

Liberal principles of Justice and Emerging Trend of Economic Liberalization: Lesson from Rawlsian Scheme of Distributive Justice

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Abstract

We are living in the age of so-called economic liberalization. Markets are expanding and States are voluntarily limiting their legitimate right as the only redistributing authority of resources. The money market has globalized in such a manner that state has almost lost its capacity to hold its redistributive function. Economic liberalization is one of the most dominating policy frame work which is to be pursued and institutionally concretized in many of the post-colonial societies as the legitimate and only viable alternative mechanism to regulate the distribution of resources. It has been claimed that the market is relatively far more just mechanism to distribute the legitimate share of recourses under the principle of efficiency. It is very interesting to note that the principle of efficiency has been presented in post-colonial societies as the only way to realize the principle of freedom. Because any attempt to counter the so-called policy of economic liberalization is presented as anti-liberal. However in Rawlsian frame work the principle of freedom is prior to the principle of efficiency. In this article it will be argued that in liberal conception of justice expounded by Rawls, the principle of liberty is prior to the principle of efficiency, and the distribution of resources through the myth of efficient-market-mechanism i.e. independent of State intervention and governance as redistributive authority is against the principle of liberty according to Rawls. Thus the so called economic liberalization and principle of liberty are mutually incompatible.

Keywords: Distribution of Resources, Economic-liberalization, Liberalism, Market, Rawls, State.

1. Introduction

The contemporary process of economic liberalization is generally being presented as liberal policy framework. The globalization

and economic liberalization are the two faces of a same coin. The process of globalization is presumed to be the universalization of two distinct tendencies i.e. the universalization of

liberal cosmopolitanism and free market capitalism according to Peter Gowan.(Gowan, Leo Panitch and Martin Shaw 2001. P.4).

This emerging world order which is apparently “spreading across the whole globe liberal democratic values and regimes”(Ibid) reveals the political side of globalization and identified itself as liberal cosmopolitanism. This new political order insists on the institutional guarantee of the legal protection of citizens’ human rights and democratic rights. The compelling world order has conditioned the legitimacy of non-liberal statecraft with the acknowledgment and formalization of liberal rights i.e. minimal human rights and democratic rights, otherwise the so called international community which is a coalition of liberal West European states, USA and Japan will take away, the sovereignty license of “the delinquent state.”(Ibid. p.5) In short, we can say that the rise of unilateral so called liberal order has questioned the sovereignty of nation state under the slogan of liberal cosmopolitanism.

On the other hand the economic globalization is actually the internationalization of economy due to the globalization of financial markets, “a globalized market which dominates all the national economic parts. And so each national economy now subordinated to the logic of global market.” (Ibid p.6).Thus the redistributing capacity of nation state has almost become insignificant in contemporary domination of global financial market. And market has been acknowledged as the legitimate mechanism for the distribution of resources. Thus it is actually the age of the re-

construction of nation state as per rational of the global financial capital.

The hierarchy of state apparatus is also dominated by those who are “more closely associated with the forces of international capital, treasuries, central banks and so, forth were increasing their status at the cabinet table” (Panitch 2001p.10) according to Leo Panitch. He believes that this rising trend of free market capitalism which is promoted and protected by liberal cosmopolitan order is actually weakening the political sovereignty and redistributing capacity of nation state. He claims that an interesting phenomenon of internationalization of state has been manifested. The process of internationalization of state is the process, in which “each domestic state increasingly not only take responsibility in the evolution of its economic and other policies for managing its domestic economy but for contributing to managing the global economy”. (Ibid.p.11). Leo Panitch believes that the emergence of particular kind of internationalized community within a given state compels state apparatus to incline more towards outside of state i.e. capitalistic dynamics rather than inside. This is what similar to Ellul notion (See Ellul 1964) **globalization** i.e. always think globally to act locally.(See Wincharles 2013). The internationalized community plays a fundamental role in the justification and codification of state’s constitution as per rational of global free market economy. This process of neo-liberal constitutionalization according to Panitch is actually the incorporation of “set of legal codes that makes it difficult not impossible but difficult to break with the disciplinary financial order, free-

trade provisions and above all the free capital mobility provisions that are the essence of economic globalization.” (Gowan, Leo Panitch and Martin Shaw 2001. P.12).

This brief exposition of contemporary dynamics of globalization in general and economic liberalization in particular which is protected and controlled by liberal political order provides us an opportunity to analyze this process in the light of establish liberal thinkers like Rawls so that we can understand the future dynamics and limitations of liberal order. It is obvious that this process of globalization has questioned the redistributing capacity of a sovereign state which has been identified by Rawls as one of the fundamental condition of liberal political order. In the next section we will comprehensively discuss the significance of redistributive process in the realization and sustenance of liberal political order so that we can understand the rising internal crisis of liberal cosmopolitanism that it is gradually opposing the cause which produces it.

In Rawlsian framework, there is a delicate relationship between rules, Institutions and basic structure of a society. Rawls believes that it is possible for rules to be unjust while institutions are just .On the other hand, “institution may be unjust¹ although the social system as a whole is not” (Rawls 1971 p. 57). The institutional side of Rawlsian conception of justice is basically three-dimensional:

- i) The institutionalization of equal liberty.
- ii) The institutionalization of the distribu-

tive scheme.

- iii) The problem of civil duty and its institutional ramifications.

However in this article we will only focus on the institutionalization of distributive principle of Rawlsian theory of justice. The first section provides an initial exposition of Rawlsian principles of justice so that we can understand the organic link between Rawlsian liberty principle and his difference principle for the sustenance of liberal socio-political order. In second section it will be argued that how Rawlsian reconciliation of private property economy i.e. interventionist-capitalist-economy and constitutional democracy through the institutionalization of second principle of justice in general and distributive principle in particular guarantees liberal system of justice. Through this analysis it will be argued that there is no necessary link between contemporary economic liberalization and principle of liberty rather it is contradictory to Rawlsian notion of liberal order.

