and the concerns regarding the just outcome in terms of distribution of something valued but also that of the operation of the principle of impartiality in treatment and procedures of conduct. On the path towards egalitarian ventures by persons, the principle of impartiality can be promoted by ensuring that people acquire certain disposition or virtues such as fairness and non-discrimination²⁹. It can be promoted also by ensuring that people adopt certain principles or action-guides.

An egalitarian impersonal effectuation of exercises requires that what anyone ought to do in any given set of circumstances is what anyone else ought to do, as long as his case is not relevantly different, and anything one ought to do on every occasion unless again there are factors present which are relevantly different.

In alternative egalitarian paradigm, what matters is the consequence and result of an action. A conduct always generates an outcome and a consequence. It generates welfare. It generates commodity. It generates income. The standard of justification for enterprises, institutions and the whole worlds has been the impartial welfare consequentialism. An egalitarian performance is one whereby the most valued thing is allocated and distributed among human beings rather equally, be that welfare, income

²⁸ The natural right is a right of an individual that supervene upon nature of men and women, and thus, are inseparable from their nature. It is an inalienable right. An individual in state of nature does have natural right. It is a right of humanity. The natural right neither is nor created by claims, consent and recognition. It is independent of legal system and social environment. There is one central natural right: right to freedom and equality. This is a right belonging to all human beings by virtue of being simply a person. This is extra-legal and extra-societal right. In Rawl's theory of justice, such a right to freedom for all persons equally exists under the veil of ignorance (Lemos, 1986, pp. 54-5).

²⁹ Justice is equal consideration and treatment of individual human agency in its own right in the ethos of freedom – either negative or positive, and it requires for its attainment a commonly agreed principle for fair and impartial deal in procedures of interactions among human agents of free will under the situations of presence of no enticement, no duress, no compulsion, and no coercion.

or commodity. The idea of welfarism is associated with the utilitarianism in moral philosophy. In the framework of utilitarianism, the welfare based principle has insisted on requirement of the maximization of the arithmetic sum of all satisfied preferences, weighted for the intensity of those preferences. An egalitarian accomplishment is here equated with that achievement that maximises the arithmetic sum over all weighted preferences of all economic agents.

In contrast to the liberal construct (and also the libertarian tradition, to some extent), both the utilitarianism-consequentialism tradition³⁰ of philosophy and ethics³¹, and the neoclassical tradition of utilitarian economics insist on considering a human agent simply as dummies³² with prescribed attribute called ‘rationality’. These traditions do not consider the human agency as a ‘plurality of distinct persons with separate system of ends’ (Rawls, 1971, p. 29) – the trait of being involved in promotion of utility and equalization of marginal utility. The utilitarianism shows no other and no further interest³³ in any information other than the ‘*person’s utility*’. Be that as it may. Utility

³⁰ Utilitarianism is the moral doctrine that one should act so as to produce the greatest possible balance of good over bad, where good is understood to mean happiness or pleasure. Jeremy Bentham advocated act utilitarianism, and John Stuart Mill proposed that one act according to the general rules of conduct that produces the greatest happiness, even if the rules do not maximize aggregate happiness in every instance. Vilfredo Pareto (1971) himself did not portray his principle as a justice theory, but this version of his principle has been interpreted as such, e.g., by Richard Posner in his book *The Economics of Justice* (1981). Posner defends the claim that justice be equated with economic efficiency, specifically, with wealth maximization (Konow, 2003, pp. 1200-02).

³¹ The utilitarian morality is the morality of homo economicus – the classically rational, narrowly self-interested agent of neoclassical economic theory.

³² Utilitarianism sees persons with a metaphor of locations – locations of utilities and the sites ‘*at which such activities as desiring and having pleasure and pains take place*’ (Sen and Williams, 1982, p. 4). In the manner that an individual petrol tanks do count in the national consumption of petrol, the persons do count as individuals in the society in the framework of utilitarianism. Such a conception is undoubtedly narrow.

