

Analysing Justice as Integral to Governance: A Survey

Abstract

The write-up attempts to develop a conceptual and theoretical framework on the theme of human action of justice, and successively link it with the actions of governance in a nation. It is devoted to a survey of interdisciplinary, multidisciplinary and cross-disciplinary literature on private and public human conducts of justice. Such a survey is warranted so as to further elaborate the assertions to the effect that both justice and governance are actions – the effectuations of enterprises of human executions. The problem is that justice cannot be treated as a stand-alone activity independent of the patterns and characteristics of administration, management and steerage in a nation.

The second problem is that 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 propriety, uprightness and justice 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, and all these constitute an essential component of good, righteous and efficient governance. Much of the accomplishments on the scale of fairness and justice – individual and societal – depends on the executions of the interplay of civil society and government in the course of steerage of the nation.

The narrative of the paper begins with the literature on the themes of act of propriety and equity and links it with the ambit of a wider and broader plethora of completion of social and economic executions under the framework of national democratic supervision, administration and stewardship of welfare and development.

Key Words: Action, private, public, hybrid, moral, egalitarian, fair play, uprightness, distributive justice, fairness, probity, management, civil society, government, stewardship, administration, governance

Introduction

To govern a country is to impart propriety, impartiality and fairness to the populace. The governance, steering and administration in a nation serve many purposes and leads to multiple accomplishments. One of its crucial purposes, however, is to render freedom, equity and fairness and offering something valuable and valued to its citizenry. It is the aggregate level of efficient and effective management and administration across a polity, society and economy of countries that do necessarily induce, buttress and facilitate the interpersonal conduct of propriety, uprightness and fairness on a mass scale.

It is both in theory as well as in the practice that the very act of enabling and ensuring fairness in procedures, equity (equality) in the distribution of some valued thing and freedom in beliefs, speech and conducts has always been subsumed in the performance of steering, superintendence and governing of polity, society and economy in a nation. It is for such a reason that the piloting, navigating and stewardship of a nation, region and locality has been unthinkable without the pursuit of the ideal, value and idea of procedural fairness and actions of substantive parity and justness for the citizenry. The morass of private, public and hybrid actions of steering, managing and regulating a society and an economy, at the core of which the concern for impartiality, fairness and equality is rather absent, may not qualify as governance per se.

It is then imperative to assert at least three concise and relevant observations on the relation of uprightness with governance in the context of a country as elsewhere in the world. One, justice¹, fairness and uprightness for the populace as a set of hybrid actions of private individuals of the civil society and public functionaries of the government are integral part of the wider canvass of a plethora of similar hybrid actions of private individuals of the civil society and public functionaries of the government in steering, managing and governing of a nation.

Second, if at all the extent and level of attainment of the fair play, propriety and uprightness in the society and economy is ever appraised, the route to such endeavor

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.

towards assessment must necessarily and unfailingly pass through and mediated by an extensive analysis of the characteristics, patterns and outcome of the national stewardship and administration.

Third, the conjoint conceptual framework on the relation of the performance of justness for citizenry with the executions of steering and managing the nation in a study on the issue of assessment of the uprightness and fairness is therefore a befitting and realistic approach to proceed with.

Method:

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 two sections on the categories of justice as positive and negative doing and governance as a plethora of hybrid actions in a society. Second section is a progression on the precedent section, leading to formulation of a theoretical perspective, framework and design.

1. Justice – Positive and Negative Hybrid Actions

Justice² is essentially moral and egalitarian actions in a human society. Morality is to be conceived as an activity, enterprise, institution, or system whose aim is to guide and influence the endeavours and practices, to regulate what people do or try to become or at least what oneself does or tries to be (Frankena, 1967, p.151). A moral doing has such features of being valued, guided and regulated ordinary deed. Morality refers to both ‘individual’ as well as ‘societal’ norms that may guide the conduct. There is individual morality based on conscience and social morality based on collective convention. The individual morality based on conscience is a formal

² Justice is not merely the name of a human aspiration and passion, an idea and an agenda of theoretical reasoning and a public policy statement. Justice is essentially and really a ‘doing’ - an action that it is.

morality which is conducive to formal moral effectuation of enterprises, while social morality requires as its basis the collective convention that leads to collective moral doings.

It is worth remembering that morality is however not as such a neat and settled category, and therefore, what is moral has many more shades. There are multiple meanings and multiple phraseologies used to connote the moral. The moral is not however considered at all a subdivision of language or of logic. Morals have neither vocabulary nor idioms of its own. There are but moral discourses. Socrates and Aristotle have been pioneer of such discourse and its relation with the character and virtues of men. It is one of the virtues that a majority of men do not attend to the sense of honour but rather follow their pleasures and passions (Kirchner, 1989, pp. 54-7).

A moral action is influenced by the moral discourse as such a discourse is quite significant in assessment of a moral enterprise. It is also relevant to the formulation of public policy within the context of a social contract of an ethical nature between private autonomous agency and government. Be that as it may. Despite the caveat, the efforts and endeavours towards the impartiality and fairness are ordinary private, public and hybrid moral action, rather unfailingly and necessarily. The conduct of justice is moral action, involving normative assessment and evaluation of private, public and hybrid ordinary human functioning.

With regard to such actions and enterprises, there are two principal criteria of appraisal and assessment of worth of a human conduct and practice – be that a private individual one or the collective public one or a hybrid of the two sorts. It is appraised for either the generation of the ‘goods’ in society or the facilitation of the ‘rights’ of human agency. A moral deed qualifies for either of the assessments or both. It is assessed and evaluated in terms of instrumentality to the realization of some goals³, and appraised through some outcomes, consequences and results of performance. What matters is the goodness of a practical endeavour as it is evaluated variously in terms of either the enhancement of human welfare or augmentation of satisfaction, happiness and pleasure. This is the maxim of ‘action-for-consequence sake’.

³ Jeremy Bentham prioritized happiness of individual as the greatest good and coined the moral dictum: ‘greatest happiness of the greatest number’. It advocated the principle that a society of humans should always act so as to produce the greatest quantity of ‘happiness’ as the only valuable ‘good’.

Another maxim of assessment is ‘action-for-action sake’. It is here considered as the identity of agency and the characteristic of person⁴. It is appraised and evaluated in terms of its intrinsic worth, and assessed on some deontological principles of morality⁵. In such appraisal, what matters is the righteousness as it is judged variously in terms of either the protection and capitalising on the desirable intrinsic features of the performance, for example, the righteousness, equality, fairness and flourishing of life or the reduction of undesirable harmful features, for example, wrongs, vices, inequality, and degradation of human life⁶. Once the ordinary execution and performance meets either of the criteria, it qualifies as a moral action and justice as action meets either of the two criteria of assessment of human action.

The uprightness, fairness and justice are also essentially egalitarian actions. In academic parlance, for those who are votaries of principles of intrinsic and instrumental equality among human persons and demand for the worthiness of ordinary and moral but egalitarian conduct and performance, a person is not simply a person with a personality but a ‘free’ person. A person is an individual substance of a rational nature. A human being is a person that is characterized by features of rationality⁷. A human is endowed with free will (autonomy), and therefore, a human is

⁴ Moral rationalism is a thesis that constitutes a view that an agent can be morally required to do only what she has most reason to do. It is called alternatively, the principle of moral imperative, and also the overriding-duty thesis. In deontology, there is Kantian categorical imperative and practical reason is the moral reason.