Section 1

Rawlsian contribution in the revitalization of liberalism not just as a philosophical thought but as a whole socio-political theory is more than obvious. He provides a firm basis for the advancement in political philosophy. A theory of justice is the refined version of liberalism explicating its moral and political stances. He “revives the English tradition of Hume and Adam Smith, of Bentham and of John Stuart Mill, which insists on relating its political speculation to fundamental research in moral

¹It is important to note that in Rawlsian framework “just order” simply mean liberal order or the order of freedom. We are interested in the analysis of conceptual deviation of the prevailing liberal order under the domination of market rationality. Therefore in this article “Just” will be used in specific Rawlsian semantics or in other words Rawlsian use of the term

psychology and political economy”.(Dworkin 1971).

A theory of justice not only revives the liberal tradition of moral and political philosophy but it also provides a legitimate realm for meaningful inter-disciplinary discourses. “The specification of Rawls’s conception of justice is a paradigmatically interdisciplinary enterprise.”(Pogge 1989 p.7). This cross fertilizing quality of Rawlsian analysis is appreciated not just by the academicians but the popular press as well(Dworkin 1972).

It is an acknowledged fact that 1960s were a hard time for liberalism. On the one hand the socio-political conditions particularly in the United States, “the civil rights and black liberation movement, followed by the anti-Vietnam war movement, brought millions of people into conflict with existing political institutions”(Daniel 1989 p.xxxv). These adverse circumstances were brought into question the authenticity of liberal socio-political institutions. The intellectual animosity towards liberalism was ignited because, “liberal moral and political judgments were pitted against liberal political institutions, and these institutions were in turn defended by the liberal political arrangement”(Ibid.). On the other hand, existentialist and post-modernist critique along, with the prevailing positivism of analytic tradition play their role in the solemnization of its collapse. Rawls restates the liberal argument at a time when liberalism was becoming unfashionable. Against the positivistic and new-left critique, Rawls provides a comprehensive and sophisticated statement regarding the actual liberal position (in its

most diluted and acceptable form) and saves it from total ideological bankruptcy. “Logical positivism and the analytical approach seemed to abandon crucial issues of right and wrong in favor of technical questions about the emotive function of moral language and the meanings of moral and political terms” (Ibid.p.xxxi). Rawlsian analysis plays a decisive role in the emancipation of moral and political discourse from mere semantic or linguistic analysis.

The Rawlsian conception of society is that of a contractually structured association of mutually self-interested individuals. The self-sufficient association presumes certain rules for the distribution of material resources among the members of this association. Since individuals are essentially self-interested therefore the possibility of conflict (regarding the distributive share of material resources) is organically embedded in such a society. There is a need for a just and systematic socio-political and economic arrangement for the determination of fair distribution. Rawls believes that the principles behind such socio-political organization are the principles of social justice. The elementary function of these principles is to “... assign rights and duties in the basic institutions of society”(Rawls 1971. p.4). The Rawlsian notion of a well-ordered society presumes two conditions: firstly, everyone believes that the other members accept the same principles of justice; secondly the basic socio-political institutions generally satisfy and are known to satisfy these principles. The theoretical corollaries of the Rawlsian conditions for the existence of a well-ordered society are: a) the social contract takes place

among free, rational and self interested individuals (Individual's freedom and rationality are considered as the structural preconditions of their (self-interested individuals) associations), b) the fundamental principles provide the foundations for the constitution and interpretations of further principles and consociational ventures, c) the essential concern of these principles, is to determine the sphere of basic rights, duties and the just distribution of material welfare.

Rawlsian derivation of liberal principles of justice is in itself a complex issue to understand the deontological dynamics of his principles of justice. The hypothetical conditions of original position in which liberal principles of justice have been discovered behind the veil of ignorance is in itself intellectually challenging but here we are interested in his difference principle to understand the nature of redistributive function it demands for the sustenance of liberal order. Therefore we are just referring to his liberal principles of justice which are stated as follows:

1.1. Two principles of justice

The two principles of justice which Rawls put forward as likely to be chosen are:

First Principle

"Each person is to have an equal right to the most extensive system of basic liberties compatible with a similar system of liberties for all" (Ibid.p.302).

Second Principle

"Social and economic inequalities are to be arranged so that they are both a) to the greatest benefit of the least advantaged, and

b) attached to offices and positions open to all under conditions of equality of opportunity" (Ibid.p.302-303).

These principles of justice, derived by the formal contractors, are claimed to be the best possible attempt to reconcile the paradoxical co-existence of the issue of equality and liberty. The two principles assimilate liberty related aspects as well as equality related aspects of liberalism in a single socio-political framework. However, in the establishment of his institutional structure, liberty has lexical priority over equality. Rawls explicitly states that, the first principle is prior to the second, because he believes that liberty can only be constrained for the sake of liberty itself. The conditions he presumes for the justification of his restricted conception of liberty are;

- 1) "a less extensive liberty must strengthen the total system of liberty shared by all;
- 2) a less than equal liberty must be acceptable to those with lesser liberty" (Ibid.p.302).

This means that Rawlsian conception of liberty is not an anarchic conception. Its political predication legitimizes certain constraints. Rawls optimistically believes that these political constraints eventually yield a better political environment for the enhancement of the freedom of the individual.

