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# Is the Concept of Utilitarianism a Golden Dream Towards Justice?

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## ABSTRACT

*Jeremy Bentham propounded the principle of Utilitarianism. Bentham's utilitarianism is a theory, which believes in highest principle of morality whether personal or political morality is to maximize the general welfare i.e. the collective happiness of the majority of people. It talks about overall balance of pleasure over pain. Jeremy Bentham's utilitarianism was devised for the welfare of people, but people started posing objection towards Bentham.*

*John Stuart Mill, Jeremy Bentham's disciple eventually in 1861 wrote the book Utilitarianism in order to deal with these objections. This research paper aims to find out how was utilitarianism planning to hold the society with its principles. And can the concept of utilitarianism be used today in the 21st century judgments to deliver justice?*

*This paper will also try to dig into the objections raised towards utilitarianism and how John Stuart Mill answered all these objections.*

*The research methodology used in the paper will be doctrinal in nature, with the use of case laws, legal books, articles and legal databases.*

*Keywords: utilitarianism, society, morality, utility, happiness*

## I. INTRODUCTION

What do you do in a situation when you have to take an innocent life in order to save other lives? Do you take the life of the innocent person? Or do you not? The question of death is morally permissible or not?

Let's start with discussing a case Regina v. Dudley & Stephens<sup>2</sup> also known as the lifeboat case. This case revolves around the trial of two seamen named Dudley and Stephens who killed a cabin boy named Richard Parker, when they were stranded in the sea 1000 miles away from the shore. In the summer of 1884, four English sailors were aboard on a voyage in their ship named Mignonette. Their ship had gone down in a storm in the South Atlantic, a thousand miles from the land. The four men: Thomas Dudley the Captain, Edwin Stephens the first mate,

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<sup>2</sup> R v. Dudley and Stephens, 14 Q.B.D. 273, 1884

Edmund Brooks the sailor and Richard Parker the cabin boy aged seventeen, an orphan, were stranded on a lifeboat.

For the first three days after the storm the four men ate small portions of turnips. On the fourth day they had caught a turtle. For the next few days they survived on turnips and turtle. And then for eight days straight the men ate nothing. Richard Parker the cabin boy by now had gotten ill as he was on his first voyage and had drunk the sea water against the advice of the other members. On the nineteenth day, Dudley their captain proposed to draw lots to determine who would sacrifice their life in order to save the lives of the other. But to this motion Brooks refused and no lots were drawn.

The next day there was no ship in sight and the men were hungry. Dudley now told Brooks to look elsewhere and avert his gaze and signaled Stephens that Parker had to be killed. The Captain offered Parker a prayer and killed him with a penknife. For four days the men fed on the flesh and blood of Richard Parker the cabin boy. And then on the twenty-fourth day came help. The three survivors were rescued and upon arrival in England, Brooks turned state witness and the two seamen were tried for

Murder of Richard Parker, to which Dudley and Stephens accepted the murder and claimed they, had done so out of necessity<sup>3</sup>.

In this case a man who is hungry and in order to escape his death kills another man for the purpose of eating his flesh is guilty of murder. But when we apply Utilitarianism approach towards this case it changes its outlook. Now the man who was killed helped other three people and saved their life. Is killing the cabin boy's life morally permissible?

## **II. JEREMY BENTHAM'S APPROACH TOWARDS JUSTICE:**

Jeremy Bentham was born in 1748 in England. Bentham has always been a child prodigy and went to Oxford at the age to twelve and at the age of fifteen he went to law school. At nineteen he got admitted to the bar but never practiced law. He instead devoted his life to jurisprudence and moral philosophy. Jeremy Bentham propounded the principle of Utilitarianism. Bentham's utilitarianism is a theory, which believes in highest principle of morality whether personal or political morality is to maximize the general welfare i.e. the collective happiness of the majority of people. It talks about overall balance of pleasure over pain. Bentham believes that we all are governed by pain and pleasure, these pain and pleasure decide the majority and minority, they

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<sup>3</sup> Michael Sandel, *Lecture 2: the case for cannibalism*, HARVARD JUSTICE, <http://justiceharvard.org/lecture-2-the-case-for-cannibalism/#1477504398584-5d76ef29-aab0>

are our sovereign masters<sup>4</sup>. But with such revelations came a myriad of questions. What should we maximize? Bentham tells us Happiness, which he calls as utility. Who is benefitted with this concept? The community is benefitted with the help of this concept, as a community is the sum of individuals who comprise it, and that is why in deciding what the law should be, what the society wants, what the policy should be the question should be posed that if we add up all the benefits and subtract all the cost, the right thing to do is the one that maximize happiness over pain.