⁵ Morality in deontology approach is not a matter of producing right results, but of meeting obligations that relate to features of acts themselves rather than their results. The deontological approach advocating the equal distribution of the ‘rights’ having an intrinsic value in its own right trumps the consequentialist approach championing the instrumental value of the equal distribution of the ‘goods’.

⁶ A consistent deontological ethics was propounded by Immanuel Kant. Kant propounded the rule-deontological ethics. It defended the priority of rights over goods of action. The maxim is: “*always act in such a manner that your actions can be taken as a universal maxim*” or “*always act according to a maxim that is at the same time valid as a universal moral law*”.

In its original formulation, Kantian ethics of the categorical imperative is: “*act according to the maxim by which you can at the same time will that it should become a universal law*”, and “*act as though the maxim of your action were by your will to become a universal law of nature*” (Kant, 1785, p. 422). This is the maxim of universality and reversibility.

In another formulation, Kant says that: “*act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end*” (Kant, 1785, p. 429).

⁷ While Brandt’s theory is a rival to the self-interest theory (Postow, 1989, p.69), it is a bit different interpretation in the hands of Alan Gewirth (1978) who published his monograph of ‘Reason and

a personal agency. Egalitarianism requires that each person is treated a deliberate actor, a maker of project, and therefore, a personal agency, and that too rather equally with others.

A person is a being who has continuous consciousness over time, has second-order volitions, and is a deliberate actor. A deliberating human agency is a person. The human persons are deliberate actors. A person is a maker of projects, and thereby, a person is also in some measure the maker of himself. A person has capability of framing representations about the world, formulating plans and acting on them. The autonomous person – the “truly self-made man”- is an ideal deeply rooted in the liberal tradition and is clearly one of the threads woven into the complex notion of a free man who is entitled to egalitarian considerations based on equity, parity and equality of sort. An egalitarian exercise respects the notion of natural person in each person in a human society. An egalitarian venture is premised on consideration that each person is a bearer of rights and obligations without any difference and discrimination.

The ordinary, moral and egalitarian action of a human being is fair and just, and it is premised on the recognition that a human being is a person – possessed of a personality with individuality⁸. Personhood is the status of being a person which figures prominently in moral and legal discourses nowadays, and an egalitarian venture has this feature of protecting the equal personhood in the society and economy. A practice of fairness and impartiality by virtue of being ordinary, moral and egalitarian carrying out of work is rooted in the protection of this equal personhood in a society and economy.

Morality’ a year prior to publication of ‘A Theory of the Good and the Right’ by Richard Brandt (1979). It is interesting to compare these two moral philosophers and their works. According to Gewirth (1978), it is irrational for any agent, regardless of her psychological make-up and history, to deny any other agent freedom and wellbeing. Cognitive psychotherapy is an ideally rational deliberation, and it is but a flawed deliberation that leads to irrational desires.

⁸A person is not merely capable of responding to a reason but also a being in whom reason and value necessarily resonate. Peter Singer (1985) defines a person as being a conscious, thinking being, who knows that it is a person (self-awareness). A person is a being who has a sense of ‘self’, has a notion of the future and the past, can hold values, make choices, adopt life-span (Taylor, 1985, p. 97). In the moral tradition of the Enlightenment project scholars, for example, Rene Descartes, John Locke and David Hume, a person is one who possesses continuous consciousness over time.

Precisely speaking, a person is a being with certain moral status as well, and therefore a person is a bearer of claims, rights⁹, privileges and entitlements¹⁰. A person is recognized by law because the rights¹¹ and duties are ascribed to him/her. The person is the legal subject of which bearing of the rights¹² and discharging of the duties are attributes. In respect of moral status, a person has certain capacities and a certain psychological depth. The concept of person is intimately connected with the notion of not only 'free will' but also the structure of human volition according to 'first-order desire' and 'second-order desire'. There is a notion of a natural person¹³ that is

⁹ There are classic works on "rights". Wesley Newcomb Hohfeld (1917) (1974) has talked in terms of "correlatives" and "contradictories" (opposites) to clarify the meaning of rights. Rights arise from claim, consent, recognition and what supervenes upon human nature. Foundational rights are basic and primary rights. These rights are normally called human, moral or natural rights. They are inalienable. They are essential part of who we are as human beings and require no proof since there are known by intuition. All human beings have certain natural rights and certain moral rights. Such rights are not created by the legal and social systems. Legal, constitutional and contractual rights are secondary and implied rights.

¹⁰ The Greeks had the laws of custom and convention. The right of *lex talionis*, a term coined by Cicero in Rome, was the right of retaliation or revenge. It evolved into a series of laws, rules and codes covering punishment, exchange for damage to the injured party and property rights. There has also been a tradition of championing the cause of 'divine rights'. The natural right is the right to acquire or retain something rather than of the right to do or to refrain from doing something. Some natural rights are universal and some are non-universal in nature. The natural rights theory slowly lapsed and lost the authority later.

¹¹ In the history of rights as these have originated in Rome and European countries, most popular rights have been the property rights and welfare rights. Property right includes the right to exclusive use of one's property and the right that others not trespass on it; it also includes the liberty to use the property as one chooses. Welfare rights might be described as rights which create an unconditional duty on part of others to contribute. Social contract and natural rights theories were propounded in eighteenth century. In 1789, the Declaration of the Rights of Man and of Citizens was declared in France. In 1791, Thomas Paine wrote the Rights of Man. Greater attention was drawn towards human rights after Second World War during Nuremberg trial in 1945.

¹² There are three types of rights: legal, natural and moral. Wesley Hohfeld (1923) discovered four senses of the conception of legal rights: claim, privilege, power and immunity. The legal right is a right to claim something; it comes as correlative with duty. The legal right confers privilege to get something done; it is right without duty. The privilege is often the liberty. The legal right can also be in the form of power to effect changes in the legal relations. The legal right of immunity is a negation of liability. A right is always held by a person with respect to other person. All persons have certain rights simply as persons. A "right" is a claim of one on another, and therefore, it is the correlative of obligation, responsibility and duty (Hohfeld, 1917; 1974).

¹³ In the liberal tradition, there is a deeply rooted ideal of the "truly self-made man". The autonomous person is clearly one of the threads woven into the complex notion of a free man. As interpreted by John Rawls, Kantian '*moral law specifies a positive concept of freedom*'. Human persons are free not only in the sense that they are '*able to act independently of our natural desires and needs*'. In the framework of Rawls, persons are '*free and equal*'. Persons have a right to '*equal respect and consideration*'. Moral persons are 'autonomous' in the sense that they are both '*rational*' and

fundamental to the principle of the conception of practical reason in the form a person-centred reason or ‘reason of respect’.

To elaborate, there is moral capacity, and also natural capacity and empirical capacity in humans, and the exercise of such capacities do matter in the course of human actions and practices. The moral capacity is the “intelligence, a capacity for sympathetic understanding, and a measure of resoluteness”. The empirical capacity is the empirical characteristics of human beings, possessed in different degrees in different individuals. Human beings have conscious experience, and thus, they can experience pleasure and pain, they can have desire of something and they are averse to others¹⁴. This is natural capacity.

A being with these capacities can be benefitted and harmed, and it is for these reasons that a human being is an object of moral concern – a concern regarding ought-abundance and obligatoriness. The egalitarian ellipsis is: all humans are entitled to equal treatment and all humans are equal in their entitlements¹⁵ (Bernard Williams, 1962). This is the object of an egalitarian deed. An ordinary and moral work out is upright and impartial by virtue of meeting this object of egalitarian action.

