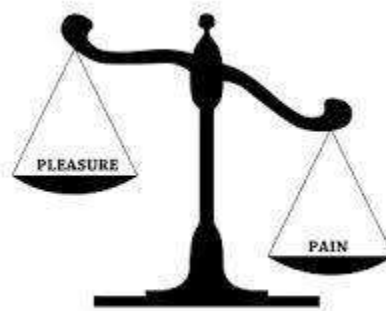


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“APPLICABILITY OF DOCTRINE OF PAIN AND PLEASURE UNDER INDIAN LEGAL SYSTEM”



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ABSTRACT:

Utilitarianism is a theory in normative ethics which tends to promote moral actions that maximize utility. Utility defines not only the happiness of the performer of the deed but also that of every individual affected by it. It is a form of consequentialism, where the consequences of an action are of moral importance. "GREATEST HAPPINESS FOR GREATEST NUMBER" as propounded by Bentham forms a foundation stone of various legal systems around the world where the term "Happiness" he means the paramountcy of pleasure over pain. So, in every legal system, the government aims to promote the happiness of the maximum number of people and afford protection against pain. Thus pleasure and pain are the ultimate standards on which the law should be judged. In light of the theory of utilitarianism, this paper highlights the contemporary scenario of the Indian legal system with special reference to various legislations, policies and judicial pronouncements.



1. THEORY OF UTILITARIANISM:

Bentham being an individualist believed that the function of law is to emancipate individuals from the bondage and restraint upon his freedom. He supported the economic principle of "laissez faire" which means minimum interference of the state in the economic activities of

individuals. According to this theory the right aim of the legislation is carrying out the principle of utility, in other words, the proper end of every law is a promotion of greatest happiness of the greatest number. Bentham defines "utility" as property or tendency of a thing to prevent some evil or procure some good.¹

Bentham proceeded from the axiom that nature has placed mankind under the governance of two sovereign masters, pleasure and pain. They alone point out to us what we ought to do, and what we should refrain from doing.²

Bentham supported those laws which guaranteed happiness of society which encourage 4 major goals namely;

1. Subsistence
2. Abundance
3. Equality
4. Security for the citizens

However, among all these heads Bentham puts security on the highest footing as it ensures protection of honor, property, and status of the person. He contended that individual liberty, through a basic branch of security must sometimes yield to consideration of general security.

The utilitarian theory opposes the principle of natural rights and the social contract, they contended that people created a state for their benefit for "maximum welfare for the maximum number." Utilitarians being reformist, encourage the intrusion of

¹ Dr. N.V. Paranjape, Studies in Jurisprudence & Legal Theory 27 (Central law Agency, Allahabad, 9edn., 2019)

² Hume's two essays "Inquiry concerning human understanding" (1748) and "Inquiry concerning and principles of Morals" (1752)

the state in reforming social evils and defective laws for public welfare. Thus they had chosen a middle way between idealism and individualism.



● HEDONISTIC UTILITARIANISM-

The original basis of utilitarianism was hedonism, a psychological theory. As per Hedonism, the main aim of life is the achievement of maximum pleasure. Bentham himself believes that utility was a pleasure and the absence of pain. Suppose it was possible to measure and quantify pleasure and pains. We might then call one unit of pleasure a positive "Hedon" and one unit of pain a negative "Hedon". Maximizing utility than would simply be to maximize the sum of Hedons. When we evaluated legal rules, we would engage in what Bentham called a "Hedonic calculus". Bentham believed that pleasure and pain could be treated as mathematical quantities and weighed against each other through the application of "Hedonistic calculus"³.

John Stuart Mill agreed with Bentham's views regarding utilitarianism which is also called the Doctrine of Hedonism or Theory of Pain and Pleasure. He advocated the Doctrine of utility in terms of pain and pleasure was altruistic rather than egoistic since the ideal was "the Happiness of all concerned".

The several simple pleasures, of which human nature is susceptible, seem to be as follows:

1. The pleasures of sense. 2. The pleasures of wealth. 3. The pleasures of skill. 4. The pleasures of amity. 5. The pleasures of a good name. 6. The pleasures of power. 7. The pleasures of piety. 8. The pleasures of benevolence. 9. The pleasures of malevolence. 10. The pleasures of memory. 11. The pleasures of imagination. 12. The pleasures of expectation. 13. The pleasures are dependent on association. 14. The pleasures of relief.