In the second principle, part "b" is lexically prior to the part "a" (See Rawls 1999). This reveals that in order to sustain the equal system of liberty, Rawls gives priority to fair opportunity over the distribution of material

resources. This means that he is not willing to accept any scheme in which welfare of the least advantaged increases but as a result of this the liberty of conscience, personal property and political participation is constrained. Rawls considers inequalities as natural because individuals are different in their mental and physical abilities and also in their natural endowments. He accepts that they have not determined their social location rather they have been unequally placed in different families, races, environment and social position.²

The second principle is concerned with the equality-related aspect of the theory. It is derived on the basis of the abstraction of the knowledge about the material resource one has or his social position. Before analyzing the first part of Rawls second principle, which he usually calls as difference principle Rawls presumes a social structure in which the first principle and the second part of the second principle i.e. equal freedom for all, and equal opportunity to compete are already being realized. This means that “there is one class of equal citizens which defines a common status for all” (Rawls 1993 p. 144). The Rawlsian system presumes formal equality, i.e. a system of rights which treats every citizen equally before law. This means that before taking substantive inequalities (i.e. socio-economic inequalities) into consideration, formal equality is presumed to be established through the lexical priority of the first principle over second principle.

The substantive inequalities are the result

of an unequal distribution of income, power, wealth and authority. Rawls believes that the inequalities of these primary goods are “just if and only if they are the part of a larger system in which they work out to the advantage of the most unfortunate representative man” (Ibid.).

Rawlsian distributive scheme is based on certain assumptions; firstly the inequalities of socio-economic system are chain-connected, which means that the rise in the expectations of the least income group eventually raises the expectations of all social positions. Secondly Rawls presumes that the inequalities of the social structure are also *close-knit*. This means that it is not possible to raise the expectations of one social group in isolation. The rise and fall of the expectations of different social groups are directly proportional to each other. Lastly the inequalities are such that there is no *loose – jointedness (see Ibid. p.144-146)*. This means that there is no social position which remains unaffected with the rise and fall in the expectation of one social position in the chain. However he acknowledges that there are certain cases in which the middle group remains unaffected but the possibility of such cases in a democratic society is negligible. Thus on the basis of these assumptions Rawls claims that “everyone benefits from an inequality which satisfies the difference principle” (Ibid. p.147).

Rawls has defended the priority of his principles of justice at two different levels:

a) At the level of original position

²Rawlsian position regarding the prioritization of first principle over second principle and opportunity principle over difference principle is consistent in revised version of A Theory of Justice .revised edition, Cambridge, MA:Harvard University press 1999.

b) At the level of institution

His defence at institutional level is purely consequential because he thinks that the validity of the principles of justice can be tested by working out “their consequences for institutions and note their implications for fundamental social policy” Rawls 1971. p.152).

However his defence from the stand point of original position is relatively deductive while from the stand point of original position he considers principles of justice “as the maximum solution to the problem of social justice”(Ibid.).

The term “maximum” simply mean “maximum minimorum” (Ibid.p.154) . The maximum rule helps “to rank alternatives by the worst possible outcomes” (Ibid. p. 152). Thus the maximum rule provides a methodology to choose such a “choice the worst outcome of which is superior to the worst outcome of the other”(Ibid. p. 153).

The adoption of maximum rule in original position is attractive due the peculiar constraints imposed in the structure of original position. The choice of the two principles of justice seems to be rational in uncertain conditions of original position (from the stand point of the least advantaged group).

The maximum rule directs the attention of the contractors to the worst social existence (i.e. least advantaged group) that can be possible and encourages them to minimize the cost of being in that worst condition and to decide in the context of that unfortunate situation.

Thus the self interested and mutually disinterested individuals accept the second principle which apparently constrains their absolute freedom, which is acknowledged in the first principle. So the lesser freedom is acceptable for such mutually disinterested contractors if the anti-egalitarian consequences maximize the benefits of the least advantaged group.

It is obvious that the max-min principle offers constraints on to the right of property or accumulation, which naturally restricts individual freedom. The question arises why do the contractors necessarily choose the second principle in the original position? One possible answer is that since the individual is ignorant about his own social position in the upcoming society, therefore being rational and self-interested he legitimately withdraws from his absolute right of accumulation. The contractor accepts that the greatest benefit should go to the least advantaged section of the society. This sort of derivation reveals Rawls’ preconceived notion of rationality. The rationale of the original position presumes two principles which have not been chosen but presumed by the contractors in the original position. They determine the parameters of the hypothetical choice situation³. The principles are: a) The principle of “rational choice”. b) The principle of “deliberative rationality”

The principle of rational choice justifies the derivation of the two principles of justice, whereas deliberative rationality provides the justification of the individual’s pursuit of one’s own conception of the good and also the ordering of one’s own preferences and desires. There is a harmony between the principles of

rational choice and that of deliberative rationality. In the Rawlsian framework deliberative rationalization must be “consistent with the counting principles and other principles of rational choice” Rawls (1971 p. 417). It is important to note that the rationale of the original position presumes certain constraints which make the principles of justice culturally acceptable and compatible with the prevailing convictions about justice.

In an uncertain condition the rational behavior of an individual is based on:

- i) Knowledge of his wants.
- ii) Knowledge of the shape of his (convex) utility function.
- iii) Quest for the maximization of satisfaction subject to the constraint of risk aversion.

Although in the original position individuals are ignorant about their own specific conceptions of the good they know how to act rationally. They know that they must sustain their capacity to revise their conceptions of the good in an uncertain condition in which they do not even know their own specific conceptions of the good. Rational behaviour is that by which individuals try to maximize satisfaction while averting risk, and thus they choose the principles of justice. Rawls believes that being rational persons they must choose the first principle in order to sustain their capacity to frame, revise and pursue their own specific conceptions of the good of which they are ignorant. On the other hand they must choose second principle because being rational the

contractors maximize their opportunities in the worst condition and minimize the cost of being in that worst condition.