Harry Frankfurt (1978) has proposed this feature that distinguishes persons from other beings by virtue of the notion that persons have ‘second-order volitions’. A person has a capacity for reflective self-evaluation that is manifested in the formation of second-order desires. A person is one who desires that his/her second-order desires become his/her effective will and give rise to execution of an act, proceeding from the associated first-order desire. In contrast to a person, a wanton is an agent that has first-order desires and possibly second-order desires but lacks second-order volitions. In a legal system, a person is a holder and possessor of second-order volitions and a person

‘reasonable’ (Shionoya, 2005, pp. 122-23). Closely related with the notion of personality is the notion of rights to autarchy and autonomy (Benn, 1988, pp. 9-10).

¹⁴ The Kantian maxim (to treat persons as ends in themselves) implies not only that “one should respect and try to understand man’s consciousness of his own activities” but also that “one may not suppress or destroy that consciousness” (Williams, 1962, p. 118). In Rawls’ view the basis of equality is the binary property of being a moral person where a moral person is a being that has a capacity for a conception of the good and a capacity for sense of justice (Carter, 2011, p. 549).

¹⁵ There are correlative duties. ‘To do good’ is a positive duty. Not to do harm is a negative duty. Not all duties are directed. A talk of duties owed to the “public” is merely shorthand of talking about duties owed to each and every citizen. The claim-right is correlative to duty, and a liberty is the contradictory of a duty. The right as power is correlative to liability, and the right as immunity is the contradictory of liability.

is self-aware that it is a person, therefore, and a person is considered a bearer of rights in law. A being capable of second-order volitions, that is, a person has sophisticated perceptual and reasoning capacities, and are entitled to equal treatment in some respect. An effectuation of a deed that is in accordance with this principle is an egalitarian action.

A note on the relation of egalitarian functioning and fairness motive is warranted at this juncture. To proceed, it is only very recently¹⁶ that a concern for fairness as motive of economic agent is rebounding in empirical literature in economics. In an interactive setting of a macroeconomy, the empirical surveys and laboratory experiments show that fairness¹⁷ motive of human agents is variously associated with a choice of not merely the principle of equity but also the principle of efficiency and the principle of needs-meeting in either the lexicographic order or as a matter of trade-off among the three principles of choice. In the literature of economics, the most cited descriptive study of fairness today is that of Kahneman, Knetsch, and Thaler (1986).

¹⁶ One exceptional work of modern economics was that of Luois Kelso and Mortimer Adler (1958). In a monograph entitled “The Capitalist Manifesto”, they claimed that economics as a moral science was sensitive to the question of economic justice that consisted of moral principles used in designing the institutions of the society. According to Luois Kelso and Mortimer Adler (1958), there are three principles of economic justice. Three principles of economic justice are the principle of ‘participation’, the principle of ‘distribution’, and the principle of ‘limitation’.

The principle of participation required equal opportunities in accessibility to property and seeking work is to be provided to all. Under the principle of distribution, justice required that there must be equal proportionate reward for contribution of labour and capital equal to the marginal productivity. The principle of limitation is the principle of harmony that requires a limitation over greed, monopolies, and building checks and balances within social institutions; it synchronizes the distribution with participation. The third principle is the social justice that balances and restores the participative justice and distributive justice within a market based economic system to counter monopoly tendencies.

The Centre for Economic and Social Justice in the American University, Washington (now Arlington, Virginia) has pursued the paradigm to highlight four pillars of economically just society, according to Luois Kelso and Mortimer Adler (1958): expanded ownership of productive assets, limited economic power of the state, the restoration of free and open markets, and the restoration of private property.

¹⁷ Mainstream economics is a newcomer to the proposition that fairness motives do affect the behaviour of a considerable number of individuals in an economy. There is now a wide set of distributive concerns, including the study of fairness preferences of people, that are part of the studies in economics – a sort of emerging consensus in economics over the relevance of fairness because of incorporation of the perception of increasing economic inequality. There are now studies that quite often cite the impact of fairness motive (and not merely, self-interest motive) of people as revealed in the failure of the product markets to clear, the phenomenon of labour unemployment due to efficiency wages, working of the public utility regulations, and resolutions of social choice problems (Konow, 2003). Such a shift in economics is welcome. This newcomer status is worth celebrating.

It is now realized that while self-interest may be a crucial motive that is often accounted for in the theory of individual planning, the fairness motive is also to be accounted in a theory of social interaction. The fact of the interdependence of utility functions is a good candidate for ethical belief on applying practical reason on cooperation and mutual care. There are possibilities of altruism and other-regarding etiquette to exist where egoism and egotism are both self-defeating (Fehr and Schmidt, 1999).

So far as the relation of egalitarian practical accomplishments with the ordinary and moral ones is concerned, a pertinent remark is in order. Serge-Christophe Kolm (2005) has advanced a theory of egalitarianism in which equality of labour efforts and income is combined in a fiscal policy of single tax and redistribution expenditure. In this framework, it is claimed that the accomplishment of just allocation of the items to people is not influenced by the individuals' will. What is allocated is the effect and result of voluntary practices, belonging to the field of economic exchange, and such an allocation constitutes the domain of commutative justice¹⁸. The latter in turn is based on bringing "geometric equality" – "in proportion to", and "as the relevant increasing function of". It depends on individuals' "merit" (axis). This is but also called "retributive justice".

According to Plato and Aristotle, the second domain of virtue is that of "distributive justice"¹⁹ - the distribution of items that do not depend on individuals' will but follows the principle of "arithmetic equality"- strict equality²⁰ and, in particular, equal sharing.

¹⁸ The Greek philosophers had been preoccupied with the conception and idea of commutative and distributive justice. Medieval Christian and Islamic scholars had also devoted sermons, texts and writings to the theme of requirements of justice. In recent years, the Aristotelian virtue ethics, idea of equality and commutative justice have been attempted to be revived and reinstated by a number of moral philosophers and political thinkers.

¹⁹ Distributive justice insists that societies must be just, and interaction among individuals must be just. The distributive justice is concerned with which goods to be allocated in what context among which persons and through what rule of allocation/criteria. Distributive justice is concerned with allocation of scarce resources and goods among individuals with competing needs and/or claims. The distributive justice is a form of fairness: an impartial distribution of goods through a fair decision procedure. Giving people rather equally what they need (need-based principle) is however a different proposition from the assertion of giving people rather equally what they deserve (desert principle or equity principle).

²⁰ In a very unequal society, the better off typically have more power and are more effective at pulling in resources for the public goods they value. A high degree of inequality makes it further more tempting for the better-off to opt out of public services altogether. Moreover, inequality of outcomes does not generate the right incentives when it rests on rents. In that case, individuals and households divert their efforts toward securing favouritism and protection instead of creating new wealth or innovating. Last but not least, the existence of extreme inequality exacerbates social fragmentations

This principle is, in fact, not merely equality but is also of the concepts of aim-freedom, immanent (where “immanent” means reward according to effects of choice or conduct) merit or desert, and responsibility (Kolm, 2005, pp. 247-9). This is a classic version of viewing an egalitarian practical exercise. The social contract perspective of Immanuel Kant (1785) and John Rawls (1971) requires the lexical priority of rights and respect for their correlative duties, recognition of the inability to perspecify endogenous and complex final ends and desires, and a procedural imperative to promote just and impartial institutions as the defining characteristics of justice as ordinary and moral doing and undoing in the institutionally well-ordered society and nation.

