CHAPTER 6

JUSTICE AND EQUALITY
The Utilitarian frame work of values in Mill's socio-political thought becomes meaningful only in the light of his deliberations on the concepts of justice and equality. In fact, no vision of a perfect society is complete unless it incorporates these two value dimensionalities. Therefore, in addition to social and political freedom, Mill pleads for the realization of justice and equality in a good society. The State which gives more liberty to the individual is more just than the State in which there is less freedom for an individual. The democratic form of government helps us in achieving the ideals of justice and equality. As such, the concepts of justice and equality are closely related to the concepts of liberty, democracy, and happiness as an end. However Mill's chief concern is with the sanctions of justice, their sources and obligatoriness.

According to Mill the question of justice arises on special occasions, events and situations. There is a widespread agreement amongst philosophers regarding justice as a social norm, which Mill accepted, too. The concept of justice in the earlier stages of history was linked with customs and traditions. Any one who violated the prevailing customs and traditions was supposed to be unjust. Plato, however, regarded justice as the sum of
virtues. According to Plato 'Telling the truth and rendering what is due to other people' are actions in which men are involved with one another. According to Aristotle justice is a particular virtue and he distinguishes between distributive and corrective justice. Hume insists that the need of justice arises in special situations and he regards justice as an artificial virtue which owes its origin to convention.

However, since justice is used in various senses, its content is said to be ambiguous. In fact, the connotation of justice differs from society to society. The modern thinkers like Stevenson and Hare, warn against fixing up any one meaning of it. They claim that justice, like good, is a vague and emotive word and therefore no one particular definition of justice can be given; for, precision in this matter is not possible. At the most we can either exemplify the various meanings, of which the term justice is susceptible or generally mention that justice has to do with equality, law, distribution of goods, opportunities etc. But in Wittgenstein's phrase both these senses have only a 'family resemblance'. According to Stevenson, an appeal to justice implies persuading people to adopt a certain attitude and course of action; he says; if we take into account the full range of significance of the term including its emotive
connotation there will be no difficulty in understanding its import or meaning in the context.

But does the above discussion imply that no definition of justice can be given? It is true that the term justice is vague and emotive in its content, but in spite of the difficulty encountered in giving a precise definition of justice, some attempt can be made to define the concept of justice. The controversy, however, is centred not so much around the meaning of justice as its practice and the basis of its validity. There is a widespread agreement regarding the general meaning and characteristics of justice. For instance, all would agree that when we say 'X is just', it implies a pro-attitude towards X. This judgement indicates that justice is a value which involves an emotive content. In this context A.C. Ewing rightly states that ethical judgements have a practical emotive function. Hare too regards justice to be a commending word like good which involves value judgement. He says that it is an action guiding principle and an obligatory norm. Earlier Plato also regarded justice as obligatory in the sense that when a particular action is judged to be just, it entails that others in similar situations ought to do the same thing. Thus justice is not only an evaluative but also a prescriptive concept. It imposes an obligation on the members of the society.
According to Mill, if an individual violates a perfect obligation towards some assignable person, his action is unjust. He says that an individual may rightfully be compelled to fulfill his obligation. Duty is a thing which may be exacted from a person as one exacts a debt. He also takes into account the general duties of imperfect obligation that imply no rights in assignable persons.

He writes:

"... duties of perfect obligation are those duties in virtue of which a correlative right resides in some person or persons; duties of imperfect obligation are those moral obligations which do not give birth to any right. I think it will be found that this distinction exactly coincides with that which exists between justice and the other obligations of morality.... Justice implies something which it is not only right to do, and wrong not to do, but which some individual person can claim from us as his moral right. No one has a moral right to our generosity or beneficence, because we are not morally bound to practise those virtues towards any given individual."

In this context, a critic points out that although Mill's distinction between two classes of obligations makes good sense, yet there are situations to which it does not apply. He gives the example of a four year old child, whose mother leaves him for a brief care in her neighbour's house and when mother is away, the child hurts himself badly while playing with a bottle which suddenly breaks. The neighbourer takes the baby to the hospital, but the hospital authorities refuse to perform
surgery in the absence of the mother's signature. The result is that the bleeding child cannot be treated, for the mother is not easily traceable. In this case although the sense of justice demands that the child should be treated immediately, yet on legal grounds the treatment is refused. The child has a moral right to such treatment but from the legal point of view it is not certain that such a strict obligation should be imposed on the physician under special circumstances. All the same most people would feel that they do have such moral obligations. Thus, there can be duties of perfect obligation from the moral point of view which may not find place in the legal system.

Here, Mill would reply that whenever there is such a case we must appeal to the principle of utility. It is the standard of utility which helps us to determine the duties of perfect obligation and other such problematic questions.

The idea of justice according to Mill presupposes a rule of conduct and a sentiment which sanctions the rule. A rule of conduct is common for all mankind and it is meant for the good of everybody. Mill derives the sanction of justice from the sentiment that accompanies the rule of conduct i.e., internal and external sanctions. The internal sanction of duty or conscience which is a
subjective feeling in our mind involves the feeling of moral obligation. When we apply this feeling to justice, this would tell us to do what is just and to refrain from doing what is unjust. Mill asserts that it is right to do what is just and wrong to do what is unjust. Apart from this, an individual has a claim to receive justice at the hands of others and to deny it to him would be wrong, while he has no such claim on our generosity or beneficence because these are not part and parcel of justice. All moral actions can be merged into justice.

All questions of justice can be answered in the context of rights. According to Mill when we assert that something is unjust we imply that it is not only wrong to do it but also that it deprives some one of something to which he has a right. It means that injustice implies two things: wrong done on one side and violation of the rights of some assignable person on the other. If a wrong is done to the individual himself, his action is wrong but not unjust. He further adds that the feeling of ought is included in the feeling of justice and a person may be rightfully compelled to do it.

Mill says although justice implies a feeling of 'paramount obligation', it is a name of certain moral requirements, and at times it must give way to some other moral principles. In such cases what is just under normal
conditions and in ordinary cases may not be so in a particular situation or under extraordinary circumstances. In such a contingency, we must have recourse to the principle of utility to resolve the problem.

Hence, according to Mill justice involves the idea of personal rights, whether it consists in depriving a person of his property or legal rights or in treating him worse than he deserves, it is unjust to deprive a person of anything which belongs to him by law. In other words, it is just to respect the rights of other people. There may be exceptional cases which may result from the concept of justice and injustice, e.g., a person who is deprived of his rights may have actually forfeited them.

