THE UTILITARIAN APPROACH TO JUSTICE

The utilitarians approach justice from a different stand-point. They treat utility as the ultimate standard of morality. Utilitarianism, as an ethical theory signifies that the ultimate end is and ought to be general happiness, and that those actions are treated to be right and just which bring the greatest happiness for the greatest number of people.

It was James Mill who first enunciated such a principle which took a clear form in the hands of his successors. Even Leibniz is sometimes regarded as the precursor of utilitarianism when he speaks that the general good or happiness is the end of law and of morality. Utilitarianism as a moral theory was first formulated distinctly by Bentham, followed by a fundamental modification in the hands of J.S. Mill. Sidgwick opines,

"By utilitarianism is here meant the ethical theory that the conduct which, under any given circumstances is objectively right, is that which will produce the greatest amount of happiness on the whole; that is, taking into account all whose happiness is affected by the conduct." 1

By happiness Sidgwick means pleasure and absence of pain; he defines pleasure as,
"feeling which the sentient individual at the time of feeling it implicitly or explicitly apprehends to be desirable; - desirable, that is when considered merely as feeling."2

Hedonism is a general term which includes all systems of ethics accepting pleasure as the end of life. When pleasure is accepted to be an end which people really seek, it is regarded as psychological hedonism dealing with whether people really run after pleasure or not. But when we are interested in whether people ought or ought not to seek pleasure, we are dealing with ethical hedonism. Ethical hedonism is the doctrine, which instead of involving itself with what man actually wants, involves itself what man ought to want. A moralist is not concerned with what actually is, but what ought to be. He is not concerned with whether people actually seek pleasure, but whether pleasure ought to be treated as the end of life. According to ethical hedonism, pleasure should be the ideal which should be the guiding principle both of the individual and of the society.

Utilitarianism is the revival of hedonism in the late eighteenth and nineteenth centuries by the English thinkers like James Mill, Bentham and J. S. Mill. Hedonism in its gross form seeks only the individual's self-
interest. But that form of hedonism known to be altruistic hedonism takes the name of utilitarianism in the hands of the English philosophers. Utilitarianism as a theory of morals and values seeks to maintain that pleasure or general happiness should be the end of a moral life. Morality lies in the conduciveness of an action to general happiness. It does not take into considerations the psychological factors. It does not tell us whether men do really seek the general happiness but that it provides a norm that speaks that man ought to act in a manner which instead of seeking only the individualistic interests to be fulfilled, hankers after fulfilling the general happiness - the greatest happiness of the greatest number. It is a peculiar feature with almost all the earlier utilitarians that they base the theory of the general happiness on the psychological assumption that man always desires pleasure.

Utilitarianism as a theory of justice regards actions of a rational creature to be just when it achieves the general happiness. Actions of individual human beings and of the state can be treated as just, virtuous, moral or legal if their activities bring general happiness. Actions are judged on the merit of their consequences. If the consequences are useful for the general mass or if
it brings about the general improvement, then actions are treated as just, otherwise unjust. An action detrimental to the social good or the general good is rejected as unjust, and therefore immoral. Justness and morality of an action depend on its being socially good and beneficial. In a sense, utilitarianism identifies utility or general good with justice and morality. Being just and moral is virtuous. To seek general happiness is to seek the virtue.

In its days, utilitarianism got its importance in the field of legislation. The legislations of the state are generally directed to the sole aim of achieving the general good. They bear the essential feature of being useful to the social good. A legislation is, therefore, just when it has the only aim of fulfilling the general happiness of the society. A law which is just should aim at the fulfillment of the general happiness. To treat a law as just and at the same time not to seek the general happiness is to involve in self-contradiction. Justice is not dependent on positive law. Justice does not lose significance even where there is no organized positive law. Law depends on the norm provided by justice. Thus, a positive law may be just or unjust as it corresponds or does not correspond to the norm provided by the utilitarian standard of justice in bringing about the social
good in general. In the like manner, a government is considered just or unjust depending on its correspondence to the norm of justice. A government which neglects the welfare of the people at large and looks to the well-being of a few or of the ruling class can be regarded as going against the norm of justice, thereby making itself unjust. Thus, law and government presuppose justice.