Within the discourse in the academic discipline of study of social psychology, a large literature has developed that focuses on the evaluation of procedural impartiality and propriety in ordinary, moral and egalitarian action. It has a close relation with the law and legitimacy of human activity. It is often asserted that fairness as a concept makes sense only when applied to the dealings between personal agencies. It is a ‘*procedural notion*’ (Scruton, 1994, pp. 424-5) of ordinary, moral and legitimate working in a society. The procedural dimension of fair deals is related with the study of subjective evaluations of the procedures through which people coordinate their conducts. It is evaluation of whether they are fair or unfair, ethical or unethical, and otherwise accord with people’s standards of fair process of interaction and decision-making. Four elements of procedures are the primary factors that contribute to judgments about their fairness and fair legitimate practices: opportunities for participation, a neutral forum, trustworthy authorities, and treatment with dignity and respect (Tylor, 2005, p. 602).

There is also a notion of substantive dimension that requires the subjective assessment of the fairness of outcomes and the degree to which people feel that they are gaining or losing goods, welfare, resources, rights and respects in a group. Such gaining and losing of the resources and goods as well as the rights and respect with dignity on the part of individual person in a group and social class does matter a lot as regards to facilitating impartiality and fairness in a society and economy. While such issues are addressed through the public ethics and private morality as well as in the field of the political economy of a nation, such issues are also essentially addressed through legitimate and legal actions in the corridors of legal system of a nation in a modern world.

and undermines social cohesion—the capacity of a society to manage collective decision making peacefully. Those suffering from extreme deprivation may turn to violence and conflicts as the last resort to address their concerns (Rama, et al., 2015, pp. 37-9).

A legitimate and lawful action is ordinary, moral and quite often egalitarian conduct but its relation with justice has been debatable. In academia and legal discourse, a classic theoretical dictum and scholastic wisdom have prevailed for quite long time: the legal action secures the justice. The exaggerated claim has also often been made: law²¹ alone secures fairness and uprightness. In the natural law tradition championed by Aristotle, Stoics, Christian theology and the neo-modern advocates, the dictum still persists: * *lex injusta non est lex* * (an unjust law is no true law). A true and genuine law-abiding and rule-bound conduct is one that is based on a just law – a body of rules oriented towards securing and effectuating propriety and fair play rather inevitably and unfailingly. It is for such a belief in the academic legal discourse that historically speaking, a long era of practices and performances as influenced and inspired by the private law and customary law has always been claiming to be in the service of reasonability, uprightness, fairness and propriety in the society.

In the history of law in general and positive law²² in particular, such an identification of legitimate and legal actions with the political, social and economic equity, fairness

²¹ There have been three principal schools of thought on positive law: analytical positivism, behaviouralism and moralism. In the framework of moralism, law has been an instrument of enforcement of obligatory principles and the moral goods (beneficial, advantageous and useful). Which value, habit, norms, principles, rule, care, commitment, character and morality that the law promotes has been the basis that ever has defined the nature and characteristics of law.

The behavioural perspective however views law as a means of social control of individual behaviour (attitude, beliefs, expectations, motivations and aspirations) and conduct of client, lawyer, administrator, bureaucracy, legislator, judge and citizenry. Which intention, interest and behaviour the positive law encourages is the focus here. To be precise, behaviouralism has begun with seeking an answer to a question and investigates: given a law (a jurisprudence and a legal structure), how the so-called 'rational' client-citizen, lawyer, administrator, judge and legislator does behave.

The analytical positivism however insists on comprehending law as what law does in terms of legal and jurisdiction logic – the logic of replacing the undesirable, unwanted and disallowed attitude, behaviour and conduct of the citizenry, the law-makers and the public functionaries with the desirable, wanted and permitted ones. In the plural and hybrid law framework in India, there have been overlapping influences on the law-makers, law-enforcers and justice-dispensing agency.

²² The legal scholars often attempt to frame their analyses within a theoretical framework. There are however legal scholarships, which are mostly in the forms and substances of theoretical perspectives. Theoretical perspectives are grand, which attempt to seek to understand the entire legal realm from a specific perspective, and to comprehend concrete legal phenomena by placing them within a general conceptual framework.

In the framework of law and economics theory, all law is regulation. All law are justified, criticised, and explained from the perspective of cost-benefit analysis, internalisation, externalisation, and often welfare maximisation. Similar is with the formalists. They attempt to understand all law from an internal legal perspective and within a given set of legal concepts, which include corrective and distributive justice, the public and private realms, and formal rights and remedies.

and uprightness has not been a neat and settled idea, however. There have been two contrasting traditions in law and jurisprudence. The Greeks regarded law as being closely related to justice and ethics. Aristotle considered justice as either what is law or what is fair and equal. This conception still continues though many refinements have been made to it. Aristotle distinguished between natural justice as universal and conventional one to be locally determined. He also distinguished between distributive one and remedial one. The aim of natural justice is to secure propriety and uprightness and to prevent the miscarriage of fairness by preventing all discriminations against a person for possessing qualities that do not have a direct bearing on the case. The criminal justice requires punishment while the civil one requires it that the wronged party is resituated to a position that he would have been in if the contract in question have been honoured with the wrongdoer suffering just so much harm as is necessary to make good the wrong he has perpetuated (Singh, 2003, p.126).

Justice and fairness, as it is elaborated in the foregoing analysis, is ordinary but moral and egalitarian human action. It is also mostly legitimate²³ conduct. It is private individual conduct as well as public collective deeds, and also mostly hybrid actions of establishing parity, equity and equality in concerns, respects and something valued while ensuring freedom and liberty for all.

Justice is not an instinct, emotion and psychology²⁴ of men and women. The practical and moral reasoning and subsequent formation of intentionality and disposition on the

The critical theory of legal scholarship conceptualise law as power - domination, gender and racial inequality, and other constellations of power relations. Moreover, whatever lies outside the scope of the theory does not exist (for the theory). In short, the legal theory assumes the primacy of epistemology. What determines a legal phenomenon is the theoretical perspective through which it is observed. One chooses a perspective. Theoretical perspectives are only one possible way of approaching law (Lavi, 2011).

²³ A legitimate action may also be in the form of compensatory justice, which is based on the view that inequalities in income should be permitted to the extent that they compensate for differences in the advantages/disadvantages of different sorts of works (Joseph Carens, 1985, p. 39).

A class of legitimate actions that confirm to the conventions and the law of the land have this additional characteristic that they are often fair, impartial and conforming to some notion of parity, equity and equality, and often grounded in some adherence to morality and public ethics.

²⁴ Justice is not an instinct, emotion and psychology of men and women but cultivation, nourishment and training of instinct, emotion and psychology do contribute to sharpening of the reasons for action, that is, justice. Therefore, the moral dictum is: cultivate, nourish and train 'moral sentiments' of charity, benevolence, beneficence, and 'human values' of sympathy and compassion since early childhood through the institutions of family, school and churches (temples, mosque)! That was what Aristotle said long time ago and this is what Martha Nussbaum has presently been saying.

part of individual citizen and public functionary towards morality, impartiality, equity and fairness are merely the preludes and the antecedents, and not at all either the initiation of work or the completion of the project. The preludes of reasoning, intentionality and disposition are the antecedents²⁵ to action, and as such, these antecedents are not justice²⁶ at all.

The concept and propositional statements about uprightness²⁷ and equity as moral and legitimate value and ideal has always conveyed a dual sense: an episode at a point of time (a substantive outcome) and a process over a period of time (a procedure). There are substantive and procedural dimensions of justice as ordinary, moral, egalitarian, and legitimate private and public human feat in a society and a nation.