Earlier the idea of justice was closely connected with the idea of law. Mill says if we take the etymology of the word justice into account it becomes clear that the primitive people connected justice with the ordinances of law. He writes that "justum" is a form of "jussum" which means what has been ordered or commanded. The Greek word ἡκατερ comes from ἱκατερ, which means a law suit. "Recht" means right and righteousness and it is synonymous with law. "La Justice" in French, stands for judicature. All these terms go to show that the primitive element in the idea of justice is conformity to law.
But we can ask: is justice connected only with the obeying of laws? Are we not faced with problems other than those pertaining to laws which are just or unjust? Will rightly believe that the term justice is applicable not only to legal justice but also to moral justice and sometimes even laws may be good or bad. There is also a difference between the justice involved in the application of a law and the justice of a law itself. A law is said to be applied justly when it is applied impartially to all. If a law is applied discriminatorily, it is said to be unjust.

Gradually, it was realized by people that there could be bad laws because they are made by men. From this it follows that the problem of injustice refers not to the violation of all laws but only to the violation of laws which are good and therefore ought to exist. The idea of justice is even now connected with the idea of law.

Since, there can be bad and unjust laws, they cannot be regarded as the criteria of justice. Justice is a wider notion than law, for the idea of justice and the obligation of justice are applicable in many spheres where a law is not applicable. Therefore conformity to law may be just but this alone cannot exhaust the notion of justice. Justice in its broader sense means
But is there any way of deciding about the rightness and justness of a law? The justness and unjustness of a law can be decided in two ways, i.e. firstly through open agreement with the help of arguments and discussion as to what is right. Secondly, through the accepted political processes which may decide whether the laws are right or wrong, just or unjust. They can also help in deciding about the ways and means of changing unjust laws peacefully. 15 I will agree with the former view and would add to this that the interest and the welfare of all should be taken into account.

Yet another suggestion has been put forward by Clarence Morris who contends that a law can be judged to be good or bad with reference to justice, and justice can depend on law. He says in this context: Justice can result from social recognition of legal obligatoriness, which sometimes occurs without governmental prompting. 16 However, law thus defined would be conducive to justice only if law makers act as public agents and keep in mind the public aspirations while formulating laws. If the legislators are lazy, stupid, partial, tyrannical and selfish, then the laws enforced by them can be unjust. In order to realize justice in a society law makers must
have technical knowledge, good will and possess some knowledge of public aspirations and be devoid of even remote involvement of their own personal interest.

Mill's method of choosing from such disputable alternatives is dependent on the principle of the greatest happiness of the greatest number. According to Clarence, Mill believed that he would know what is just by knowing what the public ought to want. But he says that Mill is wrong in this, for he overlooks the consideration of what people actually aspire for. For Clarence, law makers should serve the cause of justice in accordance with public aspirations. A legislator must discover and understand the public aspirations and not his own.

It is true that Mill does not speak about aspirations but he would insist that a law maker should serve the cause of justice with reference to the principle of utility. Even if Clarence's view is accepted, then law must not only actualize public aspirations but also define and shape public aspirations. However it may be emphasized that by aspirations we mean only public aspirations and not one's own selfish aspirations. If aspirations refer to those of the public, then they must be defined with reference to the general welfare of people.

Another question which baffles us is: If some laws are unjust, is it right to disobey them? In cases
of bad laws, opinions regarding the justice or injustice of infringing them may differ. Some may opine that a bad law should be disobeyed. Others may argue that since all laws impose a certain amount of restraint on people, these should be obeyed only if conducive to the good of people.

It is a popular notion that it is morally right to break and oppose unjust laws. Bad laws are subject to criticism. On what moral grounds disobedience to law can be justified? According to Mill all questions of justice must have reference to social utility. No law and no right can fall outside this criterion. He says if the rule is contrary to the public interest, it cannot be regarded as a just rule. Sidgwick holds the same view, and states that although one may argue against the change of unjust rules by saying that some people would be treated differently from others under similar conditions, yet it seems just that if a rule does not meet the common expectations it must be changed. Thus, from the utilitarian point of view, rules must be flexible and not rigid.

In this context, it is argued by some analytical thinkers that there is no scientific way of deciding whether the existing law is a right law. The only scientific criterion of a good or right law is its
efficiency in achieving its aim and purpose. All norms whether legal or moral should be discussed in relation to hypothetical values which are accepted on emotional grounds by a society, such values cannot be justified on rational grounds, since they express attitudes and emotions.

Since the above viewpoint is based on the approval and disapproval, likes and dislikes of people, it cannot be accepted. The questions of right and wrong are based on rational grounds. Here, Morris Ginsberg very rightly states that it is true that morality must have an empirical basis, "but it is sheer dogma to confine experience to what is acquired through the senses. There is such a thing as moral experience. Men not only make choices but they reflect on them and there is no reason for believing that reflection is confined to means."18

Yet another view is put forward by Rawls. He says that the individual should act in accordance with laws or rules when the institution imposing it is just and he has voluntarily accepted the benefits of the arrangement. According to Rawls, if a practice satisfies the principle of mutual acknowledgement, then it is fair and if it violates this principle, it is unfair.19 He holds that men being rational are capable of arriving at mutual agreement regarding fairness in their dealings.
with one another, which is mutually accepted by people.
For Rawls justice is a legal or political concept but
fairness is an ethical idea. He contends that laws
can be overridden on sufficient grounds. Rawl’s discussion
of civil disobedience assumes the special context of a
near just society with legitimately established democratic
theory.20

However, according to Rawls it seems that there
is no political obligation for people to obey a law.
In fact Rawls does not take the help of the principle
of fairness to support the obedience of law. He says
that those people whose liberty is of very little value
on account of certain conditions, such as economic
depivation, social discrimination, exclusion from
powerful offices, are free of any obligation to obey the
law even in a society where the institutions are just.
There can be a number of conditions which justify civil
disobedience which would be reasonable if a law infringes
the principle of equal liberty.21 Rules and laws should
be violated only when the expected consequences of
doing so are better than those of conformity. He says
that this does not mean that laws, rules and promises
can be broken just to achieve a small gain in utility
but laws should be broken or disobeyed only to avoid a
disastrous loss in utility.
Rawls' account of the justification of civil disobedience is similar to Mill's view, for both appeal to the principle of utility. In spite of this similarity their arguments are not identical for their starting points are different. Rawls' method of establishing a certain principle is contractual and grounded on the principle of fairness. All principles according to Rawls should be based on fairness. Mill derives all his rules and principles with reference to the ultimate principle and applies to the same principle in difficult and conflicting cases.