Bentham's utilitarian concept is used all over the world and one such example is the Philip Morris Cost benefit analysis<sup>5</sup>. Phillip Morris the Tobacco Company had a huge turnover in Czech Republic. They published a cost-benefit analysis wherein they published publically how the government was gaining benefits if the citizens smoke.

It was an analysis where they quoted that the government was benefitting from the sale of tobacco, it also mentioned that the government also has to invest in the medical facilities of the state because of the increase in people with diseases related to smoking. But there were many perks, which were attained by the government such as the various tax revenues for the government, saving of pensions when people die early and also saving of the housing costs for the elderly. The Philip Morris study found that Czech Republic was gaining net public finance of over a hundred and forty-seven million dollars. Well, this turned out be a public relations disaster for Philip Morris and the analysis was highly criticized by the people of Czech Republic as to how could someone put a price tag on human life. And thus, Philip Morris had to publically apologize for his cost-benefit analysis<sup>6</sup>.

The Philip Morris Study analysis is an important example here, because as per Bentham's Utilitarianism principle maximum happiness is achieved as the government is benefiting from the sale of tobacco in the Czech Republic, but the question arises that, *can it be achieved at the cost of morals?*

Let's take into account Pinto Ford case<sup>7</sup>, Ford Pinto was a compact car and was very popular back in the 1970s but the car had an issue with the fuel tank. The fuel tank of the car was present at the rear end of the car and in rear collisions the tank would burst and injured many, several people even lost their life due to this. The victims sued the Company Ford and it turned

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<sup>4</sup>Jeremy Bentham, An Introduction To The Principles Of Morals And Legislation (ed. J. H. Burns and H.L.A Hart, 1970)

<sup>5</sup> Arthur d. Little, *Morris study blasted*, CNN, (July 16, 2001, 04:04PM), <https://edition.cnn.com/2001/BUSINESS/07/16/czech.morris/index.html>

<sup>6</sup> Reuters, *Philip Morris Issues Apology For Czech Study on Smoking*, THE NEW YORK TIMES, (July 27, 2001), <https://www.nytimes.com/2001/07/27/business/philip-morris-issues-apology-for-czech-study-on-smoking.html>

<sup>7</sup> Grimshaw v. Ford Motor Company, 199 Cal App. 3d 757, 174 Cal Rptr. 349 (Cal. Ct. App. 1981)

out that Ford already knew that the tank present at the rear of the car is dangerous. But the company had estimated cost benefit analysis to increase the safety of Pinto, as it had estimated whether it is more beneficial to cover the tank or not. The company estimated that is more beneficial to let the fuel tank in the back of the car without any cover than to cover it for the safety of the passengers. When the Ford Company's analysis was presented in the court it appalled the judges and huge compensation was imposed on the company<sup>8</sup>.

This was a counter example as compared to the Philip Morris study as that calculated the value of person whereas the Ford analysis calculated the value of life. But the Judges of the case as well as the citizens were appalled with such analysis as can human life be measured for the sake of happiness? Can human life be measured in terms of money? Well, if we take Jeremy Bentham's concept of utilitarianism into consideration maximum happiness is achieved by greatest number of people with a significant number of people getting pain. For when back in Rome, Romans used to throw Christians into the coliseum to be eaten alive by a lion<sup>9</sup>, majority of the people were experiencing the pleasure, but what about that one person who is suffering the most excruciating pain of being eaten alive by a lion? Well, can maximum happiness for maximum number of people really prevail over pain being suffered by the minority of the people?

### III. OBJECTIONS TOWARDS UTILITARIANISM

The principles, which Bentham tried to delineate, were for the masses of people. Bentham wanted his idea to reach mass population so that maximum people could be benefitted out of Bentham's idea. But Bentham's principles not only reached the mass population but also brought along objections raised towards it by people who were intrigued by the idea and principles of Utilitarianism.