A re-distributive mechanism (governed by the difference principle) of primary goods is to improve the capacities of those unfortunates who are left behind by cultivating their natural abilities (which are necessary to cope with the demand of competitive societies) at the cost of fortunate sections of society. Rawls acknowledges that apparently “difference principle” contradicts the lexical priority of the first principle, because the least advantaged section of a society is subsidized at the cost of the fortunate group (most advantaged group). So that difference principle limits the sphere of freedom of fortunate group. In his defense however Rawls claims that since in the original position individuals are ignorant about their own social position therefore being rational individuals, “they will find it to their interest to agree to a principle”(Ibid. p.146) which apparently maximizes the living standard of least advantaged at the cost of upper income groups. The difference principle does not negate the efficiency principle in absolute sense, but it is argued that the subsidization of one group cannot be possible without taxing the upper income groups. Since the natural abilities and talents of individuals are unequally distributed therefore it is generally argued that claim of equality of opportunity” is fictitious. It is further argued that those who belong to higher income groups cultivate their crud abilities or skills due to the availability of better resources, services and socio-cultural

³Rawls J. “The right and good contrasted” in liberalism and its critique by M. Sandal (ed.) Oxford Basil Black well 1984. in which he has precisely acknowledges that the principle of deliberative rationality and principle of rational choice are the unconditional presumptions for the constitution of initial choice situation. p.48

environment therefore the institutional assurance of equality of opportunity is meaningless among unequally equipped individuals. In justice as fairness “the two principles of justice define distributive shares in a way compatible with efficiency” (Ibid.). The subsidization of the least advantaged at the cost of the most efficient group is not the rejection of efficiency principle rather he presumes that “when the difference principle is perfectly satisfied, the basic structure is optimal by the efficiency principle”(Ibid.).

The second principle also legitimizes the priority of the right over the good. Justice as fairness rejects the criterion of distribution according to moral desert. Rawls believes that it is difficult to “distinguish between moral desert and legitimate expectations” (Rawls 1984.p.44). However in Rawlsian procedural conception of justice the individuals can claim “fair shares” of resources according to the rights given to them and the compatibility of their claims to the existing socio-political arrangement. In a well-ordered society the distributive share of the individual should not be dependent on the moral worth of a particular conception of the good which he chooses in his private life. This means that in theory there is no one to one correspondence between the distributive mechanism and moral preference of the individuals. Rawls believes that in order to sustain the mechanism of justice as fairness it is necessary to emancipate the distributive function from the moral desert principle. Because there is no direct relationship between the moral worth of an individual and his productive capability, therefore Rawlsian distributive mechanism remains neutral regarding

the moral states of an individual. Since justice as fairness remains neutral regarding the question of good, thus the issue of the distribution of primary goods is resolved on the basis of the body of rights, which has been prioritized over individual’s conceptions of good. It is important to note that this distributive mechanism presumes a well-ordered society, the society in which the socio-political institutions “are just (and are also) publicly recognized as just” (Ibid. p.45). Since this distributive mechanism reflects the public conception of justice, it means that, it cannot be a-moral, but Rawls believes that the moral worth of the presumed conception of the good by the individual has trivial significance. The co-relation between moral worth and distributive shares can also be interpreted within the context of the “retributive” conception of justice. This presumes that those who belong to well-off sections of society must possess superior moral claims. This moral superiority provides them greater opportunity to increase their distributive shares against those who violate the laws of the just society and are justly punished by deprivation. This argument confuses morality with legality, most of the times it happens that morality and legality does not match. This is one of the reasons that the rationale of justice as fairness does not allow an interpretation of the distributive principle in the retributive conception of justice.

The individual’s conception of the good is determined by “what is for him the most rational-long-term plan of life given reasonably-favorable circumstance”(Ibid. p.93). The primary goods according to Rawls are necessary instruments for actualizing any rational

desire. Since different people have different conceptions of the good therefore the distribution of primary social goods is a core concern of justice as fairness.

The contractors in the original position bargain about the possession of the fair share of these primary social goods. So Rawls explains the prioritization of primary goods in the context of his “thin theory of the good”. The thin theory presumes that the knowledge of the, “thin conception of the good” is not blocked by the veil of ignorance. Therefore the process of bargain (in original position) presumes primary good index as a substantive criterion that qualifies the legitimate distributive shares according to the patterns of expectations of different social groups.

Rawls argues that since individuals are different in their abilities, capacities and potentialities therefore, their plan of life also differs but he believes that “primary goods are necessary means (to realize any system of ends)” (Ibid.). The determination of the weightage of these primary goods is a problematic issue but he argues that the lexical order of the principles of justice simplifies this problem. Rawls believes that the weightage of the primary social goods and their (distributive) proportional combination is known by us intuitively⁴. This implies that the rational ordering (of primary goods) of the representative individual of the least advantaged group can only be known by “our intuitive capacities” (Ibid.p.94), although “self-respect” is lower in the priority list of social good, it is important to note that the priority of this social good is not determined by the

second principle rather by the first. “Rawls appeals extensively to self-respect in support of his first principle and its lexical priority” (Ibid.). However he acknowledges that the protection of formal equality of basic liberties is not the ultimate guarantee for the sustenance of the individual’s sense of self-respect, because economic inequalities eventually generate a consciousness, which negates the possibility of self-respect.