After taking into consideration the different views on the justifiability of disobeying unjust laws, we can agree with Mill in maintaining that the rightness and wrongness of actions should be determined by the principle of utility. Rawls in this context rightly contends that laws should be violated only if the consequences following from their violation are better than those resulting from their non-violation. Hume points out that when a law becomes perverse and goes contrary to the interests of society it loses its authority. The ultimate end of legislation is the common good and thus laws should be administered from the standpoint of the general welfare of mankind. Mill does not invoke the theory of natural rights to justify civil disobedience. If laws are beneficial for some and deprive
others of their benefits and legal rights, they cannot be regarded as just. Laws should be identical for all because they all laws aim at equal protection of life and rights of every body. As Hobhouse puts it: It means equal protection of life, limb for everyone under the law and equal penalties on everyone violating them. Law also recognizes special relations with special obligations. It may give special rights to some and may impose special duties on some others. But generally special obligations are developed by their application, keeping in view the requirements of general good.

But if just laws are violated, then the person or the group of persons who violates it must be punished, because the violation of a just law may deprive some people of their rights. Mill claims that the idea of justice is closely connected with the desire to punish those who infringe a rule or a law or harm others. There are different views regarding the idea of punishment, some would maintain that it is unjust to punish anyone for the sake of others; others would say that the punishment is just if it is for the good of the offenders; yet others may believe that it is altogether unjust to punish people for their offences.

Mill finds it difficult to refute all these reasonings and even sees a lot of plausibility in them.
he says that even if legitimacy of inflicting pain is admitted, there will be many divergent views regarding apportionment of punishment. No fixed rules can be set up in this connection. Some would suggest the principle of an eye for an eye and a tooth for a tooth. Some would say that punishment should be in proportion to the offence meaning that it should be exactly measured by the moral guilt of a culprit. Some others would maintain that punishment has a deterrent function and it has nothing to do with the question of justice. However, the problem remains: how is one to choose from such different alternatives? According to Mill the utility principle alone can help us in taking a decision.

Mill rightly bases his idea of punishment on the principle of 'evil for evil'. The practice of this maxim has value and justifies the use of punishment. The idea of punishment has an important place in Mill's thought because it is concerned with the welfare and distress of people. If people are not prevented from harming others the general welfare of people is affected. Mill's view regarding punishment and rewards implies a claim to equality of welfare and therefore is quite intelligible and sufficient warrant for inflicting punishment.

Mill says that it is universally accepted as just that each should get what he deserves. Likewise, it is
unjust to out-in good or evil which he does not deserve. The principle of good for good, according to him, is a real principle. He asserts that if a person accepts a benefit and denies a return to the person concerned he is unjust for he disappoints and hurts the person. The evil conduct deserves an evil return.24 Rewarding good for good leads to social good for it provides stimulus to the right and good efforts of people. Mill says that withholding of good from a deserving person is wrong and it excites a feeling of resentment both in the person deprived of that good and in others who sympathize with him. The idea of justice, therefore, includes the principle of good for good and evil for evil. According to him the feeling of ingratitude inflicts a real hurt but even the disappointment in regard to some expectation in hurtful.

Are all our ideas of justice born of resentment against the wrong done to others with whom we sympathize as claimed by Mill? Sometimes punishment for a certain immoral act may be given to a person not in the name of justice but for other reasons. For example, a father may penalize his child because he does not like his child to do a certain thing. Similarly enemies may punish only out of malice. Both these examples show that punishment is given for reasons other than justice. In the first
example, a father has a sympathetic attitude towards his child and in the second case such an attitude is absent and it is an expression of vengeance and has nothing moral about it because moralization depends on the subordination of the desire for punishment to social sympathy.

In this context, Mill is criticized for laying too much stress on the animal desire to take revenge on those who hurt us or hurt those with whom we sympathize. It is argued that justice is not concerned with wrong and harmful actions alone but also with rewards. If Mill is right, then W. Kaufmann argues that the sense of injustice would become primary. He writes:

"Fulfilling some reasonable expectation would not be felt to be just; but failing to fulfill it would be felt to be unjust and arouse resentment. While it would not be sufficient to multiply examples in which we have no doubt that an injustice has been done although we should not be able to specify any distribution on punishment that would be just, Mill's claim that the origin of justice lies in resentment is not backed up by any good argument or evidence and ought to be rejected." 25

He says that it is not necessary that the individual should retaliate in all cases. For example, when punishment of an offender is deferred or postponed, one may be anxious about it but his feeling of resentment may not be aroused. Similarly when a reward is not given to a deserving person, the feeling of resentment may not
be aroused in the case of wrong acts. It is not necessary that the feeling of resentment should be aroused because of the feeling of sympathy towards the harmed person. Moreover, society does not allow free outlet to people's feelings of aggression and hatred. Thus, there is no necessary connection between the feeling of resentment, the feeling of sympathy and the feeling of justice.

According to Mill, the natural impulse to retaliate is moralized when combined with the utility principle and it is concerned with those cases where the injury is to others and to society at large. Retaliative justice serves as a useful deterrent. There is a mutual obligation on people to respect and protect one another's interests and claims. We are justified in attacking the interests of others when they attack ours or of the society at large.

If the obligation to punish arises from utility, then it may be argued that it is not the pain of punishment or the pleasure of reward that will help in warding off public harm or furthering public welfare. People should be properly guided and instructed to make themselves useful to society. For instance, Raphael here points out that when we say that a deserves punishment, it is identical neither with 'someone ought to punish A' nor with the 'punishing of A will be useful'. The idea of desert is a connecting link between past actions and
the consequent reward or punishment. The function of
punishment is not only to punish the guilty but also to
protect the innocent.

It may also be pointed out that sometimes it is
expedient that an innocent person, supposed to be
responsible for some punishable act, should be hanged
or sacrificed for the sake of utility. But is it right
and just to punish an innocent person for the sake of
utility? Our common sense immediately protests against
the injustice done to the innocent man. We would say
that a person should be punished only if he deserves it.
If the pain is inflicted for the sake of utility it may
be expedient but not just. Punishing an innocent person
may be conducive to social utility, yet it is a highly
unjust and immoral act for it will violate the principle
of "each should be treated as an end and each is to count
as one". In this context Rawls observes that sacrifices
made for the sake of utility may be unjust because the
interest not even of one should be sacrificed. If some
individuals are sacrificed for the sake of the greatest
number, it implies that they are treated as means and
not as ends in themselves.