Furthermore, most of the utilitarians, except a few, judge actions and with reference to the end alone. With the solitary exception of J. S. Mill who respects and tries to protect the liberties of individuals at any cost, all others, neglect the means and confine their attention to the end only. Actions are considered right and thereby just, if at the end they promote or tend to promote the general happiness. Means are irrelevant to moral and juridical considerations. Means are never objects of moral and juridical judgements according to the utilitarians. They are outside the purview of such discussions. The moral worth of an act depends not on the motive that prompts it, but upon its effects on society as a whole. An end catering to the general happiness and utility is justified, however ignoble the means may be. But however noble and virtuous the means may be, if the end, instead
of achieving general happiness for the state, incurs the reverse of it, the action of an individual or of the state is to be treated as unjust and immoral. Therefore, justice derives exclusively from society and consists ultimately in promoting the social good.

Most utilitarians with the aim of accelerating the social good, sometimes sacrifice the natural rights and liberties of human individuals. They make all natural rights and liberties subservient to social good. Rights and duties are justified in so far as they achieve or try to achieve the social good. They do not base justice on natural rights. In the case of utilitarianism, natural rights presuppose justice rather than justice presupposing natural rights. Natural rights, instead of being the ultimate referent of justice, are made depend on it. Most of the utilitarians, therefore, neglect the dignity and importance of human individuality by overriding the natural rights. Actions of individuals or of the government are ultimately judged not in terms of natural rights and liberties, but in terms of social good and the general happiness of the society. By making man subservient to the goal of the general happiness, it robs man of his intrinsic worth subjecting him to an alien end wherein,
instead of being a free agent he becomes a puppet in the hands of the government seeking general good.

The most characteristic expression of such a utilitarian view is found in Bentham's works who is regarded as the founder of utilitarianism. Bentham expresses the principle of utility as follows:

"Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand, the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think: ...."^^

This position is called the principle of utility. An action conforms to the principle of utility when it tends to increase the happiness of the individual concerned and the community at large. The principle of utility has further been described by Bentham as follows:

"which approves and disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question.... I say of every action whatsoever; and therefore not only of every action of a private individual, but of every measure of government."^
Utility is that property of an act or object which tends to produce benefit, advantage, pleasure, good or happiness. It prevents the happening of mischief, pain, evil, or unhappiness to the people in the entire community. The justification of the principle of utility lies in the "greatest happiness of the greatest number." It was Bentham who in fact, borrowed the phrase "the greatest happiness of the greatest number" from Priestley's Essay on Government, a pamphlet published in 1768.

The principle of the greatest happiness of the greatest number is a principle of morality and virtue and at the same time of legislation. The act which brings or is capable of bringing more balance of pleasure than pain is regarded as fitting to the principle of utilitarianism. Since pleasure is good and pain is evil, the consequences rather than the motives are taken to be more important in moral considerations. The end is always considered to be good or bad. If the end is pleasurable, then the action is justified. The means is never taken into account. The motives may be evil, but the end should be pleasurable. If the motives are good or evil, it is on account of the consequences. They are good when they tend to produce pleasure; evil when they lead to pain. Consequences, in
terms of pleasure and pain, determine whether an act is good or evil. Instead of means justifying the end and motive justifying the consequence; it is end or consequence that justifies the means.

An action, then, may be said to be conformable to the principle of utility only when it brings or helps in bringing happiness to the community which is greater than the pain that would have stemmed from the action. The proper ethical attitude is to calculate carefully the amount of pleasure and the amount of pain any act might produce. If there is a balance in favour of pleasure, the act is taken to be a good, just and moral.

Measures of government are also subservient to the principle of utility. Such measures as would bring social good or general happiness for the community should be implemented. Government and its measures presuppose the principle of utility in the sense that they owe their justification to it. A measure of government that seeks something contrary to the maximum pleasure of the maximum number or the social good, has to be treated as unjust and immoral. The government rests on its benevolent works. If the measures of the government fulfill only the needs of the ruling class and does not look after the
needs of the entire community, they are taken to be the unjust measures of an unjust government.