³³ With domination of utilitarianism, the neoclassical political economy tradition of subscribing to a single goal-based moral theory began. The value of ‘goods’ trumped the value of ‘rights’ in moral discourse. The proposition that ‘rights have priority over conditions like utility or desert because they reflect the conditions under which it becomes possible for an agent to recognize and act on considerations like utility and desert (Waldron, 1995, p. 19) poses a dilemma for social welfare theorists (Roth, 2002, p. 17).

Utilitarianism cannot justify on utilitarian grounds the respect for the moral equivalence of persons. Utilitarianism posits a conception of benevolent despot (self-interested in economic market but noble omniscient, beneficent and benevolent in political market arena). The philosophical version of utilitarianism insists on at least three premises: one, the individual wellbeing ought to be the end of moral action; two, each individual is to count for one and no more than one; three, the object of social action ought to be augmentation of general utility. The third premise is represented by Bentham’s famous phrase: to promote the *greatest happiness of the greatest number* (Welch, 1987, p.770).

and other things need to be equalized in the utilitarian ethics. In other words, only those private individual and public bureaucratic practical efforts which equalize the utility and other things across all consumers and maximize the sum total over all are utilitarian-egalitarian conduct of affairs in the society.

In the public sphere of the bureaucracy of the government, the foundation of utilitarian public policy analysis is based on the measurement of welfare. In twentieth century, the utilitarian social welfare theory³⁴ was advanced. Central to the social welfare theoretic enterprise is the distinction between efficiency in the sense of Pareto optimality on the one hand and equity on the other. Economic efficiency³⁵, which is the exemplar par excellence of the idea of the morality of the goods in combination with the science of procedures of human activity, requires that both the waste and technological cumbersomeness are avoided. A maximal efficiency attainment through reaching the upper limit of utility under the budget constraints of income is presumed to be a situation of fairness and level playing in consumption. A maximal efficiency attainment through profit increase and cost diminution in production is a situation of equity and justness in production.

If at all, there are still areas of human life and social settings where effectuation of balances and square deals are required, the concerns for efficiency in market, being the arena of freedom of buyers and sellers under a fair contract system, must trump

³⁴ The social welfare theory has been based on two mathematised theorems about achieving Pareto optimality or efficiency in perfect and imperfect markets of the economy. The first theorem of the utilitarian social welfare theory is about the Pareto efficiency in a perfectly competitive market. The second theorem is about enhancing the Pareto efficiency in the imperfect market and the environment of externalities and public goods through lump-sum taxes and subsidies. Economics borrowed the concept of efficiency to refer to the competence and good organization '*in the use of and allocation of resources*'. The hallmark of efficiency in the uses of resources is the attempts at process '*cost minimization*' (Bannock et al., 1978, p. 144).

³⁵ Economics has extolled the conceptions of '*exchange efficiency*' and '*allocative efficiency*'. Exchange efficiency refers to the production of goods that the consumer wants at the right time and in the right quantity and quality, providing for product innovation, variety of choice and so forth. In economics, what is popular is the concept of allocative efficiency which comprises of three efficiencies simultaneously: productive efficiency, product-mix efficiency, and efficiency in consumption. Absence of allocative efficiency is the market failures, and the presence of allocative efficiency is possible without productive efficiency. Pareto efficiency refers to a situation when nobody can be made better-off without making someone worse-off, with a change. It can be there without allocative efficiency.

any other additional concern for freedom, equity and fairness in deals³⁶. In general, asking for efficiency is to inquire about the process of making the best use of limited resources of time, effort and money for a purpose and a task. As efficiency³⁷ is an agent-neutral concept, and an egalitarian enterprise is therefore not defined with respect to the human agency – the performers and executioners – in this tradition.

In the theory of utilitarianism, it is assumed that a human agent is not only self-interested in market situation but also both omniscient and beneficent in his political praxis (Roth, 2002). There is a ‘benevolent despot’ model of government that is implicit in the social welfare theory. The social welfare theory assumes that a benevolent despot does pursue a supra-individual ‘socially desired’ outcome³⁸. The utilitarian social welfare theory which is normatively applied to develop an economic theory of the state, allocating public good, is nowadays often declared to be an inappropriate standard for public policy appraisal, and therefore, a questionable criterion of defining and conceptualizing an egalitarian action.