The utilitarian's were pretty confident with the principles drafted by Bentham. But Bentham forgot the central objective of Individual rights. Utilitarianism fails to respect *individual rights* and gives favour to the happiness provided to the majority. It cares about the sum of satisfaction of happiness, and thus violates the fundamental norms of morality of giving preference to everyone's happiness.

Here we recall the case when in ancient Rome, the romans used to throw the Christians to the

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<sup>8</sup> Christopher Leggett, *The Pinto Ford case: The valuation of life as it applies to the negligence-efficiency argument*, LAW & VALUATION, Spring 1999

<sup>9</sup> Rev. Mark H. Creech, *Thrown to the Lions: Christian Persecution Yesterday and Today*, CHRISTIAN POST, (Aug. 30, 2016), <https://www.christianpost.com/news/thrown-to-the-lions-christian-persecution-yesterday-and-today.html>

lions. You might wonder the reason for doing such an ill willed activity; well the answer to this is Pleasure. Yes, watching the Christians suffer excruciating pain as the lion would eat and devour the Christian all the Romans would enjoy this sight and this led to the happiness to the greatest number of people. As the utilitarians may say and calculate that the greatest happiness is being achieved in this case as the Romans in majority are enjoying this sight, but does this not violate the fundamental right to life of the Christian person? Every person has his or her right to life to live and the Utilitarian calculus here is totally defying this point <sup>10</sup>.

The same situation occurred in the Lifeboat case stated above. Richard Parker the cabin boy was given no option to decide whether he wants to sacrifice his life so that the other three seamen could live. The poor boy was chanted the prayer and killed. Some people completely reject the idea of happiness of majority ruling over the happiness of minority as if the people in minority hold no human rights. They argue that the human rights and human dignity have a moral basis, which is placed much higher than the utility which here is the happiness i.e. pleasure, and if they are right, well then Bentham's philosophy is wrong.

Utilitarianism claims to offer morality to everyone, according to Bentham everyone's preferences count equally. Bentham has tried to expound that all things have to be measured on an equal scale in order to be given equal preferences. But the question in

Doubt is; is it possible to translate all *moral goods into a single currency* without losing their value? And according to this objection raised all moral goods and values cannot be apprehended by a common currency of value<sup>11</sup>.

Let us look at Cost benefit analysis drafted by Philip Morris in Czech Republic. The company drafted cost benefit analysis showing that it is beneficial for the government to allow the sale of tobacco in the country as it will help the government and in turn help the country flourish. The utilitarians uplifted the analysis, as the government was getting tax from the sale of tobacco, the government would not have to pay for the housing of elderly who smoke and die early because of the same and save pensions also. The utilitarians claim that the money saved can be used for the greater good of the public. People were aggrieved with such analysis drafted by the company as how can one put a price tag on human life. Bentham planned to put everything on an equal scale, well but human life cannot be measured in dollars. The cost benefit analysis created an outrage not because they didn't value the human life, but because they did.

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<sup>10</sup> MICHAEL. J. SANDEL, JUSTICE 37-41, (2010)

<sup>11</sup> MICHAEL. J. SANDEL, JUSTICE, 41-46 (2010)

Another example, which can be quoted here, is the Pinto Ford case of the 1970s where the car had exploding gas tanks at the rear end. When the plaintiffs sued the company, the company confessed that they were already aware of the fact that the fuel tanks are vulnerable to a blast when collided. But in defense they presented their cost benefit analysis where they calculated the value of life. The jurors were outraged and placed a high compensation on them to pay to the suffering parties. The jurors as well as the public, once the facts were out considered it wrong for a corporation to assign monetary value to life.

#### **IV. JOHN STUART MILL'S CONCLUSIVE THOUGHTS:**

Bentham had contended that utilitarianism takes into account preferences of everyone. But we could decipher that comes into play a bit differently. The question posed towards utilitarians is the aspect which worries about aggregating values and preference and why should we weigh all the preferences without asserting the good preferences and the bad preferences. They say what is a good or bad preference? What makes one preference higher and one preference lower? What are the consequences, which led to one preference being taken up and being followed by the majority and the other being discarded? Well the questions posed are a part of the appeal that is it non-judgmental and egalitarian on part of Bentham when he claims to have taken into considerations the preferences of everyone? Who is to say that one preference is more noble or higher or longer lasting than the other preference?