Thus, we can conclude that punishment can be
justified only if a person deserves it and it should be
in proportion to the offence committed. It is true that
we cannot think of absolute justice. For example, let us suppose, that A loses his eyesight in an accident for which B is responsible. Now, if A gets compensation and B is punished for his offence, A will still cry and feel for his eyesight. No amount of compensation can bring his eyesight back. He cannot get full justice. And a search for absolute justice is futile. A can never be free of the pain that he is blind.

According to Mill, the sense of justice which is rooted in the desire to punish the wrong doer is a spontaneous outgrowth from the feeling of self-defence and of sympathy. The sense of justice derives its value by transcending utility. This is made clear when Mill discusses the origin of justice. He asserts that there are two ingredients of the sentiment of justice, namely, the desire to punish the wrong doer who has done some harm to others and the knowledge that the harm is done to some definite individual or individuals. The impulse of self defence and the feeling of sympathy are natural feelings. It is natural to resent or retaliate if any harm is done against ourselves or against those with whom we sympathize. The feeling of justice is a peculiar feeling and distinct from the qualities of other sensations of colour, taste etc.

However, Mill stresses the moralized feeling of
justice rather than the natural feeling of justice. He says that people are capable of sympathizing with other human beings. The desire to punish the person who has done harm to others arises even when we are not directly involved in it. Because an individual, endowed as he is with intelligence, finds a close link between his own interests and those of the community of which he is a member. Intelligence and feeling of sympathy for others help us to transcend the purely self-regarding feeling. In other words, intelligence grounded in the feeling of sympathy enables a man to see a relationship between his own interests and those of others and to identify himself with the collective ideas of his country, tribe, society and mankind.

If an individual resents what is disagreeable to him in self interest, his feeling of justice is natural but the natural feeling of justice has nothing moral in it. It should be modified and moralized by social feeling. Regarding Socialization of the feelings, it has been remarked that in Mill's moral philosophy:

"Such modifications of feeling had a natural basis in sympathy and relied upon the conscience and the love of approbation which, in themselves, indicated no general lines of conduct or truths applicable to all cases."

(Italics mine)

According to Mill, therefore, the origin of the
sense of justice is psychological in nature. It is
social utility which transforms Proto justice into justice
as a virtue.

In this connection Sidgwick points out that the
feeling of justice is not merely a social feeling as is
claimed by Mill. He argues that moral judgements are
more than feelings and cognitive in nature because otherwise
two persons could differ in their judgements without
either ever being in error. But moral judgements are
universal and it is unreasonable not to do their bidding. It
is practical reason that guides what is to be done
and what ought to be done.

Sidgwick’s criticism does not seem to be well
placed. It is true that we cannot distinguish between
what is right and what is wrong, between what is just and
unjust by eliminating the role of reason. The basis of
the distinction cannot be a matter of attitudes and
feelings alone, for the distinction between morally right
and wrong is just the difference between what is socially
useful and the socially pernicious and these are cognitive
conceptions. Social perniciousness implies that which
jeopardizes the security of the society and that which
causes harm, suffering and pain to others. The role
of cognition is not denied by Mill for he emphasizes
the fact that the feeling of justice should be enlightened.
and controlled by reason and intelligence. Further, this becomes clear when Mill regards all moral judgements as universal judgements except in cases of social expediency.

Before Mill, Hume had tried to explore the origin of justice. Hume contends that morals cannot be derived from reason and nature because these arise artificially from conventions and education. Justice being an artificial virtue owes its origin to convention and not to reason or to self-interest or to benevolence. Justice is a natural motive only in the sense "that our approval of justice is the inevitable reaction of a being who is both rational enough to consider the remote consequences of acts and benevolent enough to approve of human happiness." It is not always in conformity with either one's own self interest or public interest. If this is true, then justice must have origin in some artifice whose advantages we learn. He argues that if the feeling of justice were natural to men, then there would have been no problem, for there would have been justice everywhere. Hume maintains that the need of justice arises because of the selfish nature of men. He asserts that whenever there is scarcity of material goods men want to have more and more for themselves and their families, and this tendency poses a threat to the peaceful life of others. The problem can be overcome by regulating
the possession of material goods. This is possible if all the members of society enter into convention to bestow stability on the possession of material goods. Justice thus has its origin in a kind of agreement or convention related with the distribution of property, for Hume says in this connection, convention is only a general sense of common interest which induces them to regulate their conduct by certain rules. In like manner are human beings established by human conventions without any promise. According to him if everything is available in plenty, the question of justice would not arise, just as, if there is no property, no disputes will arise. Property implies goods, whose possession is defined by laws of society and laws of justice. It is through laws that possessions are changed into property.

Both Mill and Hume speak of sympathy and its role in the origin of justice. But their arguments are not the same. Mill combines both selfish and unselfish feelings in the explanation of the generation of the sense of justice. Intelligence enables us to know that by defending others, ultimately we defend ourselves. Mill does not connect justice with property or possessions and distribution of goods alone. His concept of justice also embraces the problems related to one's freedom and anything which belongs to an individual by law. This
sense of justice is rooted in the principle of sympathy which is moralized by social feeling and intelligence.

Mill connects his idea of justice also with keeping one's faith. He says it is unjust to break a promise or an engagement whether expressed or implied. Again Mill leaves a margin for exceptions and says that the obligation to keep faith is not an absolute obligation and can be overruled by a stronger obligation of justice which may be conducive to utility. Many thinkers would agree with this statement of Mill about promise keeping. For example, Rawls contends that promises create obligations. It is an accepted practice and once we make a promise we must keep it. There is an imperative connection between promise keeping and the obligation of promise keeping. Promise breaking cannot be universalized; if promises are not kept, the practice of promise keeping would lose its significance and value. Hume too maintains that promises should be kept; if a person refuses to perform what he promised, he will never be trusted. Promises give a kind of guarantee that a particular thing will be done. For Hume promise keeping is a conventional virtue and he offers the same argument as in the case of property.

If Ross regards promise keeping as a prima facie duty, he says when an ordinary man fulfills his promise,
he does so because he thinks that he ought to do so without considering its consequences. Alf Ross recognizes the fundamental character of these prima facie duties. There an individual think he ought to do something, there is always one of these general principles which calls for the action. The utilitarians do not deny this but they insist that we do so because by doing it we shall actually produce the greater amount of good since the principle of promise keeping is one of those principles which, like the principle against murder, theft and not paying one's debt, have been found to be good for the society. It is not the single act which has to be taken into consideration but the class of such actions. Even general security demands that promises should be kept. The community as a whole will feel confident that people will pay their debts, keep their promises etc.