In a society, whenever a person says that ‘it is justice’, what is meant is an ‘episode’ (an event) with its attributes in terms of consequence (realising the aims and goals of individuals or restoring the claims and rights of individuals). Whenever a person says that ‘justice has been done’, what is articulated is about the nature of a ‘process’ (a procedure) with its attributes in terms of the obligatoriness (meeting the needs and discharging the duties in a proper and fair way).

²⁵ It is mostly in the self and other-regarding day-to-day actions of individuals in which the circumstances of justice and injustices originate, and subsequently, it is through some corrective action that justice is secured against injustices. Each and every individual citizen is to perform fair and just actions so as to confirm to the sense, idea and requirements of justice, failing which an impartial spectator or an impartial judge is posited and positioned as institutionalised second-best agency to attempt to restore ‘justice as fairness’ for the aggrieved, harmed, incapacitated, injured and the wronged ones. The State as an impartial spectator-judge does intervene to undo injustices, and thereby, facilitate securing of justice to the aggrieved and harmed party when the arena of free citizens as sovereign rational moral law-abiding individuals and group of individuals fail in securing justice for oneself and rendering justice for others.

²⁶ To begin with ordinary sense, justice has been a prime concern since antiquity. It has been considered a virtue of human character, a virtue of private and public human action, and of late, a virtue of the institutions of polity and society as well. It was the Greek philosophy that laid down the foundation of virtue ethics. In the Greek thought, justice was also variously considered the features of ‘harmony’, ‘power’, ‘strength’, and only finally, the ‘virtue’. Classical Greek thoughts of Plato and Aristotle on justice as virtue still resonate and reverberate with a vengeance in the literature.

²⁷ Justice is the name of relations between two or more individuals in an interactive setting of human society. The idea and clamour for justice is redundant and irrelevant in a perfectly harmonious world of a single individual on a hypothetical island. It is only in the context of interaction among individuals that the possibility of cooperation and harmony on the one hand and disorder and conflict on the other arises, and thus, originates the problematic and circumstances of justice.

To go further into the attributes of reasonable level playing as action, there are two dimensions of either private individual, public collective and hybrid human conduct and practice that is associated with justice²⁸. In the positive dimension²⁹, it is often a proactive doing of guaranteeing the liberty, welfare and equality among human beings – both at present and in the future. It is also characterized as giving and getting what is deserved or needed. It requires proactive doing with regard to positive distribution of not only human respect but also something valuable among human beings. The balancing and symmetry in distribution as positive execution of projects is often considered a matter of pedigree.

The positive dimension of action is entangled with the present and it often looks towards the possibilities of the future. It however does not address the undoing of the harms, injuries, exclusion and affronts of the past. At the level of primacy with a sense of immediacy and urgency that addresses the past and the ongoing present³⁰ is the aspect of essentially a negative practices³¹ of undoing of “wrong-doing”, “bad-doing”,

²⁸ Plato had asked long time back in his work - the “Republic”: What is justice? With the posing of this specific question in the dialectical method of discourse, a systematic and programmatic political and moral philosophy began in the West European world of religion and philosophy. In classical moral philosophy, there was enumeration of four cardinal virtues: courage, temperance or self-control, prudence or efficiency, and of course, justice.

In the framework of classical philosophy and ethics of virtue, a society was posited to be constituted by persons, and individual persons were conceived to be learning ‘virtues’ through systematic upbringing and rigorous training in the society (Aristotle was keen on ‘upbringing’ and ‘training’ of individual citizens without which the art and science of practical reasoning could not progress).

²⁹ The contemporary dominant hybrid idea of justice in India is, by necessity, merely seeking of partial, imperfect and suboptimal justice. The hybrid and plural idea of partial, imperfect and suboptimal justice is often secured, attained and obtained through legal remedies, reliefs, restitution and reparation of sufferings, indignation, harms, injuries and enslavement. Seeking justice through acts of legal relief, juridical remedy and public redress is also combined with attempts at social movements of revolt, rebellion and uprising to bring about economic transitions and moral and ethical appeal of norms of minimisation of harms, injuries and vices.

³⁰ Pragmatism grants priority to experiences as the experiences of unfairness and injustices are first-hand, immediate and first-mover for the aggrieved and offended. The reparative justice and retributive justices in the corridor of law and judiciary that are involved in remediation of injustices are urgent, warranted and beneficial as these alleviate the anger and resentment by undoing the indignation, harms and injuries. Such undoing actions must get overriding priority over the project of establishing ideal, perfect and transcendental justice (Dobuzinskis, 2012).

³¹ The abstract, transcendental, perfect, complete, maximal, optimal and forward-looking concerns for positive justice as proactive doings and actions towards ensuring, guaranteeing and securing freedom and equality is second-mover, tangential and descriptive responses to the concrete, observable and pragmatic central category of injustice. It is therefore treated secondary to the primary negative and backward-looking measures of undoing of the wrongs, bads and evils via corrective remedy and relief, rectification and reparation, retaliation and retribution, and restoration and restitution in courts

‘harm-doing’ and ‘evil-doing’. A complete, sufficient and holistic does require the negative aspect of achievement of fairness in undoing the bad, evil, wrong and harms of the past in conjunction with a befitting, certain and positive efforts³² of attaining some moral, egalitarian and legitimate ideals and practices of guaranteeing both formal as well as substantive freedoms, inter-personal and inter-group equality and impartiality as fairness in dealings and interactions in society at the present and in the future.

It is but significant to attend to the immediacy and urgency of the negative dimension of fairness and justness – to undo harms and wrongs. It is to orchestrate the executions of undoing of the instances, episodes and events of harms, injuries and asymmetries of the immediate past and the present. It is a set of specific human enterprises that are primarily required to do the “undoing” of harms, injuries and wrongs so as to make an advance towards securing reasonable impartiality and fair deals at the present. It is an enterprise³³ with a purpose. It is a fructification of doing³⁴. More importantly and pragmatically, it is often rather a set of completion of works of undoing of vices and evils³⁵ of indignation, sufferings, harms, injuries and fatalities of the present and

and society. Any attempt to attain the ideal perfect transcendental maximal and optimal positive forward-looking justice via gifting, provisioning, affirmative action, distribution and redistribution has a potential to consume a hell lot of scarce resources.

³² Morally and ethically speaking, a concern for justice is a reminder that justice is a positive action of “right-doing”, “good-doing”, “care-doing” and “virtue-doing”. It is but also a negative action of “undoing” of wrong, bad, vice and apathy.

³³ In a review of the academic discipline of psychology, it is opined that justice theme has been neglected for long time, and it has been neglected not only by the discipline of economics but also that of psychology. Economists, at least those calling themselves behavioural economists, have rather belatedly but come to acknowledge the importance of perceptions of fairness in economic decision making. It has been belated in psychology (Dale Miller, 2001).

³⁴ In the discipline of psychology, it is only over the past two decades or so that the focus has been on “procedural justice” - the fairness of the methods, mechanisms, and processes used to determine outcomes as opposed to the fairness of the outcomes themselves. The most commonly reported experiences of everyday injustice involve some form of disrespectful treatment. Absence of ‘voice’ is considered disrespectful and unjust. Violations of interpersonal codes of conduct are also a common source of feelings of injustice (Dale Miller, 2001).