To come to summarising the discussion so far, justice is always an ordinary and moral execution but all ordinary moral effectuation of performances are not necessarily propriety, uprightness and fairness as such. To qualify as a feat of uprightness and justice, the ordinary and moral action has to be further an egalitarian one in some sense, measure and respect as well. All ordinary activities of human beings that are intentional and often purposive events, episodes and doings are not moral ones, and

³⁶ To revisit, the notion of maximal justice was conceived simply as consistent with the maximal efficiency in attaining the good of welfare in the mainstream economics, and the mainstream economics has been dominated by Utilitarianism. Jeremy Bentham (1789) held that a person has a right whenever he/she stands to benefit from the performance of a duty. Classical utilitarianism as advanced by Jeremy Bentham was first and foremost a standard for judging the public action. Bentham embeds the Enlightenment aspiration to achieve freedom in ‘a thoroughly determinist science’ (Shapiro, 2004, p. 36).

³⁷ It is measured by the output of goods and services divided by input, giving the maximum output of goods and services at minimum cost of time, effort and money. In general, efficiency characterizes the quality and attribute of the processes of activities of production, consumption and exchange in economics. While ethical equilibrium and political efficiency goes together, the competitive market equilibrium and economic efficiency goes together.

³⁸ According to the thesis of maximalism, it is always wrong to fail to do the best thing available. The idea is that what is ‘good’ is the pleasure, or happiness, or utility, or ‘welfare’ only. The goodness of a state of affairs is a function of utility information alone regarding that state of affairs only. Consequentialism is then a thesis that a person should act with a purpose and a goal to achieve, and an individual action is to be judged ‘right’ or ‘wrong’ solely according to the value of its intended consequences. It requires that every choice of individual should be determined ultimately by the goodness of the consequent state of affairs (Sen, 1987, p. 39).

each moral one is not an egalitarian conduct either. To qualify as a moral conduct, an ordinary endeavour is to be justifiable and recommendable on the criteria of either goodness or righteousness or care and virtue-ethics but for it to further qualify as an egalitarian feat, it has to have additionally the features of equality, equity and parity in either consideration of human respect and worth or distribution of valued resources of the world among human beings. There is a fourth feature of justice as action to which we turn.

4. Legitimate Action

A legitimate action is an ordinary feat and conduct. A legitimate performance and accomplishment is just an ordinary rule-bound action. It does belong to a specific class of ordinary conducts that are publicly acceptable, rightful and reasonable as these are conforming to the standards of propriety based on acceptable principles of public reasoning. Such efforts and practices are often attached to widely prevalent and accepted public norms and values of a given society. In strict sense, a legitimate practice is however mostly a lawful one that is authorized, permitted and sanctioned by the reasonable standards of the community, and it is also in accordance and conformity with the national constitution, provincial legislations, societal rules and regulations, and legal system³⁹ of the society.

In all ages and all societies, however, the lawful and legitimate actions require at least two conditions in order to be really effective. First, there is active machinery for securing compliance with the rules and regulations that the law buttresses and promotes. Second, there is a well established method by which the changing conception of justice and the transfer of power from one class to another are mirrored in the legitimate actions and canons of law itself. The law consists of the body of rules which are seen to be operating as binding rules in that the communities, backed by some mechanisms already accepted by the communities by means of which

³⁹ Beginning with the ancient origin of written, codified and formal law in the Babylonian *Codes of Hammurabi* in 1760 BC (sidelining the ancient Egyptian oral precepts), the Semitic tribal law of the *Ten Commandments* of Prophet Moses in the 13th century BC, the *Great Rhetra* (proclamation of the Oracle of Apollo at Delphi (Spartan Constitution) of Lycurgus in 9th century BC, the Athenian *Commands of Solon* in 6th century BC, the *Law of the Twelve Tables* of Roman jurists of 450 BC, and the *Code of Justinian* in 6th century AD in Byzantium empire, the contemporary society everywhere in the world has modern legal structure, legal infrastructure and written laws. A long journey of establishing courts of law, parliament and the constitution has been accomplished in every settled country to maintain order and dispense justice through the law and legitimate actions of citizens and public functionary.

sufficient compliances with the rules are secured, do enable the system or a set of rules to continue and to be seen as binding in nature. The existence of a State power may not be necessary for the law⁴⁰ to exist in society. The legitimate action flourishes in an environment of conformity and compliance through existence of a method and machinery in the community. The power of the state lends further support to the legitimate deeds and law-bound feats.