Rawls has also tackled the problem of the individual’s “criterion of expectation” through the distribution of primary goods. He rejects the utilitarian criterion of individual expectations. In his perspective the expectations of individual should be defined in terms of the primary social goods rather than in term of pleasure or satisfaction. It appears that the distribution of these primary goods is the concern of equality related aspect of his theory of justice, because primary social goods are the legitimate instrument to actualize substantive conception of the good presumed by formal, rational and self-interested individuals. But we cannot ignore the organic relation between primary goods and the liberty-related aspect of the theory of justice, because if individuals do not possess the primary social goods then the claim “to be free” is fictitious. To be free in the real sense is the ability to accumulate these primary goods. The primary goods are the concrete form of freedom and one can never realize one’s freedom except thought the accumulation of these goods. Rawls claims that “it is rational to want those goods whatever else is wanted. Since, they are in general necessary for framing and the exe-

⁴It is a problematic side of his formulation because the criterion is shifted from rational choice to ethical intuitionism see Ibid p. 94-97.

cution of a rational plan of life” (Rawls 1971.p. 433). In reality these are the pre-conditions for freedom. Thus if we provide an equitable distribution of these primary goods then what we are promoting is freedom.

In the light of above discussion we can say that conception of justice which emerges from Rawlsian principles of justice is essentially a liberal conception of justice. In his framework the individual alone determines what is (privately) good for him, subject to the constraint that the only public good is freedom. Rawls’ emphasis on the issue of distribution creates an illusion that he is more committed with equality than liberty. In his framework the distribution of material resources becomes the fundamental question because his theory of justice is concerned with the allocation of primary goods as the only means to realize freedom. He tries to reinterpret the meaning of the individual’s substantive conception of the good. If one rejects the right of self-determination regarding the autonomous pursuit of the substantive conception of the good, then the issue of distribution becomes irrelevant. The prioritization of distributive justice is based on the right of self-determination. This is so because if the individual is free to pursue his own (private) conception of the good, he can only operationalize his freedom on the basis of primary social goods. Thus the distributive principle becomes the fundamental principle of a liberal society because it ensures the concrete manifestation of the right of self-determination.

Rawls believes that the institutionalization of the two principles of justice is possible only

in a private property economy and constitutional democracy. In our next section we will focus on the institutional implications of the second principle of justice.

Section 2

The Institutionalization of Second principle of justice:

The distributive side of the theory of justice comes under the heading of second principle. Rawls provides the scheme of the institutional arrangement (regarding the distribution of material welfare) necessary for the constitution of a modern liberal statecraft. The principles of justice in general and second principle in particular provide the basis of “a doctrine of political economy” (Ibid. p.258). Rawls consciously avoids the term “welfare” because of its linguistic identification with utilitarianism. He rather prefers to use the phrase “social choice” to identify the object of distribution. He believes that any doctrine of political economy presumes a particular conception of the “public good” which serves as an evaluative criterion to judge the socio-economic policies. The legalization of socio-economic phenomena, according to Rawls, directly affects the basic structure of the society, social system, and structures of desires, aspirations and preference of its citizens. On the other hand, economic structure provides the institutional framework to satisfy their desires, wants and needs. The economic structure not only satisfies the existing needs and wants of its citizens but it also provides a “way of creating and fashioning wants in the future.”(Ibid. p.259). The choice of these socio-economic arrangements is determined by the conception of “human good” and the “institutions”,

which are designed to realize those ends. Rawls acknowledges that the social cooperation without any conception of “human good” is not possible. He claims that justice as fairness provides a framework in which any interpretation of human good (i.e. political, moral, aesthetical, and economic) is realizable which is not in conflict with the prioritized principles of justice in general and ‘will to freedom’ in particular.

The issue of “public good” is central as far as the issue of distribution is concerned; therefore Rawls tries to justify the authenticity of “contract theory” in the derivation of a public conception of the good. He specifically claims that the superiority of contract doctrine as an alternative to ethical intuitionism and moral perfectionism. Traditionally, it was believed that there is no “Archimedean position” other than ethical intuitionism & moral perfectionism to judge the “real aim” or “public good”.

Rawls claims that his conception of original position and derivation of the principles of justice is a unique alternative to judge the most abstract and highly general human social good that “men are presumed to want whatever else they want”(Ibid. p.260). He acknowledges that the list of these identified “primary social goods is may be based on psychological premises and these may prove in-

correct” but he emphasizes that the identified goods are necessary to pursue any rational plan of life. He believes that theory of justice does presume a theory of good, but the theoretical as well as institutional nomenclature of the theory of justice are so, flexible⁵ that the conception of the good does not affect the pursuit or “choices” of individuals to plan their life according to their own will. In short it is a purely secular framework in which any conception of good is realizable⁶ except one which contradicts the public good i.e. equal freedom.

According to Rawls, the “contract doctrine” presumed by theory of justice offers certain constraints on the conception of good, which serves two purposes simultaneously:

- a) It establishes the priority of “justice” over “efficiency” because people are naturally unequal in their efficiencies but even than they are all equally human and have equal right to be treated justly.
- b) It also ensures the priority of individual freedom over social and economic advantages, because the precedence of liberty over all other conceptions of good is necessary to sustain the secular framework.

Any desire or plan of life, which violates the ultimate priority of justice, would be con-

⁵See Ibid page 260, the reason of his deceptive flexibility is that Rawls prioritizes ‘right’ over the “good” in the constitution of just socio-political order and “good” has trivial significance in constitution of just socio-political order.

⁶See page 258-62. It is theoretically claimed that in such political procedure any conception of good is realizable but in actuality it is not the case, because the conception of good which is organically linked with the Rawlsian conception of Justice is such, which de-construct any particular conception of good, form of life, communal bond etc. which reject absolute priority of “individual freedom” as an only legitimate public good

sidered as illegitimate. The Rawlsian condition regarding the legitimacy of the desires or plans of life is presumed to be an “institutional criterion” to judge the legitimacy of desires and also discourage those desires which are in conflict with the principles of justice. Therefore, there is a need to construct an institutional framework which performs two functions:

- i) Promote the virtues of justice as fairness
- ii) Discourage those desires or plans of life, which are in conflict with the virtues of justice as fairness.