'All cases of injustice, whether pertaining to breaking promises, violating a law or taking away one's property or freedom, should be treated impartially. No two cases are exactly alike or occur in identical circumstances. Therefore each case should be dealt with on its merits and with impartiality. Partiality is inconsistent with the idea of justice.' Mill contends that the rules of justice are different from moral rules in the sense that the requirements laid down by the rules of justice considered collectively occupy a higher place.
in the scale of utility. In peculiar and problematic situation we should refer to the principle of utility instead of moral rules which are derived from the ultimate principle. Favours and preferences are inconsistent with the idea of justice except in cases where differential treatment is required by expediency and utility. Mill says that impartiality is not a duty in itself, but is necessary to safeguard other duties. Partiality is unjust because it leads to exploitation, profiteering etc. The idea of impartiality is an absolute obligation of justice which ought to influence particular cases.

Mill's view regarding impartiality seems to be similar to Kant's Categorical Imperative. Kant gives a clear imperative treat every rational being including yourself always as an end and never as a means, and a principle of ethical conduct is morally binding on me if and only if I can regard it as a law which I impose on myself. We should avoid such actions which we are not prepared to accept from others. Each belongs to the same moral community and thus stands on the same footing. On a careful analysis we find that although both Kant and Mill insist on impartial treatment, their principles are not identical. Mill's principle of impartiality is a qualified principle for it has reference to the ultimate principle of utility.
Impartiality is an attitude which applies to the principle of utility honestly and authentically. All moral rules entail impartiality which trains the attitude of people. It is relevant and true of all systems of justice. Whereas in Kant's theory, impartiality is an unqualified principle. It is a categorical imperative, a command which admits of no exceptions and thus is more rigid and inflexible as compared to Mill's principle. Mill lays emphasis on the end of happiness and his approach is teleological. According to Kant, actions done for the sake of some purpose or end cannot be called moral actions. A moral action is not a conditional action. As such, we find that Mill and Kant, though they have some affinity of principles with each other, disagree on the related aspects of morality. However much personal and intimate the situation may be, justice calls for objectivity in one's attitude.

The idea of impartiality leads us to the idea of equality. Mill asserts that the idea of equality is embedded in the very meaning of justice. The notion of equality which is the essence of justice enters in the practice of justice. Mill writes:

"But in this, still more than in any other case, the notion of justice varies in different persons, and always conforms in its variations to their notion of utility... The justice of giving equal protection to the right of all is maintained by those who support the most..."
They argue that all rules by definition entail a measure of equality. A rule has to be obeyed equally by all who fall under it. To enforce a rule is to promote equality of behaviour. A similar view is expressed by Alan Gewirth:

"... for rules are general prescriptions as to how to treat people, and all cases falling under the rules ought to be treated in the same way."43

Kant contends that if people think that inequalities in rank are required by the dictates of justice then they do not regard the uneven distribution of riches and social privileges to be unjust. He further says that if people feel that government is necessary to attain the end of utility, they find no injustice in as much inequality as is constituted by giving more powers to the magistrate than to others. According to Kant, no matter how much we believe in equality, we cannot regard it as an absolute principle because men are not endowed with equal gifts of nature. But if individual differences cannot be denied, would we then be justified in treating everybody equally? A similar view is held by Rawls who warns that egalitarian considerations should not go to the extent of eliminating inequalities of intelligence or reducing them to the minimum.
In this context, it may be argued that there is something peculiar and common to human beings which lies far deeper than all irrelevant differences between them. It may be called soul, reason, the physical capacity for suffering or just human nature which is something generic of which there may be many specific and quantitative differences but which underlies and embraces them all. But the problem with such a view is that the so-called generic qualities may differ from person to person in degree and extent. Individuals may differ from each other in their rational capacities; therefore, such qualities can hardly be regarded as the proper grounds for treating them equally.

The concept of equality seems to have two meanings, one refers to a moral ideal and the other is related to the notion of likeness or identity. It implies on the one hand that we seek justice and on the other that we seek identity. These two meanings may be stated as equality of justice, and equality of sameness. Equality is a condition of freedom. The principle of uniformity is neither identical with nor a condition to liberty but a hindrance to it. If men are equal, they are equally free as well. A society that adopts the principle of equality has to show respect to each person. It is on the other hand a society accepts the principle of uniformity,
it has to suppress all individuals who do not conform to the same pattern.

However, there is a difference between identical and equal treatment. All rightly holds that we cannot expect identical treatment. An identical treatment can be justified neither by morality nor by justice. He raises a question in this regard and says:

"In a co-operative industrial association, is it just or not that talent or skill should give a title to superior remuneration? ... whoever does the best he can, deserves equally well, and ought not in justice to be put in a position of inferiority for no fault of his own." 46

Thus, treating people equally does not imply absolute equality of treatment in all respects. It has been equated with treating them similarly. For example, if society is allotting musical instruments to C and D, and C prefers a banjo and D a guitar; if society gives C a banjo and D a guitar, it is treating them differently but equally. 47 Thus, if justice is equal treatment of all men, then it is treatment which is equal in this sense. Here the idea of equality which is built into the concept of justice does not imply identical treatment; rather it is a notion of various connotations and shades. 48 Equality understood in this sense implies that equal consideration should be given to all.
Mill rightly contends that society need not respect irrelevant differences among people such as race, color, sex, which have little or no effect on the good life of those concerned. All have a right to equality of treatment, and should be treated if equally just because they have black skin and they belong to some particular race. Mill while advocating equality of sexes asserts that legal subordination of one to the other is wrong in itself. He points out that the discrimination resting on such alleged inferiorities is unfounded on ill-grounded and therefore cannot be justified. Whatever criterion we accept, it should be applicable to both men and women, negroes and whites, jews and non-jews etc. Whether individual differences do exist, can any body assert that one kind is superior to another? This is not possible except on one condition, namely that certain traits are demonstrably related to the better performance of certain functions.