Without conforming to the principles and outcomes of either morality (of the good, the right, the care and the virtue) and egalitarianism (the equality, the equity, the impartiality and the fairness), all ordinary activities that is in accordance with popularly recognized customs, legislations, law and the constitution are a legitimate deed. In many instances, it needs be neither necessarily moral nor egalitarian ones as well. If a moral and egalitarian action is also legitimate action, the action of justice gets legitimacy in the eyes of society and in the corridors of law.

A legitimate act and feat is an ordinary functioning and execution is undisputed but it is also a moral one only in those cases where law of the land has a base that is rooted in morality. In a moral community, the admonishing, reprimanding, rebuking and censuring for blameworthy and wrongdoing things are ordinary moral actions. If these are also in accordance with established norms and values of the society, these are then legitimate conducts as well. The wrongdoers and offenders are held morally responsible for their offending and wrongful activities, and they are morally required to repair the harms done to citizens, public functionaries and institutions of society. If these undoing actions and reparation and retribution is also made binding on the wrong-doer as per the law and the legislations, these are as well legal and lawful actions.

Such legitimate exercises of restoration of rightful dues, retribution of harms and injuries, and reparation of the loss of respects are performances of negative juridical

⁴⁰ To revisit the history, a universally acceptable of definition of law is quite difficult in view of the various schools of thought of jurisprudence that have approached law from diverse viewpoints and perspectives. H L A Hart (1957; 1960) does not define law. John Austin speaks of a science of law and jurisprudence but use mostly the description of philosophy of positive law. John Austin (1885) defined law as a command of the sovereign. The law is valid only if it is the command of the sovereign. Hans Kelsen (1941; 1945) also uses an approach of the philosophical character but claims to be developing a pure science of law. Hans Kelsen (1941) refuses to treat law as a command; rather he treats law as normative rules. As normative rules, the positive law is the only true law. According to the school of thought associated with the American realists in jurisprudence, law is not only a series of the command of the sovereign but also a body of the principles that have slowly evolved by the decisions of the judges over the years in the courts.

settlements of conflicts and disharmony. The legitimate functionings in the corridor of law and judiciary are concerned with the retributions, penalties and punishments for wrongdoing. In one interpretation, a retribution theory looks back to particular acts of wrongdoings and attempts to balance them with deserved punishments while the utilitarian theories of Jeremy Bentham, J S Mill and Henry Sidgwick always look forward to the future consequences of punishment as a legitimate deed. In short, a legitimate conduct has this feature of being the positive and forward-looking and also the negative and backward-looking justice.

A legitimate and lawful conduct and practice is equally an egalitarian one in those cases where the standardised customs and rules and regulations of the society that stamps legitimacy and the statutes, legislations and law of the land that stamps legality to performance of human deeds do confirm to the canons of impartiality, and these are equally based on concern and respect for the value and principles of parity, equity and equality. All those efforts and endeavours which are in accordance with the Aristotelian notion of commutative justice, and the liberal European Enlightenment notions of restorative, reparative, corrective and retributive propriety and uprightness are considered legitimate exercises.

In the markets, the accomplishments of commutative justice⁴¹ are legitimate actions by citizens, and in the courts of law, the ones associated with retributions are legitimate endeavours and deeds. The retribution whereby the victim of injuries and harms is paid back and compensation is awarded so as to restore the status of victim to its perfectible rights are also legitimate conducts. The endeavours of making offenders responsible for actions to repair the harm they have done are legitimate executions as these are to protect the goods and the rights of an individual⁴² from infringement by others. The past indignations and affronts are rectified in the present. Such verdicts of judicial retribution address the issues of law and punishment.