The state legislations should also be based on the principle of utility. A law is useless when it does not look to the interest of the community at large. The spirit of law should be in favour of the greatest happiness of the greatest number. General happiness or social good should be the essential feature of a law. Once law is assumed to be the dictate of the principle of utility, then law stands as the standard of measuring the justness of actions. An act, conformable to such dictate of utility which is law, is supposed to be just; otherwise unjust, and

"is one that ought to be done, or at least that it is not one that ought not to be done. One may say also, that it is right it should be done; at least that it is not wrong it should be done: that is a right action; at least that it is not a wrong action."5

Bentham accepts the principle of utility to be self-evident, the rectitude and purity of which is never doubted. It is the principle, according to Bentham, that stands supreme over all others and which is presupposed by all other principles of morality. There is no other
principle which can stand superior to it. The principle that is self-evident, the principle that is just in itself, needs no justification. The principle of utility is itself the principle of justice and morality which requires no proof, but can stand as the proof for all others. The utility principle does not presuppose, rather is presupposed by all other principles of morality. The utility principle is not susceptible to any direct proof for

"that which is used to prove everything else, cannot be proved: a chain of proofs must have their commencement somewhere. To give such proof is as impossible as it is needless."

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Bentham's utilitarianism is based purely on a quantitative ground, which takes into account the strength or the amount of pleasure and the number of persons involved. Anything that gives a quantitatively greater balance of pleasure over pain is better than anything giving a lesser balance - the quantity of pleasure being equal, pushpin is as good as poetry. Quite consistently, Bentham disallowed any difference in quality in pleasure. The total quantity of pleasure attendant on an act should be considered. An act is moral and thereby just which brings more quantitative pleasure than pain for the individual and for the community as a whole.
Bentham makes no difference between kinds of pains and pleasures or between persons who are affected by it. The maxim, each is to count for one, and none for more than one, goes equally for persons and various kinds of pleasures and pains. For him, there is no difference between the pleasure derived out of hearing a superb symphony or reading a divine poem and the pleasure derived out of watching a boxing match or reading a detective novel. The worth or value of all such pleasures is equal. It is most important to note:

"Bentham's table of 'pleasure' was by no means limited to pleasures of the senses; and if, even then, he did not give enough weight to pleasures of the heart and mind, this may be the fault of insufficient psychological knowledge rather than any necessary limits of his principle of utility."

According to Bentham, the problem of quantity versus quality is not a fundamental problem in the field of morality. It is the greatest quantitative pleasure or happiness of the greatest number that provides justification to an act. In order that the calculation of pleasure and pain should be scientific, Bentham has devised an elaborate calculus known as the hedonistic calculus which is summed up in the following verse:
"Intense, long, certain, speedy, fruitful, pure, such marks in pleasures and in pains endure. Such pleasures seek, if private be thy end: If it be public, wide let them extend. Such pains avoid, whichever be thy view: If pains must come, let them extend to few."

The elements of pleasure or happiness are:

1. Intensity, whether they are strong or weak;
2. duration, whether they are lengthy or short in temporal existence;
3. certainty, or the degree of probability that they will occur;
4. propinquity, or nearness in time;
5. fecundity, or the chance that they will be followed by more of the same kind of sensations;
6. purity, or the likelihood that they will not be mixed with or followed by sensations of the opposite kind (pain); and
7. extent, or the number of persons who will be affected.

The first six characteristics are relevant and sufficient to show the greatest pleasure concerning an individual. But when an act has social implication, the legislator must keep in mind all these elements of pleasure
with the aim of deriving the greatest happiness of the greatest number out of its own legislations. An act, either of an individual or of the government, is moral and just if the pleasure that it derives corresponds to the seven elements of pleasure or happiness. This precision and clearness of mathematical calculation was first introduced by Bentham into the field of morals and justice.