To take up Mill's example: if women work equally like men they should be given equal wages. Differential treatment should be based on one's performance and not on sex. According to Mill, by equality we mean that no one should be entitled to enjoy a better position than another unless there is some special circumstance which makes one more deserving than another.
here, it becomes necessary for my society to
determine what similarities and what differences are
relevant for differential treatment. For example, some
would think that a husband deserves more than his wife.
Some others would find slave owning society quite
compatible with the principle of justice. 222 It also
failed to prove that Jews were inferior to non-Jews by
excluding biological and ethnological evidences. However,
such views are not sound on moral grounds, we do not
consider being master or being a husband or a non-Jew
as a relevant quality which can make one person more
deserving than another. No person is so much less valuable
that he should become a slave of another. We would agree
with Mill who stands for the freedom of all and asserts
that society need not respect such irrelevant differences.
Mill and Bentham rightly hold that slave owning society
cannot be recorded for just for it would violate the
principle of freedom of all and ultimately it will affect
the attainment of the end of happiness. But according
to Mill, devereux's attitude seems to lack moral concern
on this issue. He speaks of inconveniences but not
about their rights and injustice done to them on
humanitarian grounds. 20

Mill would agree with Mill in asserting that
inequalities are rudimentary and inequality can be justified
on sufficient grounds. Inequality can be regarded as just, if people are better off than they would be without it, but Rawls differs from Mill in maintaining that inequalities can be justified on utilitarian grounds. He writes:

"Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all."51

The liberty and rights of none who are affected by the rules should be sacrificed even for utilitarian reasons. He criticizes utilitarians by saying that their thinking is erroneous in considering the utility of slavery as relevant to questions about justice. He contends that in special circumstances slavery may be just if it is mutually accepted by all people.52 Paul A. Taylor holds the same opinion and says that for any ground of differential treatment to be justifiable the difference must be relevant and acknowledged as such by all those whose interests are affected by the differential treatment. Like Rawls he calls this principle as the principle of mutual acknowledgement. And this principle pertains to the very core of social justice since it serves to justify the criterion of relevant difference.53

But is Rawls’ argument adequate for maintaining that slavery may be just in a particular situation? Rawls’
concept of justice rests on the principle of mutual acknowledgment. If people, with conflicting interests, freely acknowledge a set of rules for differential treatment then it is justified. We cannot accept Rawls’ view of justice for it violates our sense of justice which depends upon our conception of ourselves as moral beings possessing certain fundamental rights. Practice of slavery cannot be recorded as just, even if it is based on the principle of mutual acknowledgement, in any circumstances for it violates the principle that each should be respected in his own right. It is true that Mill gives utilitarian justification for the abolition of slavery but at the same time he recognizes that each is to be counted as one and the infringement of this is unjust. Moreover the principle of mutual acknowledgement does not seem to hold good in all cases for it is a very general and a very wide principle. For example, we would never be able to justify punishment to any one no matter what the nature of crime is because it will violate his interest and the criminal would never consent to be punished. Punishment for crime can be justified if there are relevant reasons for the difference of treatment, however, it seems to me that Rawls and Paul Taylor have failed to point as to when this principle is in order and when it is not.
The above discussion shows that the same practice may be found just in one society and unjust in another. This implies that there can be different conceptions of equal treatment based on the meaning attached to the word relevance. There is a lot of controversy regarding the question of relevance in connection with differential treatment. Some thinkers suggest that the relevant grounds for differential treatment will depend on the outlook and the scale of values of different persons and the aims of a given enterprise, in terms of which general principles can attain any degree of significance both in theory and in practice. Another view is held by Benm and Peters who assert that we can only formulate principles of procedure, namely, that particular distinctions must be sanctioned by rules, and that criteria enshrined in rules must be ultimately justified in terms of the generally beneficent consequences of adopting and maintaining them. Benm and Peters would agree with Mill and say that we have to decide relevant and irrelevant factors on utilitarian grounds:

It may be further argued that to say that a certain consideration is relevant to a moral issue would amount to say that it is to make an evaluative judgement. To state that a consideration is relevant or irrelevant to a certain moral question is, itself to commit oneself to a certain kind of moral principle. Yet another thinker
suggests that the context-dependent use of equality implies that the principle is particularized in a given context and the criterion of relevance for differential treatment is specified. Thus, in this case, the context and circumstances are instrumentally related to the questions of differential treatment. The criterion of relevance here is based on human needs and it is justified on utilitarian grounds. If we accept this view then the doctrine may be criticized as being too lax because in such a case every body will be able to act according to his own ideas whether moral or immoral without violating the principle since it is possible to show a special circumstance for every case.

Differential treatment may be justified according to Hare, on the principle of universalizability. If a social policy or practice violates the interests of some then we must ask 'can I honestly prescribe this act to be universally accepted or in Kantian language 'can I will it to become a universal law'. This principle gives an equal consideration to each. And if two persons are to be treated differently there must be some ground for this moral judgement and this is a corollary of the requirement of universalizability. But again Hare has failed to tell us what kind of reason would qualify as a justifying ground for differential treatment.
derives the criterion from the universalizability principle but this is merely a formal principle.\textsuperscript{62}

Mill would agree with Hare in asserting that our judgments and differential treatments should be based on universalizability principle. This becomes clear when he accepts the dictum of Bentham, i.e., 'each is to count as one'. This shows that he appeals to the demands of universalizability. Apart from all these factors, differential treatment should be based on the principle of utility. We should take into consideration the happiness of all concerned. Since men differ in their capabilities and capacities, they should be treated and awarded accordingly.

This shows that justice in a utilitarian sense is a distributive notion. According to Mill, rewards and punishments should be given in proportion to one's merit, energy and skill. Earlier a similar idea was expressed in the thought of Aristotle who says that justice consists in equality of proportion between persons and things assigned to them.\textsuperscript{63} He suggests that the principle of proportionate equality should take into consideration dignity, desert and merit. He uses the principle of distributive justice to regulate the allocation of honours, offices etc. among people.

Mill rightly observes that the requirements of
justice are quite controversial and controversy may rest on issues such as distribution of income, taxation, punishment. For example, he says that wages should be regulated on the basis of skill, responsibility and industriousness. Mill rightly observes that the idea of identical income would kill the feeling of initiative, incentive and industry. It is a natural functional device to give different rewards for differential works and unequal achievements. This method leads to the good of both individual and society, for, individuals need recognition of their abilities and society wants the difficult tasks should be performed. And, thus, differential rewards in proportion to one's merits and deserts are conducive to the general good.

The principle of desert can take two forms i.e. desert according to achievement and desert according to efforts and intentions. For example, A may achieve little in spite of hard work due to inefficiency and B being an efficient person may achieve more with less effort. Who should get more return in the shape of wages? If we accept to pay wages according to one's efforts and intentions ignoring the outward results, it may pose difficulties for an employer. An employer is likely to incur loss if he ignores the inefficiencies of his workers and concentrates merely on their efforts
and intentions. Thus, the principle of paying wages according to desert seems more just as is maintained by utilitarians.

It may be argued that the principle of merit may imply three different possibilities: moral merit, natural talent and exercise of industry. We do assert that it is just to provide opportunities and benefits to those who are blessed by some natural talents to develop themselves for it would be useful both for the individual and the society. We also maintain that we should reward industry and penalize idleness. Industry is rewarded for it is socially useful. Moral merit implies that virtues should be rewarded for moral actions benefit others. The value of rewarding moral virtues lies in their utility.