⁴¹ In economics, there are two further concepts: “conservative justice” and “compensatory justice”. In the arena of ‘conservative justice’, it is claimed that the right to something creates the due shares and obligations. It is variously asserted that justice is not merely the rights-relationship among people (resource rights, welfare rights, property rights and freedom rights) but also the social-norms-relationship among people (fairness, impartiality, equality).

⁴² Frederick Hayek (1973; 1993) proposes the rules of just conduct and actions of persons towards other persons as a spontaneous order of actions in the same manner that market is a spontaneous order, independent of the desires and will of individuals and purposeful and intended actions. Hayek says that a spontaneous order is the regularity of processes of rule of just conduct emerges. The aim of the rules must be to facilitate that matching or tallying of the expectations on which the plans of the individuals depend for their success in any settlement of humans.

The natural law tradition has for long identified law with justice. In this tradition, the purpose of law is justice as law is grounded in human reason and human morality. The natural law tradition holds that justice acts within the law as well as providing an external test by which law can be judged as just law or an unjust law. Law is an instrument by which justice can also be achieved. In law, it is remedial and restorative. It restores fairness. It is also compensatory and retributive. It restrains and controls the potential behaviour of harming, injuring and wrong-doing. The teleological school⁴³ of thought in jurisprudence⁴⁴ has been interested with the purpose and end of the law. Fairness and impartiality is one end of law but there are other ends as well, and there are other standards as well. There are various purposes of law, for example, the social control, law and order, and peace, including justice. These purpose and ends vary from country to country along with the specific characteristics of society and the evolution of sociology does influence the evolution of law. Eugen Ehrlich (1936) fought for the sociology of law.

In the alternative traditions of classical positivism of Austin (1885), Kelsen (1945) and Hart (1957) however, justice is not universal value. The legitimate and lawful action needs not be conduct and practices of uprightness. The science of jurisprudence and morality are divorced. The law is not treated as coterminous with the social science. The pure science of law in the framework of legal positivism attempts to strip law and separates it from the social sciences. In 1832, John Austin provided the basis by creating his own philosophy of law to create a positive science of law. There is no

⁴³ The sociological, political and economic analysis of law in teleological moral framework analyse, evaluate and assess the effectiveness and efficiency of the written, codified and man-made plural set of positive laws in producing the desired and intended outcome of transition of individual attitude, behaviour, conduct and action from illegitimate, illegal, restrained, constrained, demoted, sanctioned, discouraged and banned ones to freed, permitted, allowed, encouraged, promoted and legalised ones, post the enforcement of incentives and disincentives, reward and penalty, advantage and punishment, and freedom and jail and imprisonment, associated with adherence/breach of law.

⁴⁴ Jurisprudence has re-emerged with honor and prestige since 1960s. It involves the study of general theoretical questions about the nature of laws and legal system, the social nature of law, and the relationship of law to justice and morality. The positivist mode of thought insists that once the rule of law has been laid down and determined, it does not cease to be the law because it can be shown to be in conflict with morality. Though it is a fact that even the positivists do not deny that many factors, including morality, do concur in the development of a legal rule, and where there is possible choice in adjudication, the moral and other considerations may induce the arrival to one decision rather than the other.

Hasns Kelsen (1945) was but one who banished any element of value judgments from the juristic study of law. A less rigid position was occupied by H L A Hart (1957) who considered law s rules for the guidance of the officials and citizens to act and by Joseph Raz (1979) who considered law as a system of norms providing a method of settling disputes authoritatively. It remains a fact that morality enters law as one of many considerations.

unique association of law with justness. The law is not rooted in morality, and therefore, the prime object of law is not fair play and balance (Raz, 1979). Law has many purposes to serve, in addition to equity and equality. This being the case, all law-bound and law-abiding actions are not actions of propriety, impartiality and fairness.