³⁵ The idea of justice is often construed in logical and etymological opposition to the notion of injustice. There is but seemingly no such obvious dualism between justice and injustice. Injustice is not merely a negation, antonym and violation of justice. Injustice as merely a negation and violation of justice is rather narrow, circumscribed and partial understating of injustice. The apartheid, ethnic cleansing and genocide (as was the slavery in the past) are not simple absence, antonym, negation, corruption and violation of justice but these are outright wrong, bad, evil, and thus, exemplary instances of injustice in all sense.

carried over from the past in the first instance. It is the negative conception and the idea is principally oriented to undoing of harms, wrongs, injuries³⁶ and injustices³⁷. In short, it is an action, the negative act of undoing, and the undoing of unfair and unjust enterprises of the past era and present time that must be addressed first in the orchestration of fair play and this is a point we would be asserting and reasserting repeatedly in this thesis.

Given this duality of positive and negative dimensions of ordinary, moral, legitimate and egalitarian conduct, a more basic and fundamental interrogative query is also significant. The question is: are there a common, general and universal sense, idea and conception that is applicable to and true to the feat of fairness in all interactive setting of human society? No! There is actually none. Each and every mode of production and societal formation evolves its own appropriate and befitting sense that characterizes the context-specific relation of harmony and conflict among individuals, groups and communities in interaction in a society and a nation. The medieval acts of fairness have been different from the modern one, and the tribal and feudal ones had been divergent in comparison to the capitalist deeds of justice.

The epoch-specificity of the efforts and endeavours towards uprightness and undoing of injustices ensures that neither a common, general and universal idea nor conception that is prevailing at the present time ever existed earlier in the past nor would these notions anymore prevail in the future. In any era, say the era of slavery or the feudalism or the capitalism, an epoch-specific action paradigm did prevail, and that had become dominant one at that time and era. The dominance however in no way had ever meant the singularity, purity and stand-alone features of the enterprise of justice.

While practice of liberal capitalist propriety and uprightness is, for example, essentially devoted to the service of accelerating the pace of macroeconomic accumulation, consumption and production efficiency at the aggregate level and

³⁶ Seeking of justice in an interactive setting is of immediate practical significance for those who have ever been harmed, wronged, injured and rendered helpless and vulnerable to situations of unfreedom, unfairness and inequality.

³⁷ An agenda that is not beginning with the project of undoing injustice is an unfinished and incomplete agenda. In a meaningful way, comprehensive justice ought to mean the actions of unburdening the baggage of past wrongs, harms and injuries – undoing unfair and the injustices. The spontaneous first-mover, primary, backward-looking and negative concerns of diminishing, reducing, demoting and minimising injustices of sufferings, disrespect, indignation, humiliation, harms, injuries and enslavement is of immediate and direct practical significance in the project of justice in India.

individual rational choice in the morass of markets³⁸, it has also co-opted and accommodated the ethical concerns and moralities of bygone epochs, eras and social formations alongside, for example, the medieval norms and cannons of natural justice. It is to comprehend that the liberal and libertarian capitalist conception of the present age, era and epoch is therefore only one genre, and it is essentially of hybrid, mixed and plural character. It has a dominant component, and also subsidiary ones, carried over from the past and co-opted at the present.

It is therefore that the precise features of righteous and just conduct consist in it being an action that is performed to its finality. It primarily consists of negative conduct of undoing of harms, injuries and indignation of the past while accommodating the concerns for future doings to guarantee liberty, fairness and equality in a positive sense. Contemporaneous activity of fair play and right doing is of plural, mixed and hybrid nature that accommodates with and co-opts the norms, values and ideals of bygone era as well - some elements of ancient and mediaeval conceptions. Contemporaneously, it is considered not merely a 'virtue' of the individuals but also the 'goods' of the state of affairs of the world and also the 'rights' of autonomous individuals in the society as it is grounded in hybrid³⁹ and mixed moralities.

It is in this hybrid⁴⁰ and mixed Avtaar that the dominant liberal and libertarian justice of the present age do address the multiple, befitting and specific concerns of the future

³⁸ For example, an epoch-specific sense and idea of capitalist justice never sits alone in domineering position in isolation. It always sits either in harmony or in conflict or in collusion with the old, obsolete and earlier sense, idea and conception of feudal justice (recurring, resurfacing and clamouring for recognition and acceptance with a fervour of vengeance, as inheritance in the name of universal natural justice dies hard. A capitalist justice also accommodates certain features of future, ideal, imaginary and transcendental senses of justices (as craving for utopia of a future is always there).

³⁹ While in conflict and with competition, the idea of capitalist justice of present era and epoch has variously co-opted the residual and peripheral past senses of feudal justice (carried over in piecemeal form from the immediate and remote past) and also accommodated the forthcoming and transcendental ideal senses of justice (projected towards the ideal future, say, social democracy or secularism or socialism). An epoch-specific non-common, non-general and non-universal dominant (legal and extra-legal – social and economic) sense, idea and conception of justice (and also that of injustice) is thus essentially a hybrid and plural one in its epoch-specific dominance.

⁴⁰ Modern liberal capitalist justice in a democratic setup of polity and society, for example, in India, is always a hybrid plural corrective justice and often reparative and restorative justice as well, of the nature of undoing injustices and unburdening the baggage of past indignation, sufferings, harms, injuries, enslavement and homicides. While addressing the concern of undoing the past injustices, it also accommodates from time to time the future concerns for a benchmark justice of meeting the forthcoming aspirations and hopes associated with perfect ideal maximal transcendental justice.

along with the obsolete and peripheral ones of the present and the past on the one hand and entertaining composite senses and ideas of occasional proactive doings on the other. Though, it is also frequently associated with un-doing of the negative consequences of the ongoing and past conflicts regarding the capitalist accumulation, property, contract, exchanges, liberty in preferences and choices, equality of opportunity, fairness and impartiality as well. This is in addition to anticipating and guaranteeing ‘no future conflicts’ in these economic processes in society.

To summarise and order the arguments, there are seven significant points in an assessment of the magnitude and the level of attainment of justice through the mediation of three vital institutions of political economy, public ethics and positive law in the course of national governance as a plethora of the individual private conducts and public accomplishments of the agencies of government.

First, there is no common, general and otherwise universal idea of justice. Rather, it is a dominant sense of epoch-specific idea that prevails though it is also always hybrid and plural one in actuality. Second, it is essentially a specific purposeful dominant set of actions – both doings in the future and also undoing of past and present vices and evils. Third, as a specific set of accomplishment⁴¹, it is primarily the negative act of undoing unfairness of the past and ongoing present. Fourth, a theory of action is therefore warranted to uncover the act of undoing injustice (as a corollary, doing justice).

Fifth, a theory that is not primarily based on lexical primacy of a theory of action of undoing vices and wrongs is not a complete theory. Sixth, the positive but secondary and proactive concern for it which is mostly oriented towards a future state of affairs to attain is a utopian ideal, and as such it may consume a hell amount of resources, and therefore, it may wait till the primary project of undoing of harms and injuries does complete its course in a society and a country. Seventh, it is performance that is undertaken by both the private and public individual personae who are enmeshed in the bonds of interaction, working in association and proceeding in collaboration with each other in the course of governance of a locality, a region and a nation.

⁴¹ One of the principal acts of dis-incentivising, demoting and minimising dishonour and disrespect, harms and injuries, in short, injustices is restitution – compensation, reimbursement and reparation. An application of Newton’s Law of Restitution in the theory of action of justice estimates the coefficient of restitution as an approximate measure of how is the human life of an Indian citizen is faring well and going well in the ethos of competition, conflict and collision, and helps estimate the kinetic energy of human life as a proxy measure of the freedom and capability of Indian citizens.