In this context it may be suggested that the principle of distribution should also be based on the principle of needs because, if the basic needs are not satisfied, it will result in hardship for the people concerned. This principle of needs gives fundamental respect to individual person. It is based on a standard according to which an individual is entitled to get certain things irrespective of merit or desert. For this we must possess a knowledge about the needs and wants of people. We do not imply that all needs have equal importance. Only the fulfilment of basic
needs is important. In any just society needs, merits and performance or work, all three, occupy an important place in deciding about the problem of distribution. Special treatment may be justified in certain cases to achieve a certain minimum standard.

Morality in any case has to do with the proper regulation of community life and it has to take care of proper distribution of benefits and disbenefits. However, there is no fixed criterion for the principle of needs. It has to be created and cultivated. Needs should take into consideration one's development. For this, a decision is needed about the goals of both man and society. From this it follows that we must have a vision of what kind of society we want, then only we can fix up a criterion for the principle of needs. But this criterion may differ from society to society.

Differential treatment according to needs is based on the principle of equality. According to all, equality understood in this sense implies that all have a right to equality of treatment. Therefore, equal consideration should be given to all. Not only in the case of distribution of goods but also in the case of merits, offices etc. equal opportunities should be provided. These desired goods like offices, positions of prestige, management, are limited in range and if there is no justice these may be acquired by those who are in a
commanding position and power. Moreover to reach such positions, educational qualifications are needed and thus, in order to do justice towards all, opportunities to achieve that status and level should be open to all. Such offices should be decided or settled by means of free competition etc. Thus, equality of opportunity is inextricably bound up with the idea of justice and freedom.

Sometimes we may deviate from the principle of equality of opportunity for utilitarian reasons. For example to uplift the downtrodden, preference may be given to them in matters of admissions and jobs etc. It may be argued that such a treatment aims at overcoming age old exploitation of a particular class. But will such preferential treatment help the downtrodden class in the long run? It is an open question. It may seem right that they are provided with say e.g. jobs even when their level of efficiency is not very high. But it is quite possible that what is a concession today may degenerate into a right tomorrow. This may kill initiative and industry in the coming generation and consequently may affect the attainment of the end of happiness. If this is so then what should be the right procedure to improve their lot?

Mill would rightly say that we should bring the downtrodden to a certain level of efficiency by imparting
special training and education. They should be provided with opportunities to develop themselves, the factors which affect one's opportunities to develop oneself should be neutralized. Merit and competition should find a place in the matter of employment. In this context Rawls, like Mill holds that inequalities which affect a man's position in society, his character, his motivation and moral worth should be removed. Once we eliminate the non-moral causes of moral inequalities, men are in a position to express themselves as moral individuals of a free society. It may be just in a free society to distribute prestige, authority power in proportion to one's merit and desert. According to Rawls the positions and offices to which inequalities are attached must be open to all. The power of one person over another must be excluded.

Will's contentions with regard to the nature and analysis of the concept of justice, however, are subject to a number of criticisms. It is pointed out by J.R. Lucas that the notion of equality seems to conflict with the idea of liberty. It is argued that liberty limits equality at the going end. The person who is doing the dealing wants to be free to make his own choices and he is not required to treat similar cases similarly. It is contended that the principle of equality lays down
how we should treat people while liberty gives us right to act as we choose and not as required by certain rules and regulations. Liberty entitles us to make our own decisions and even to act arbitrarily in some cases. Such being the nature of liberty, we can arbitrarily prefer one person to another without being able to justify our preference or discrimination. A person may choose to marry A instead of her sister B whose qualities are equally appealing. Therefore, freedom has an element of inherent unfairness.

but, is there really a conflict between the principle of equality and the principle of freedom? If there is one, then it defeats our purpose, for we have already seen that freedom is necessary to achieve the end of utility. The example cited above does not show any real conflict between liberty and equality. The egalitarians do not go to the extent of demanding that when a person marries he must give equal preference to all. He is free to choose his wife. All that the principle of equality demands is that the freedom of one must not encroach upon the freedom of another. Even if there is a conflict, we must appeal to the principle of utility. The idea of respect which is due to each man that each persons should be treated as an end in himself is reflected in both these principles in the philosophy of utilitarian. In this context, Robert V. Hannaford rightly remarks that
our freedom to act on the hope of fair treatment will be secure only if the members of the community give due respect to each other.72

According to ill, all have a claim to happiness, though it may be conditioned by the actual situations of human life and by considerations of the general welfare in which the interest of every individual is included. Any restriction on this claim (to happiness) should be strictly construed.73 It is the sense of dignity which demands equality of treatment which is recognized by the utility principle. It implies a fair treatment both for oneself and for others. If a person respects his own self as well as that of others, he is more sensitive to justice. In this context, Rawls also contends that the sense of justice constitutes a necessary part of the dignity of a person. He writes:

"... it is this dignity which puts a value upon the person distinct from and logically prior to his capacity for enjoyment and this ability to contribute to the enjoyment of others through the development of his talents."74

Rawls suggests that the idea of reciprocity is central to both fairness and justice, whereas for ill the idea of equality is central to justice. He criticizes utilitarians for ignoring the moral relations which exist among 'morally autonomous persons'. But it may be mentioned here that although Rawls gives importance
to reciprocity, he does not neglect the idea of equality, he contends that justice has to do with the morals and the economic relations which exist among men.

Rawls' concept of justice does not reveal the full meaning of the term justice. The sense of justice does not consist of reciprocity and fairness alone; it must pay attention to the needs of people. Mill's principle reveals this aspect of justice. According to Mill, the outcome of institutions and institutional practices must be judged with reference to the utilitarian principle. We must consider human satisfactions. All our practices should aim at maximization of satisfaction and this is not possible without taking into account the needs of people. For Rawls, on the one hand, there is a mutual acknowledgement of principle or rule or practices, and on the other, justice is connected with fairness in practices and relationships where there is no option. Thus, Rawls distinguishes between two kinds of practices, voluntary and those which are authoritatively established.