To keep men in their proper path, to achieve the end of the principle of utility, Bentham's utilitarianism provides a set of sanctions of checks and balances on their acts. The sole objective is to convert, by any means, the selfish attitude of man to an altruistic end; to achieve the greatest good of the greatest number, instead of achieving the good of the actor. The so called sanctions are designed to motivate the actors to fulfill the end of life, the good of the community. It regulates the motives of the individuals and of the governing class. A sanction then,

"is a source of obligatory powers & motives; that is, of pains and pleasures; which, according as they are connected with such or such modes of conduct, operate, and are indeed the only things which can operate, as motives."
Bentham's view on sanctions is summarised by himself in the following passage:

"It has been shown that the happiness of the individuals, of whom a community is composed, that is their pleasures and their security, is the end and the sole end which the legislator ought to have in view: the sole standard, in conformity to which each individual ought, as far as depends upon the legislator, to be made to fashion his behaviour. But whether it be this or anything else that is to be done, there is nothing by which a man can ultimately to be made to do it, but either pain or pleasure.... There are four distinguishable sources from which pleasure and pain are in use to flow: considered separately, they may be termed the physical, the political, the moral, and the religious: and inasmuch as the pleasures and pains belonging to each of them are capable of giving a binding force to any law or rule of conduct, they may all of them be termed sanctions."9

Sanctions or punishments should not go against the very end for which they are framed. They should bear in themselves the spirit of protecting and upholding the ideal and the only end of human life. Therefore, the justification of the sanctions lies in the fulfillment of the greatest good of the greatest number. The sanction, which instead of bringing pleasure or happiness, brings pain in turn, should not be accepted as just.

According to Bentham,
"the purpose and justification of penal laws were not different from those of the secondary principles of morality - they required justification by the general happiness principle. Penal laws differed from moral principles only in their provenance - being the commands of an Austinian sovereign and in having a political sanction instead of, or in addition to, the physical, moral and legal sanctions that other norms might have. Punishment, being the infliction of pain, is in itself a bad thing. Therefore, legislators will be justified in passing a penal law only if the general happiness it causes greatly outweighs the evil of punishment for its non-observance. Now since the act made illegal would be done only if the doing of it would maximise the agent's happiness in the absence of a penal sanction, the task of the legislator in framing the penal sanction must be to impose the minimum sanction that will outweigh the advantage of performing the act;....."10

J. S. Mill paid a lip service to the Benthamite principle of utility. He brought about a drastic transformation of the utilitarian position of Bentham. He changed the very foundation of utility-principle. Mills, realizing the defects in Bentham's principle, modified it accordingly so as to keep the utility principle still the first principle of all justifications and the ultimate appeal of all actions.

Mill distinguished himself sharply from his predecessors in advocating that it is not only quantity, but
also the quality of pleasures that counts in moral judg­ments. Pleasures differ in quality too. Some pleasures are qualitatively such that they are different from other pleasures and that they should be preferred to other pleasures which may have got greater quantitative merits.

"It is quite compatible with the principle of utility to recognize the fact, that some kinds of pleasure are more desirable and more valuable than others." 11

and again, Mill maintains,

"It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied." 12

A person whose faculties are more developed is capable of higher pleasures and once a man is accustomed to pleasures of mind, he can never really afford to stoop so low to the pleasures of the senses. As Sorley says, "Mill claimed for utilitarianism", that

"...it is not sensual, because it recognizes the superior value of intellectual, artistic, and social pleasures as compared with those of the senses." 13
Mill further differs from Bentham in treating man not as a self-centered but as an altruistic being imbued with the motive of sacrifice. He identifies self-interest with the interest of the community. People are happy only when they aim at something beyond their own happiness - the happiness of others, the improvement of mankind, even the pursuit of art and music as ideal ends. Mill contends,

"the happiness which forms the utilitarian standard of what is right in conduct, is not the agent's own happiness, but that of all concerned. As between his own happiness and that of others, utilitarianism requires him to be as strictly impartial as a disinterested and benevolent spectator. In the golden rule of the Jesus of Nazareth, we read the complete spirit of the ethics of utility. To do as one would be done by, and to love one's neighbour as oneself, constitute the ideal perfection of utilitarian morality."14

The utilitarian morality recognises the good in human beings as the good for others. It only refuses to admit that the sacrifice is itself a good. A sacrifice which does not increase, or tend to increase, the sum total of happiness, is considered as wasted.