For Bentham all that matters is the quality and duration of pleasure, the so-called "higher pleasure". To explain it better Bentham wrote, "Quantity of pleasure being equal, push-pin is as good as poetry"<sup>12</sup>. Let's take the example of the Romans grueling the Christians. Who is the say that the romans were having the noble, higher and long lasting pleasure than the Christians?

John Stuart Mill, born in 1806 was a disciple of Bentham and had a convincing reply to the objections risen on Utilitarianism. Mill was born as a child prodigy, but at the age twenty he had a nervous breakdown and had entered depression. And that is when he met Harriet Taylor, his wife, under whose influence John Stuart Mill tried to justify utilitarianism. Mill addressed the issues with respect to individual human rights and to address the distinction between higher and lower pleasure. In 1859, John Stuart Mill wrote a book on liberty, the main agenda of which was to defend individual rights and minority. And in 1861 he wrote the book "Utilitarianism". John Stuart Mill in his book he mentions that it is possible for the utilitarians to distinguish between lower and higher pleasures<sup>13</sup>. John Stuart Mill explains when an

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<sup>12</sup> Jeremy Bentham, WORKS, Vol. X 113

<sup>13</sup> John Stuart Mill, UTILITARIANISM 8

individual has tried both of them and then the individual prefers one naturally, that is the higher pleasure always. John Stuart Mill quotes “Of two pleasures, if there be one to which all or almost all who have experience of both give a decided preference, irrespective of any feeling of moral obligation to prefer it, that is the more desirable pleasure.”<sup>14</sup> John Stuart Mill understood the concept where the preference would play the role and expounded it clearly.

John Stuart Mill was the more humane philosopher whereas Bentham was the more consistent one. Jeremy Bentham died in 1832 in London, but before dying Bentham has answered the question, of what use could be a dead man to the living? Well, the answer was well curated by Bentham as his body has been preserved and kept on display and also brought out at occasions. Bentham’s admirers have giving him patronage and respect and have portrayed his body as a source of inspiration. The preserved Bentham body is also brought out for meeting and he is considered to be present but not voting in the meetings.<sup>15</sup> Even after death Jeremy Bentham promotes the idea of greatest good for the greatest number of people.

The principles of Utilitarianism are well expounded by Bentham, but one thing that needs to be understood here is that modern day law does not really incorporate the facts and principle laid down by Jeremy Bentham and his disciple John Stuart Mill. Modern day law is worked according to the ever changing needs and demands of the society we live in. And the principle “greatest happiness for greatest number” sometimes doesn’t really suffice. If we look at an example in India the abolition of Article 377 was an historic move by the judiciary of the country<sup>16</sup>. But keeping in mind this judgment the country was divided between people who supported this movement and people who were against this change. Well, the utilitarians will be disconsolate to know that the majority of people in India were unhappy with this judgment. Communities like Jamaat-e-Islami openly expressed their dismay<sup>17</sup>. But as stated above modern day law changes with the ever-changing society and so the decision of abolition of Article 377 was taken.

Jeremy Bentham and John Stuart Mill were two philosophers who expressed their views and opinions on pleasure and pain and devised principles for the people to follow them. But with

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<sup>14</sup> Ibid

<sup>15</sup> Etan Smallman, *181-year-old corpse of Jeremy Bentham attends UCL board meeting*, METRO U.K, (July 12, 2013, 12:01 AM) <https://metro.co.uk/2013/07/12/181-year-old-corpse-of-jeremy-bentham-attends-ucl-board-meeting-3879586/>

<sup>16</sup> Samanwaya Rautray, *Removal of section 377 enough to end discrimination: Supreme Court*, THE ECONOMIC TIMES, (July 13, 2018, 07:23 AM) <https://economictimes.indiatimes.com/news/politics-and-nation/removal-of-section-377-enough-to-end-discrimination-supreme-court/articleshow/64969181.cms>

<sup>17</sup> The Hindu net desk, *Reactions to Section 377 verdict | Jamaat-e-Islami Hind expresses dismay*, THE HINDU, (Sept. 6, 2018, 12:24PM) <https://www.thehindu.com/news/national/live-reactions-to-supreme-court-judgment-on-section-377/article24879585.ece>

the enhancing and changing laws, the lawmakers and the people, of our country can very well understand that utilitarianism does not follow with the needs of the present day society. And thus, principles of utilitarianism cannot be used for delivering justice in the 21<sup>st</sup> century.

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