2. Governance – A Plethora of Actions

In ordinary parlance, there are multiple aspects, meanings and dimensions of governance. In its managerial aspect, it connotes the techniques of ‘steering’ and ‘management’. It also refers to the practices established by use of such techniques in the society. In its organisational aspect, it is the system of structures of regulation. It is the process of management of flows and networks by accommodating diverse actors⁴² as partners in the continuum of power⁴³.

In its political aspect⁴⁴, it is broadly conceived to be a purposive action⁴⁵ of state actors that aim at providing stability in socioeconomic flows. In its extra-political dimensions, it is however the initiation and development of those public stewardship styles in which the boundaries between and within the public and private sectors are increasingly blurred, and the governing mechanisms do not at all rest on recourse to the authority and sanctions of government alone (G Stoker, 1998, p. 17). In other words, governing feat is not merely confined to public efforts of the executing officialdom but also subsume the private actions of the citizenry in the civil society.

In its economic aspect, it is specifically projected as a continuing process, which in turn is understood as the sum of many ways in which the individuals and the

⁴² Modern governance is a framework of a poly-actor, multi-institutions and mixed-participation of civil society and government. Modern governance requires both the government as well as civil society in public private participation mode.

⁴³ In view of the horizontal reconstitution of the state power through private-public partnership, governance is a diffused phenomenon and activity which is accompanied by increasingly fluid arrangements of a polyarchic mixed actor system. There is undoubtedly a clear phenomenon of increasing privatization of governance in the framework of private human agency-public human agency partnership.

⁴⁴ The political aspect of governance variously assign roles to the state on the driving-seat in promotion of governance practices as argued by Ritcher (2002), put forward the conception of governance as power (Hunt, 1996) as “*actions upon other actions*” (Foucault, 1982, p. 220), and elaborates on the relation between governance and coercive system of regulation (Weiner, 2001, p. 473).

⁴⁵ Political governance is about managing the state and establishing a practice of accountability of the political to the people. This new public management style should use market mechanisms, client orientation and performance management to increase institutional capacity and to unbundle monolithic organisations into corporatized, decentralised, citizen focused and responsible public entities. Economic governance requires diminution of patronage distribution, nepotism and corruption. Regulatory governance requires strengthening the structure and processes of governance by establishing the rule of law, and ensuring equality, democracy, transparency and accountability.

institutions - public and private - manage their common affairs. It is through which conflicting and diverse interests are accommodated and cooperative venture is often made possible (Commission on Global Governance, 1995, quoted in De Angelis, 2005). It is opined in the radical circles and the corridors of critique of capitalism that the discourse about it is part of the arsenal of capital to boost the process of accumulation while there have been phases of emergence, consolidation and crisis of neoliberal policies⁴⁶ all over the world over the last twenty five years of the last century.

Governance today is a plethora of composite accomplishments of steering, managing and regulating the polity, society and economy in a nation. In pragmatic essence, there are multiple actors involved in the morass of exercises – both private and public. There are numerous institutions involved in the swamp of executions of steering, regulating and managing – both governmental as well as civil societal. A State is a public actor, and stewardship is its holistic public practice. This is predominantly a trait of the modern state, though such a feature did not exist in medieval⁴⁷ times. A modern state⁴⁸ governs through an ensemble of public feats to supplement the private actions of the civil society (including the principal practices of regulating, managing and enforcing the property rights). It consists of a series of public events under the aegis of a system of welfare state⁴⁹.

⁴⁶ A shift from the earlier ‘welfarist’ focus on national growth to focus on the facilitation of the conditions for ‘*entrepreneurial self-governing*’ has been observed. It is in this sense that governance means ‘*global neoliberal governance*’ agenda (De Angelis, 2005, p. 229). It is considered as ‘the apologia for neo-liberalism’ (De Senarclens, 1998, p. 94) (Rose, 1999, p. 260).

⁴⁷ In medieval times, there had been direct intervention by the state in management and organization of both internal as well as external trade with the purpose of ‘stabilizing society’ against ‘dangerous disequilibria’ like quarrels and conflicts (Evers and Schiel, 1987, pp. 465 –6). The chief economic function of the state was then to protect the institution of private property and exchange contracts. There had been however no consistent and stable exercise in policy making.

⁴⁸ Libertarian school of thought tends to define the state with the help of two minimally necessary conditions. According to the first, to qualify as a state any agency must exercise the monopoly of coercive force over a given geographical area. The second asserts that the coercive agency must claim legitimacy, that is, the right to exercise coercive forces (Haworth, 1994, p.100).

⁴⁹ The public policy envisaging role of the state in discharging certain economic functions in the classical economics was based on scientific techniques of analysis with moral presuppositions on the nature of state as paternalistic father. But, such paternalism in the economy is contingent upon the existence a legal framework already enacted by the state. The functions of the state as a supplement to the family find extensive recognition in the classical theory of policy. In such a policy framework, an appropriate legal framework and the system of economic freedom are considered as one and the same social process (Robbins, 1953, pp. 190-92).

In the course of governing, one of the highly essential endeavours and exercises of a capitalist state⁵⁰ has intimately been related with the establishment and management of property rights in the economy. The essence of such property rights is the right to exclude, and an organization which has a comparative advantage in violence⁵¹, that is, the state⁵² is in the position to specify and enforce property rights much more decisively than any other organization in the society (North, 1981, p. 249).

The classical liberal and libertarian thinking in the social sciences and jurisprudence in the academia have insisted on the establishment and management of property rights as the core of overseeing and directing an economy. Such a feat today is conceived as one that entails more or less coercive system of regulation, and crucially relies on the '*networked active participation and self-management of non-state actors*' such as non-governmental organizations and other civil society groups⁵³ (including business corporations and houses) (De Angelis, 2005, pp. 233-34).

Governance today is however not strictly associated with the governmentality. The government has not been the sole arbiter and driver of administration, control, regulation, oversight and management in a nation. The phenomenon of the accommodation of civil society as significant actor, mechanism and institutions in

⁵⁰ A modern state performs contradictory roles in the lives of individuals and collectivities and accomplishes paradoxical actions in the society and economy. A State is the public actor. A government is an integral and vital active organ of a state. Though '*a score of intellectual ghosts*' comes into picture '*to obtuse our vision*' the moment we utter the word the "state" (Dewey, 1927, pp. 8-9), the state actions are often considered governmental actions through public policy framework.

⁵¹ While acting in so-called 'public interest', a State has a comparative advantage in violence, extending over a geographical area whose boundaries are determined by its power to tax constituents in a stratified society. Being an ensemble of administrative, policy and military organizations, any state, first and foremost, fundamentally extracts resources from society and deploys those to create and support coercive organizations (Skocpol, 1979, p.29). It is the principal and defining action which is performed through a constellation of public functionaries in executive, bureaucracy, legislature, judiciary, police and army.

⁵² The State is a supra-actor; it acts, performs and accomplishes with specified intentions and purposefully. The state is an instrument which maintains law and order at one pole, and on another, it acts as an institution which dispenses justice. It performs a number of welfare functions and implements a number of redistributive welfare policies. The nature of the actor matters; what it is, and what it does is always significant and decisive. Much more significant however is, from a substantive point of view: how the state does what it does, and what outcomes it does produce – governance.