In this context it has been rightly pointed out that justice and fairness seem equally applicable to distribution of wealth or incomes, which involves voluntary as well as non-voluntary practices. In judgments pertaining to equality of treatment that have a finality
and are complex and comprehensive and require consideration of diverse claims, justice seems to find an important place. Fairness seems to be most applicable where a process or ongoing activity is in question and least applicable in matters pertaining to disparate and competitive claims. A linguistic analysis suggests that the distinction between justice and fairness is less closely clear cut than Rawls' interpretation would permit. Therefore, it seems that justice has to do with both equality of treatment and fairness. Both these are important in evaluating whether the institutions and practices are just or unjust. Justice should take into account both fairness and equality. Dorothy M. Emmet too maintains that the essence of justice does not lie in the application of certain rules and regulations irrespective of the concrete uniqueness of the individuals concerned, but in a respect for moral personality shown through the impartial judgement of each individual claim in relation to others, in the light of such general principles as may be the most equitable of all that have so far been distinguished.

However, it seems that Mill gives the same status to a man as is given by Kant. But the difference lies in the acceptance of the fundamental principle. According to Mill man is not given the first place though he is
considered as an end in himself; for the ultimate principle is the principle of utility. Whereas, for the Kantian doctrine the personality of man is considered to be as the fundamental and ultimate being possessing transcendental characterisation of being a rational being endowed with a free will which are not owed to him on account of some empirical characteristics that he may possess.

But an objection can be raised against such a view i.e. such a transcendental concept of man does not provide any solid foundation for the idea of equality among men or of equality of respect owed to them. Each person being a moral agent must be responsible for his actions and when the question of responsibility is raised, empirical considerations become relevant to evaluate his actions. Thus, we can say that the respect due to each man should be given to him; he must be recognized as an end in himself grounded on the principle of utility.

Mill's idea of equality which is embedded in the idea of justice can be reduced to utility. According to him justice grounded on utility is the main binding part of morality. It is impartial administration of rules founded on expediency. These rules of justice imply a more absolute obligation in comparison with other moral rules for guiding ourselves. The rules which forbid
us to hurt or harm one another are more important to the welfare of people than any other rules. They determine the social feeling of mankind and help to maintain peace. Thus justice still remains an appropriate name for social utilities.

Mill contends that generally people think that justice is opposed to expediency but actually the dictates of justice coincide with general cases of expediency. He says although it is true that all cases of justice are cases of expediency, but its converse is not true. All cases of expediency are not cases of justice. Some cases may lack the natural feeling of resentment which is moralized by the demands of social good. He admits that justice and expediency are not identical but at the same time he asserts that the relation between the two is not that of opposition. Mill claims that although there are different opinions regarding the claims of justice and individual expediency, yet the expediency which forms the ultimate criterion is not personal expediency but social or public expediency.

Mill further points out that there are always different opinions regarding what is just and what is useful to society. Utility is different from usefulness. He says that there are a number of different notions of justice which may seem compelling not only to different
nations but also to the same nation. Many thinkers would agree with Mill's relativism of this kind. The problem of conflict implies that there are certain things which are useful to society and certain others which are not. The concept of utility and usefulness to society are not ambiguous concepts. He equates utility with the greatest happiness principle and not with usefulness.

Thus far, we have seen what Mill's views are regarding the meaning and nature of justice which is grounded in the principle of utility. Mill's concern for the dignity of man, leads him on to the formulation of the idea of equality which must transcend the limitations of sex, caste, race etc. His vision of the ideal of social good and happiness of all makes him a true humanist and a lover of mankind.

However, Mill's chief contentions regarding justice and equality can be evaluated only in the context of alternative ideologies of freedom, equality, justice etc. And any fruitful study of Mill's socio-political philosophy seeking ethical foundations of the same, can only realize its purpose if it is assessed in the context of historically conditioned socio-political reality which encompasses it and gives it meaning. This perspective becomes the focus of our attention in our next and the last chapter of the present work.
Actions of persons can be called unjust only if the rights of others are affected, e.g., if a person notices two men struggling for their lives in water and on the verge of
getting drowned, all that he can do is to the 
rescue of one while letting the other to be 
drowned. Though each has the right to his help, 
but he is not able to help them both. Therefore, 
the question of just or unjust does not apply 
here. He cannot be said to be just to one he 
saves and unjust to other who gets drowned.

G. Vlastos, "Justice and Equality", In: Social 

15. Ibid., p. 43-44.
16. Ibid., p. 40.
17. Ibid., p. 40.
18. Ibid., p. 102.


Rawls' position is based on a distinction between the two concepts of rules, the summary concept and the practice concept. These two concepts correspond to two types of rules found in legal and moral practice, but Rawls contends that the summary concept dominates philosophical discussion of rules and is regularly and improperly used in analyzing practice type rules. He prefers the practice concept and says that rules define and practice, and the practice of any rule is justified if it is conducive to the general welfare of the people concerned.


37. W.D. Ross, Right and Good, pp. 33 and 97.


42. Ibid., p. 42.
Bentham favours abolition of slavery because he believes that a slave produces less than a free man, for it is not his work and consequently he is indolent and slothful. Slaves have never chosen their condition from free choices rather it is always an object of aversions. But we may ask: is it not possible that slaves can produce more, though not of their own will, but by being compelled under painful conditions? As such there is no necessary connection between being a slave and producing less than a free man.

This assertion of Rawls refers to the members of a society who are used to killing captives of war. If the people of such a society mutually accept to substitute the practice of killing war captives for enslaving their prisoners then the practice of slavery is not unjust.


And, he says that what is relevant and what is
not relevant depends upon the particular right which is in question. E.g., in the case of economic rights, needs, one's performance of the job he is assigned to, are important. In the case of educational rights, the factors of intelligent interests become relevant.

59. Blackstone distinguishes between the 'context independent', and the 'context dependent' concept of equality. Context independent use of the term equality implies that we treat similar cases alike. People are not given special consideration on any condition, but this view may be criticized as too rigid.


60. R.M. Hare, Freedom and Reason, p. 118.

61. For example, a racist would say that Blacks should not be allowed to eat in a restaurant, go to certain schools, live in certain areas and get certain jobs. Even if a racist is asked to imagine himself in such a situation, he may find such a treatment quite justified. Even after stepping into the shoes of others, he may still not change his mind. Appeal to the principle of universalizability may not appeal to him. Hare would call such people
fanatic. "The fanatic is anyone who believes it is right, or even that it is his duty to frustrate the interests of others in order to maintain an ideal of his own". But calling such people fanatic does not provide us with any logic of such a position.


63. But according to Aristotle the criterion of differential treatment is that equals should be treated equally and unequals unequally. But the problem is how to decide which cases are alike and which are different? No two cases are exactly alike. What is the criterion for comparing the treatment of those cases, whose justice it is in question? Aristotle's principle being a formal one does not provide us with any criterion of justice. What is just and what is unjust is not explained to us by this principle.