In this way Rawls implicates a criterion of how a citizen should be. That is to say that through the principle of justice he provides “a partial ideal of the person which social and economic arrangement must respect”(Ibid. p.261). Moreover, through the institutionalization of the principles of justice, Rawls establishes an Archimedean position to assess the long-term interests of society “irrespective of the particular desires and needs of its present members”(Ibid.). The nature of the principles of justice is such that it presumes certain institutional structures. These Institutions offer certain constraints on individual’s desire or plans of life, which are incompatible with justice as fairness. So there is a resemblance between perfectionism and justice as fairness, as both offers certain constrains on immediate pursuit of the existing desires, which are incompatible with the ideal of the person presumed by these theories.

Rawls acknowledges that utilitarianism also provides a ground for choosing among different ideals of the person i.e. “greatest

happiness for greatest numbers” but the problem lies in the institutional application of the principle of utility. In utilitarian perspective, “initial conditions (i.e. existing desires and present circumstances) may heavily influence the conception of human good that should be encouraged”(Ibid. p.262). So utilitarianism collapses into vulgar consequentialism. However Rawls believes that the ideal of person or the fundamental criterion of social structure is purely a-consequential in justice as fairness and perfectionism

Justice as fairness is embrionically an individualistic approach but at the same time it is not purely subjective regarding the issue of human good at the public level. Rawlsian principles of justice provide objective institutional standards to differentiate between legitimate and illegitimate desires, wants and aspirations. The contractarian basis of justice as fairness provides an alternative to perfectionist or a priori principles regarding the attainment of the vantage position to judge the mechanism of fair social order.

Rawls believes that in a contractually structural society the general desire of primary social goods provides the basis of agreement among self-interestedly-motivated individuals. The framework of the original position sustains:

- i) Neutrality and the fairness of agreement.
- ii) The objectivity of the general desires of primary social goods.
- iii) The list of the primary social goods.
- iv) Unanimity of the agreement (among

equally free rational and self-interested individuals), because Rawls believes that, “the deliberation of any one person is typical of all”(Ibid.p.263).

v) Equal sense of justice.

According to Rawls, the idea of unanimity presumed in the theory of justice must not be confused with the political philosophy of idealism. The basis of general consensus is contractarian in nature therefore “there is nothing characteristically idealistic about the supposition of unanimity”(Ibid.). The derivation of consensus is the byproduct of a bargaining process among self-interested individuals. Thus, the idea of homogeneity has also been derived by Rawls from the idea of unanimity. According to him, the idea of unanimity has been interpreted differently in traditional moral philosophy, which provides the basis and legitimacy of the structural formation of political order. With reference to his idea of unanimity justice as fairness prioritizes a-social individualism but the importance of community (by community he simply means contractually structured collectivity) is not being ignored and has properly been accommodated by Rawls in his idea of unanimity. The role of community in the derivation of human good is central. It also provides the initial basis of contractual association among self-interestedly motivated individuals. The distributive scheme of Rawlsian procedural conception of justice presumes a particular conception of public order which characterizes the features, values, convictions and moral intuitions of a society. If we take a glance of the background institutions of his distributive mechanism we can realize that he tries to in-

stitutionally ensure all those aspects of social constitution which are necessary to sustain liberal public order.

2.1. The Background Institutions for Distributive Justice

It seems that for Rawls the basic structure of a society is an organic whole. The major socio-political institutions are the binding agency, which sustains that structure. On the other hand, the principles of justice provide an evaluative criterion of social justice. Rawls believes that central problem of distributive justice, “is the choice of a social system”(Ibid. p.274) which is compatible with the principles of justice.

Rawls believes that social and economic process should properly be channeled by the political and legal institutions. This, on the one hand, implies that Rawls prioritizes politics over economics and on the other hand, social justice in general and distributive justice in particular both are impossible in the absence of fair, efficient and neutral legal institutional structure compatible with the principles of justice.

Rawls has divided the background institutions of government into four different branches:

- I. The allocation branch
- II. The stabilization branch
- III. The transfer branch
- IV. The distributive branch

According to him, each branch has its own domain of activities and consists of various supporting agencies according to the demand

of specific socio-economic conditions. The allocation branch is responsible to keep price system competitive and sustains its workability against unhealthy market tactics. The allocation branch controls market function, for instance maintains competitive system of price. The allocation branch is also responsible to identify or to correct different sections of economy, which are needed to be subsidized or taxed. Furthermore, it is also responsible to define or (in most cases) redefine property right, (if necessary) for the realization of the principles of justice.

The stabilization branch resolves the problems, which emerge due to the economic process, for instance problem of unemployment, inflation, free choice of occupation and also money supply and sustains effective mechanism of demand /supply. The major function of this branch is to stabilize the economic system. The assessment and evaluation of needs (or an appropriate standard of life) is addressed and compensated by transfer branch. According to him, “transfer branch guaranteed a certain level of well-being and honors the claims of need”(Ibid.p.276).

The basic function of these branches is to associate different precepts with specific institutions. The different precepts are judged and balanced on the basis of their compatibility with the principles of justice. The role of transfer is very crucial because it provides the minimum standard of well-being. Therefore, Rawls believes that after maintaining the minimum standard of well-being of the citizens it would be “perfectly fair that the rest of the total income be settled by the price system”

by presuming that the major cause of monopolistic exploitation and “unreasonable externalities have been eliminated”(Ibid. p.277).

Lastly, Rawls mentions the function of the fourth branch, i.e. distributive branch. Rawls believes that preservation of the approximate justice in distributive share is the core concern of the distributive branch. In concrete sense the regulation of the system of taxation along with the reasonable adjustment in property right (subject to the constraint that the adjustment does not violate the principles of justice) is the major function of this branch.