⁵³ The Staff Paper of the World Bank (1992) remarks that how people are ruled, how the affairs of a state are administered and regulated, how a nation's system of politics functions in relation to public administration and law are all issues of governance. The concept of governance goes beyond that of government '*to include apolitical dimension*' (Landell-Mills and Serageldin, 1992, p. 304).

addition to public actors, mechanism and institutions is a recent development in the public administration discourse. The stewardship, administration and regulation today are a hybrid and composite action in the continuum of civil society to government – a public private participation mode. In orchestrating private-public-partnership framework of governing in a nation, and thereby essentially promoting works of justice, the civil society often works in tandem with the ruling establishment and public agencies of the State.

In short, the individual private deed in the civil society is mostly complementary and supplementary to the bureaucratic public performances in the public corridor of a modern welfare state. In governing a nation, it is not merely the functionaries and personnel of the state and the government but also the civil society actors who do participate as principal actors in a major and decisive way. It does require the partnership of the public executive and the civil society. The bureaucracy does whatever it does, and such public doings is supplemented with activism of private individuals, families, groups and organisations and associations.

In a system of stewardship and administration, the pure public carrying out of works that are undertaken solely by the welfare state⁵⁴ with no involvement of private activities of citizenry and other actors of the civil society are a rarity. In other words, what abounds in the course of steering, managing and administering is hybrid action. The accomplishments of welfare state⁵⁵ is mostly in association with the autonomous, intentional and purposeful atomic doing of individual non-public agency (be that a private individual, social group and a large private organisation) in the civil society. It is therefore a private-public partnership exercise of stewardship and administration as well as the fructification of justice is both equally the plural and hybrid practices and conducts. Such hybrid functioning is the way to managing and administering a nation on the path to attaining and securing freedom and equity for its citizenry.

⁵⁴ The concept of a welfare state has strong normative connotation and is conceptually associated with a commitment to both democracy and social justice. Social disabilities rather than economic deprivation have been the focus for rectification and compensatory justice. All countries are but driven, in their welfare state approaches, by a combination of instrumentalist, competitive and progressive rationales (Gabriele Koehler, 2014).

⁵⁵ Public actions of a welfare state are of recent origin in a democratic society and economy. Whether a capitalist state or a democratic or an authoritarian state, all states attempted to establish the welfare state intervening in health and education sectors in Europe. Two authoritarian states, Germany and Italy, were relatively early in their interventions in both arenas. Democratic states has been worried about consensus, and therefore, were often late for this reason (Hague, et al. 1989). The economic action of the state became highly popular since the Russian Revolution in 1917 and the Keynesian revolution in economics discipline in 1936 made it further widespread (Deane, 1989, p. 145).

Under the aegis of civil society and public corridor of the organs of the State in collaboration and competition with each other, it⁵⁶ has been the sum of all operations of steering, managing and administering the principal spheres of economy, ethics and rule of law so as to enable the good and righteous outcomes and consequences of such economic, ethical and legal actions almost reach the door of the citizens. A myriad of such private and public exercises in the realms and corridors of operations of principally public ethics, political economy and positive law and continuing everyday civil society practices have been integral parts and constitutive elements of governance⁵⁷.

As an organised plethora of hybrid (private and public) actions, governance requires that actors are responsible and accountable for their actions, the actions are transparent, the conducts are as per the rule of law and there are adequate provisions for representations of voices of people. One principal set of deeds of stewardship of administration and regulation is that of bringing fair play, instituting impartiality and facilitating equality (and undoing partiality and discrimination). The obligation and responsibility of securing and attaining fairness and equity on the part of agencies and organs of the State and its orchestration of control, regulation and administration have over the years and decades mostly been supplanted by and supplemented with the autonomous efforts of individual citizens-in-interaction towards fairness and uprightness in the civil society of the country. It is all in the name of political, social and economic uprightness through the interactive participation of the government and civil society that the process of administration, regulation and control is ever orchestrated anywhere. The partnership and working of the civil society and the public

⁵⁶ While highlighting the governance crisis in Africa, the World Bank coined the concept of good governance. Good governance is today a buzzword. “Good governance” as a term came into vogue in the 1990s with the World Bank literature. The need for governance reform and policy prescriptions is stressed ‘to ensure transparency and rule of law, accountability in public finances, improvement in governance standards, and creation of a productive private sector’ (Bhagawati and Gambri 2005; Blitz 2005; Oppenheimer 2005; Wolf 2005). The debt relief is now given only to countries ‘with good performance and tolerable political accountability’ (Wolf , 2005). The term remains is still ambiguous. There is as yet ‘no consensus on the criteria for measuring good governance’ (Nanda, 2006, pp. 269-70).

⁵⁷ The chief of poverty reduction section of UN-ESCAP, Mr. Yap Sheng, catalogued eight major characteristics of governance so as to qualify as good governance – the hybrid mixed action. These characteristics are: it is participatory in nature, it has orientation towards consensus, it accommodates a system of accountability, it establishes and maintains transparency, it is responsive to needs, it requires government effectiveness and efficiency, it establishes equitability and inclusiveness, and it allows for the rule of law to operate.

bureaucracy is evaluated in terms of how good and effective the control, surveillance and supervision is in terms of securing, obtaining and instituting justice in the nation.

It is in this perspective of the broad understanding of the umbrella of hybrid and mixed conducts of stewarding, administering and managing a nation that governance does incorporate the ordinary, moral, egalitarian and legitimate actions of attaining liberty, equity and fairness among the citizens, public functionaries and organizations. The seeking and guaranteeing of the fairness, impartiality and parity has therefore been constitutive of the pattern and characteristics of national regulation and control.

It is well observed in the history of a nation that the psychology of men and the sociology of groups have also been at play to bring the concerns for ensuring fairness and undoing injustices to the driving seat of stewardship and macromanagement⁵⁸. The social uprightness and propriety has always been considered necessary to undo hurts, harms and injuries so as to neutralize, demote and minimize the possibilities of anger, shame, guilt, unrest and rebellion in the course of governing a country.

Conclusion

Governance is an ensemble of private civil society as well as public governmental practices, and the principles as well as practices of attainment of justice across the academic spheres and institutional practices of ethics, economic and law do constitute the good and effective administration and stewardship. The principles of private individual and public bureaucratic achievements are discoverable in the core theoretical structure of each intellectual discipline of public ethics, political economy and positive law in the academia while the outcomes of practiced and performed actions are always traceable there in the empirical data and information regarding actually lived life of citizenry.

Governance and justice are conjoint hybrid actions (individual private deeds and collective public conducts) in human society. And, the latter is an integral part of the former. The degree, extent and range of attainment of fairness and uprightness as a quagmire of ordinary, moral, egalitarian, and legitimate private, public and composite human practical activities is always assessed on the basis of how far has the national

⁵⁸ Three decades back, the good governance reform agenda focused mainly on creating market forces and a mercerisation process by adopting policies and providing institutions. In the 1990s, it was however recognised that in order to bring about good governance, reforms should take a holistic approach. There is distinction between growth-enhancing governance capability and market-enhancing governance actions of the State and government. (Khan, 2007; Khan, 2006; Khan, 2009).

administration, management and stewardship been based either in the nature of being instrumental to producing the 'outcome' or on the 'principles' (in its own right) of discouraging, demoting and minimizing harms, injuries and wrongs in the society and economy. So, all in all, the dominant concern of freedom, equity and justness today is undoing of indignation, vices, wrongs, bads, harms and injuries that have been carried out from the past in a society and economy of a nation.

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