Unlike Bentham, Mill pays much importance to the motive of an agent. In considering actions, both the
motive and the end should be taken into account. Mill finds no justification in neglecting motives and honouring the consequences only. The individuality of a man, in no case, be sacrificed for the community. Mill holds up the banner of liberty of the individuals. He has given a powerful defence of individualism as follows:

"a defence of the right of the individual to hold his own opinions and to give free expression to them and his right to live in such a way as deemed fit himself, so long his mode of living did not interfere with rights and liberties of others."15

Human liberties should not be sacrificed. A man is a human being only because he possesses some basic inalienable liberties. His natural rights and liberties should not be fettered and infringed. The government should give protection to such rights and liberties by legislation. The civil rights and liberties of every individual should be honoured, however insignificant he may be. Man has his own dignity. No man should be subjected to foreign control which does not honour his natural and civil liberties and rights. The government or the ruling class do not have any right to suppress the free opinion of an individual. Mere superior might or majority voice is no justification in depriving an individual of his natural and civil rights
and liberties or making him a means for an alien end. In the words of Mill,

"If all mankind minus one were of one opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind." 16

The only purpose for which power can be exercised rightfully over any member of the community, against his will, is to prevent harm to others. As the community should not overlook the individuality of a man, so also an individual should not hamper the interest of the community. The society may control individual actions which affect others. But it should not interfere with the rights and liberties which are basic to an individual. The only part of the conduct of the individual for which he is subjected to social control,

"is that which concerns others. In the past which merely concerns himself, his independence is, or right, absolute. Over himself, over his own body and mind, the individual is sovereign." 17

"Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason justice denies that the loss of freedom for some is made right
by a greater good shared by others.... Therefore in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests."18

Human liberties, like the liberties of conscience, of thought and feeling and of freedom of opinion, are inseparable from him. A society in which these liberties are not respected, is not free and just and the individuals in it are enchained and subjected to miseries. To disrespect the basic liberties of human beings is as good as robbing the human race of its very worth.

Though, Bentham and Mill differ as regards quantity and quality of pleasure, yet both of them lay emphasis on utility. Everything else is to be determined in terms of utility. It is utility, but not justice which plays a decisive role in human society. Utility is the primary concept. All other concepts are to be explained in terms of utility. Thus, justice is to be understood in the light of utility. Morality, virtue, obedience, obligation and such other higher values, have to be referred to utility. Political obligation is measured in terms of utility and so also is the case with justice. I wish to suggest in this connection that justice is basic to understanding human
society. A human society is different from an object of nature. Natural objects may be understood in terms of utility, whereas, society cannot be so understood. Further, the concept of justice is not utilitarian in nature. It is not even a juristic concept. In other words, it is a moral concept. This means that to understand human society is to understand it in terms of morals.

Human society consists of individual persons. What are the persons? How do we understand a person? According to the utilitarians, a person can be understood in terms of utility alone. However, Bentham dictates this line of thought. Mill wavers between utility and basic liberty. He introduces non-utilitarian principles like liberty and right. Mill accords the highest importance to self-expression. One expresses oneself in diverse ways. In other words, self-expression assumes different forms. Literature, art, music and etc. are some of these forms of expression. One can also express oneself or give opinion on matters, social and political. How do we go about it? Shall we suppress public opinion or honour it? Mill maintains that public opinion/the opinion of others has to be respected. What are the reasons for it? Why shall we respect public opinion? It can be said in this connection
that respect for public opinion is not in consonance with the utilitarian principle. The autonomy of the individual owes its origin to Kant. Mill, in his attempt to protect the liberty of the individual, echoes the voice of Kant.

The utilitarians are also empiricists. Their empiricistic bias is reflected in their attempt to measure pleasure in concrete terms. This shows their eagerness to study human society in scientific terms. I wish to suggest in this connection that human society cannot be adequately understood in scientific and causal terms. It stands in need of a non-causal mode of understanding. The utilitarians have treated human person as means. Though Mill advances the cause of liberty, he does it within the broad framework of utilitarianism.
REFERENCES

2. Ibid., II (iii), §4, p. 131.
4. Ibid., Ch. I, 2.
5. Ibid., Ch. I, 10.
6. Ibid., Ch. I, 11.
9. Ibid., Ch. III, 1.2.