To elaborate further the theoretical system of law and jurisprudence propounded by Hans Kelsen (1957), justice is an irrational idea for it cannot be clearly defined by reason. In this discourse, there is no interest in the social forces that create the law. There is no concern for the natural law, and therefore, no role for ethics, morality and justice to play in the corridor of law. Law is defined as normative rules that come with the element of coercion, and therefore, law as normative rules is distinguished from the moral and religious rules. As the Constitution and customs are the basis of law, Hans Kelsen (1941; 1945) considered the justification and motivation as political questions and kept these beyond the conception of law.

Ross (1979) has argued against the metaphysical thinking and any kind of natural law tradition. In his view, it is a fallacy to presuppose notions of justice and of the pre-existing rights and duties. The economic analysis of law has also argued that a large area of law is to be explained as being concerned not so much with the issues of propriety and uprightness as with the efficient allocation of resources and maximisation of wealth in society. There are schools of thought that treat law as that which is actually in force and which is in action in addition to what is there in the books. The American Realism School have been interested in the case laws in the forms of verdicts of the judges, that is, law in action in society. The American school of Realism in jurisprudence do not consider justice to be the only prime object of law. The pursuit of fair deals is an ideal which is limited by what happens in the actual world of facts. The doctrines of law in books is complemented by and supplemented with the empirical data about law in action (Roscoe, 1910). In addition to law as a set of norms, there are law as a matter of social facts.

On the relation of actions of justice with that of legitimate and lawful ones, there are two agreements however among all schools of thought on the jurisprudence: first, the principle of equality before the law that asserts that the law applies to all indiscriminately and irrespective of who one is in terms of any other considerations than citizenship, second, the principle of fairness of law that asserts that the law must provide relief and remedy to all those harmed, injured and victim of wrong-doing through restoration and retribution. In the corridor of legitimate and lawful actions, law is to be minimally identified with at least the remedial and restorative justice.

In brief, justice is primarily a human action. It is intentional (not wanton, not fluke, not by chance) and purposive doing (capable of generating a consequence and producing an outcome) of something to attain some valued ends. It is essentially a moral action with a tag of ought-abidance, either with regard to promotion of the good or the right or the virtue and care. It is egalitarian conduct of facilitating parity, equity and equality among human persons with regard to treatment and respect for human worth and also the distribution of something valued in the society. It is legitimate and rule-bound legal action so far as the law of the land is grounded in morality and the action of fair deals is confined to remedy and relief from harms, injuries and wrongdoings in inter-personal interactions in the society. Justice is remedial and retributive legitimate and lawful action.

Remarks

Justice is principally an act of undoing of a plethora of injustices of various forms and dimensions in the human society. It is variously the undoing of the indignation, exclusion, discrimination, inequity, harms and injuries among the populace of a nation. Such undoing is an ordinary action that is intentional and purposive in nature. Such an act is performed both on the motivation of the principles of goodness, righteousness, virtuousness and care-giving in their own respective right as well as the motivation to attain the outcome of good, right, virtue and care generated. It is for such reasons that it is not merely ordinary but moral action as well.

All such ordinary and moral effectuations of undoing of the affronts and indignations of the present as well as that of the immediate and remote past are in turn conducive to attaining the parity, equity and equality among human persons on the principle of human worth and respect. All such ordinary and moral endeavours of undoing of the unreasonable bias and unevenness are also conducive to obtaining the goal of producing the outcome of parity, equity and equality in the distribution of command, control and ownership over the commodities (including the access to the resources and income) among human persons. It is therefore that to qualify as actions of justice, these ordinary and moral doings are also essentially egalitarian ones in some sense and measure in a society and a nation.

Whenever and wherever such ordinary efforts and endeavours of undoing harms, injuries and inequities are in the nature of being moral ones and also that these are unfailingly egalitarian conducts in nature and impact, these deeds of the fair play are

as well necessarily in accordance with and in conformity to the popularly recognized customs of the society and also the laws, legislations, and judicial doctrines of the land. Justice is thus not merely ordinary, moral and egalitarian one but also legitimate one.

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