Rawls divides the distributive branch into two parts, both of which correspond to each principle of justice respectively. One aspect of this branch limits the concentration of capital / power, and at the same time controls the factors, which do effect the realization of “fair political liberty and fair equality of opportunity”(Ibid.). The other aspect of this branch is responsible to generate capital (revenues) necessary for the governmental expenditures regarding the distribution of public good. Rawls precisely claims that each dimension of distributive branch corresponds to the two principles of justice. The institutionalization of taxation, redefinition of property right etc. are the institutional strategies to protect the legitimacy of those political institutions which ensure fair equality of liberty (i.e. first principle). On the other hand, the collected revenue from taxation finances the public good which at the same time subsidizes the least advantaged section of the society as well as ensures the fair equality of opportunity. Thus, the second principle is institutionally realized.

The problem of distribution could be tackled either by the regulation of income structure i.e. by setting out the standards of minimum wages or by the satisfaction of the claims of basic needs, that is, the satisfaction of the minimum standards of well-being. Rawls considers the later approach towards the establishment of social justice as much more effective than that of the former. There are two major reasons behind this as follows:

- a) The standardization of the “claims of need”, i.e., the minimum standard of well-being is not the realm of market. There must be a need of extra-market or supra-market arrangement, i.e., of state which determines the criterion of “social minimum”. This legitimizes the priority of politics over economics (Ibid.p.276).
- b) In Rawlsian distributive scheme, the division of the different branches is basically the division of different tasks. The nature of the tasks assigned to each branch is at the same time claimed to be:
 - i) Compatible and reinforces the task of the other branches.
 - ii) Consistent with the spirit of the justice as fairness in general and principle of justice in particular.

The above mentioned background institutions of government reveal a paradoxical relation between state and market. The state / market relationship (derives from Rawlsian distributive scheme) provides the basis of economic theory and political economy. But in theory of justice Rawls is not directly con-

cerned with the explanation or analysis of economic theory. He focuses on the problems of political economy only pertaining to the question of social justice.

2.2. Distributive justice and state/market relationship

Rawls claims that the purpose of discussions about economic theory is to substantiate the implications and scope of his principles of justice (Ibid.p.265). He wants to analyze the practicality of difference principle in the context of contemporary ideas of political economy. He analyzes the issues of political economy from the perspective of a “citizen who is trying to organize his judgment concerning the justice of economic institutions.”(Ibid.) Generally, an economic system is defined by six core factors namely (1) Production, (2) Means of production, (3) Consumption and the nature of consumer, (4) Labor contribution, (5) Role of saving and investment of social resources and (6) Provision of public goods. .(Ibid.p.266)

According to Rawls, ideally all these factors “should be arranged in ways that satisfy the two principles of justice.”(Ibid.). The core concern of distributive justice is the equitable distribution of public goods. The size of the public sector is very crucial in the institutionalization of the distributive justice. Rawls acknowledges that the size of the public sector in capitalist economy, or in Rawlsian term “private property economy,” is very small as compared to that of socialist economy (in which all means of productions are owned by the state). However, in private property economy state acts as an entrepreneur along with other private enterprises. It is because of this reason “the

number of publicly owned firms is presumably small and in any event limited to special cases such as public utilities and transportation” (Ibid.). It would be better to discuss the essential qualities of a public good before discussing the institutions, which make the equitable distribution of public good possible.

There are two essential qualities of a public good namely (1) indivisibility and (2) Publicness. By “indivisibility” Rawls means that the good is equally enjoyed by all citizens and cannot be divided privately and purchased according to one’s preferences. However, he acknowledges that the degree of indivisibility varies, due to which the public goods are of various kinds “depending upon their degree of indivisibility and the size of the relevant public.”(Ibid.) . On the other hand provision of the public good is the realm of the state and not that of the market. Rawls believes that, “public goods must be arranged for through the political process and not through the market.”(Ibid. p.267) . The derivation and systematic institutionalization of the distribution of public goods are the major concerns of justice as fairness otherwise the system of social cooperation will collapse. As a result, mutually disinterested individuals lose their commitment with system which is conditional to the possibility of the realization of their self-interests. Rawls identifies two major problems, which are associated with the idea of public good.

- a) The problem of collective actions.
- b) The problem of assurance of collective agreements.

The above problems are organically linked

with each other and secondly both problems are resolved by a single agency i.e. state.

The production, protection and promotion of public goods are financed by the revenue collected from the general public. The problem is that the contribution of particular individuals in the overall collection (revenue) is negligibly trivial. This triviality of the individual’s contribution (in the promotion /production of public good) ignites a “temptation for each person to try to avoid doing his share.”(Ibid.). When people realize that other members of the society are not equally contributing in the production of public good then they start losing their confidence in the system. The lack of assurance (regarding the equal contribution of the other members) makes people skeptical about the fairness of the institutional structure of society. The public willingness regarding the payment of their fair share is necessarily conditioned with the institutional assurance of collective agreement. This implies that the collective agreement and its institutional assurance are the core issues of distributive justice according to Rawls.

In order to resolve both problems Rawls depends on the “state” as a legitimate agency to provide a legal / institutional framework which on the one hand forces individuals to contribute their fair share and, on the other hand, provides institutional assurances regarding the enforcement of binding rules. The enforcement of binding rules through statecraft eventually negates individual freedom but generally the coercion is presumed to be perfectly rational (in the Rawlsian sense) and legitimate because “the public good is every-

one's advantage and one that all would agree to arrange for."(Ibid)

Like all others liberals Rawls also appreciates the realization of the principle of efficiency and liberty through market mechanism. But at the same the egalitarian temperament of Rawls urges to counter the anti-egalitarian consequences caused by the market, i.e., income disparities or inequalities, capital concentration which threatens the positive aspects of market. The conception of state derived from Rawls theory of justice is essentially interventionist state, which counters the monopoly of market and avoids mafia capitalism. He thinks that interventionist role of state is necessary for the realization of the principles of efficiency and freedom through market mechanism. Rawls acknowledges that market essentially increases the initial advantages of those who already belong to advantaged group. This increase in initial advantages undermines the significance of efficiency and individuals' freedom. The income disparities and meaninglessness of the opportunity principle eventually disenchant the least advantaged group and encourage them to challenge the liberal socio-political system. Rawls' conception of state protects the class based society or market society by restraining the market exploitation and monopoly through state intervention.

Rawls differentiates between the ideal theory of justice from non-ideal theory of justice. He believes that the ideal theory provides a criterion to identify the nearest possible actualization of theory under given circumstances. Rawls opines that the two principles of justice

are the preambles (i.e. ideal) of a constitution for the state but the constitution must be formulated according to the "natural circumstances and resources, its level of economic advance and political culture and so on."(Ibid.p.197). It implies that principles are ideal but their institutionalization must be compatible with existing conditions, for instance, in the light of ground realities and given circumstance the equal liberties may be restricted for the maximization of greater equal liberty. Similarly, the difference principle undermines first principle for the maximization of greater equal liberties in future.

The justification of state intervention provided by Rawls is that the state is the only legitimate agency which assures the just distributive mechanism. He believes that "the indivisibility and the publicness of certain essential goods, and the externalities and temptation to which they give rise, necessitate collective agreements organized and enforced by the state."(Ibid.p.268) .There is no agency other than state which can provide assurance that the other citizens are doing their part. There are different arguments regarding the organic relation between the legitimacy of state intervention and assurance problem of the state. Most of the people argue that why not the assurance problem "was handled within the framework of customary practice and personal allegiance."(Fisk 2000. p.246). The political framework which Rawls is to deal with presumes constitutional democracy and private property economy. The society emerges from such institutional setup is a civil society in which traditional allegiance and collectivities (religion, tribal and kinship

eventually disintegrate). The social atomization presumes self-interestedly motivated and marketized relationship among citizens as the basis of social order. The individuals make their existence meaningful in various market roles. Therefore they have to rely on a coercive power of state as a lender of the last resort. Rawls believes that market cannot provide such assurance because it lacks coercive administrative structure or executive power.

Rawls takes a clear anti-monopolistic stance and considers monopoly as a social evil. It is obvious that monopoly is the unintended consequence of market mechanism which is needed to be counter through active state intervention (i.e. equitable income distribution, allocation of resources, subsidization and taxation etc.). Rawls believes that the monopolies result concentration of capital and primary social goods. So there is a need of coercive state structure to incorporate those who are left behind due to their inefficiency.

Rawls acknowledges that a competitive market is desirable because of actualization of individual's freedom and efficiency but he claims that market institutions are needed to be harmonized with the socio-political institutions through state intervention. It implies that he does not consider market mechanism as self-sufficient. His dependence on state as a re-distributive agency is of pragmatic nature because he believes that "competitive market is not sufficient for the job of stabilization." (Ibid. p.249). Justice as fairness provides a conception of state which complements market mechanism. The state performs two functions simultaneously: firstly, it counter-

acts the monopoly of market forces through price control mechanism, system of taxation and subsidization and investment (as an independent entrepreneur). Secondly it reduces the tendencies which are inherently linked with competitive market mechanism (i.e. concentration of capital, income disparities, Inequalities etc.) through the redistribution of primary social goods. It implies that in principle Rawls is not against competitive market but he considers state as supportive agency of market. For instance the market cannot insure that competition begins from equal positions, similarly, in case of market failures the market cannot sustain it-self autonomously; it necessarily looks towards state as a last resort. Rawls believes that principles of justice in general and difference principle in particular preserve the market mechanism and through a redistributive function it keeps the work force intact with the system. Rawls opines that without active state intervention the market mechanism does not remain competitive. It implies that justice as fairness presumes a market society and tries to make it competitive through active state intervention. Thus unlike libertarian the competitive market mechanism cannot be governed and stabilized by invisible hand rather active state intervention is necessary to ensure competitive and stable market. The interesting aspect of this relationship between market and state is that Rawls provides rationale for class based society. He thinks that classlessness is not the necessary condition of the fairness of just social order. It may be argued that what is the justification of this coercive state intervention if the citizens already have a sense of justice? And they are the participants of

a well-ordered society. The answer is simple; Rawls's sense of justice does not prevent people from invading one another through exploitation."(Ibid.p.255)

Conclusion

We can summarize our discussion as follows:

1) Politics is the domain of citizenship where as market is the realm of capital. Since Rawls believes in the autonomy of self. He considers individual as autonomous law giver, therefore he legitimizes the sovereignty of individual over that of market. In this context the role of state presumed by Rawls is decisive. In Rawlsian framework state is the only legitimate institution which sustains the individual's sovereignty, autonomy and his capacity to master his destiny. It seems that Rawls believes that there are certain extra-market spaces in which extra-market relations can be developed. Secondly it also seems that he be-

lieves that state is the only legitimate agency to enforce any conception of good (derived by the overlapping consensus of interlocutors) for the general welfare of the people (although Rawls is very suspicious about this term of welfare).

2) In the end we can say that contemporary discourse of economic liberalization is the deviation from the theoretical as well as institutional foundations of liberalism provided by Rawls and the result of this deviation is that the domination of market over state has been established.

3) Lastly the domination of the rational of capital reveals the internal crises of liberalism that in absence of any alternative framework like socialism etc. order of freedom and the order of capital are synonymous. And liberal discourse is just an instrument to establish the sovereignty of global capital.

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