Several simple pains seem to be as follows: 1. The pains of privation. 2. The pains of the

senses. 3. The pains of awkwardness. 4. The pains of enmity. 5. The pains of an ill name. 6.

The pains of piety. 7. The pains of benevolence. 8. The pains of malevolence. 9. The pains of the memory. 10. The pains of the imagination. 11. The pains of expectation. 12. The pains are dependent on association.

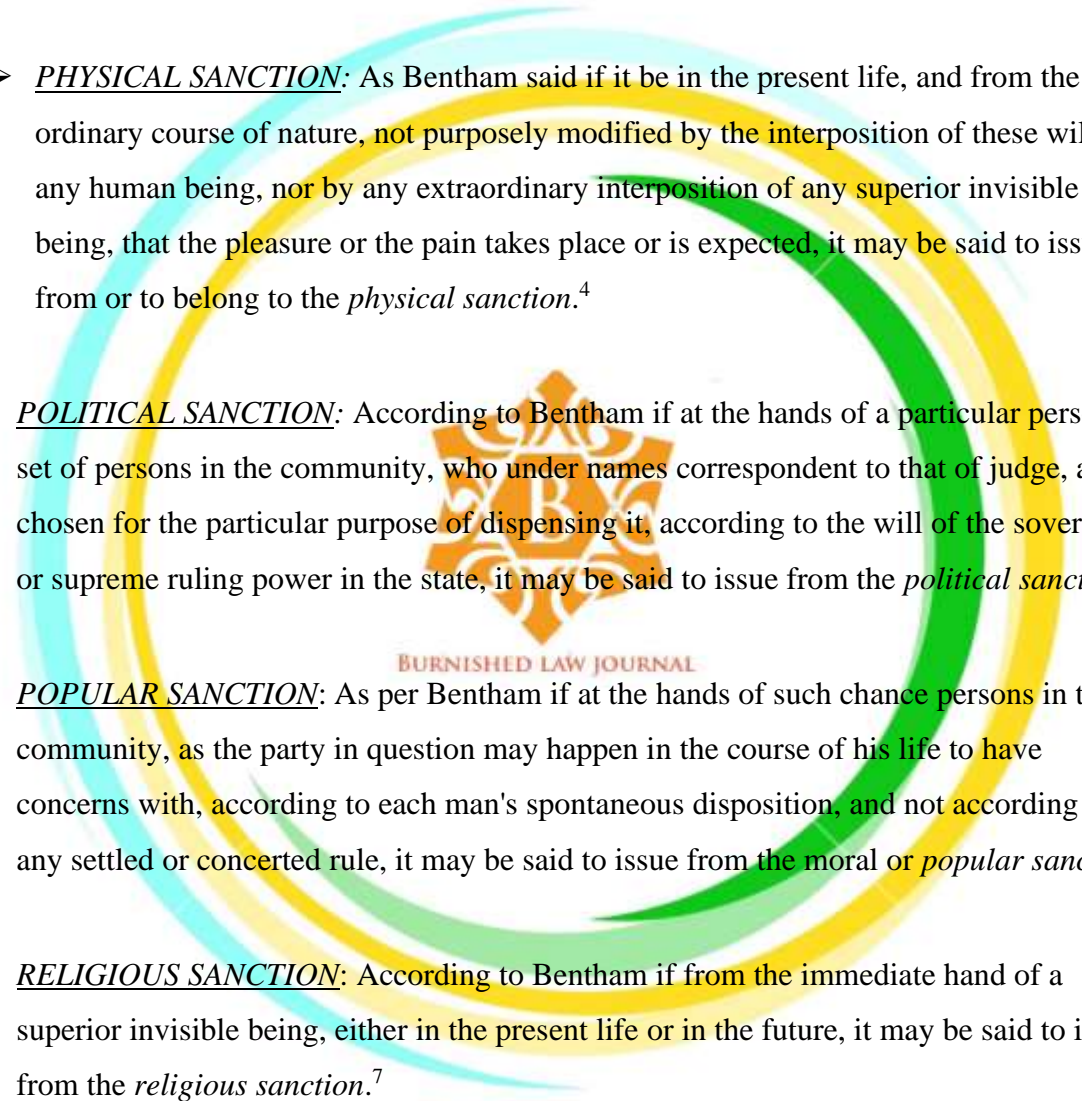
Thus, based on the assumption that individuals seek pleasure and avoid pain

Bentham's utilitarianism perspective forms a guide to moral decision making.

³ Ibid. at 41.

● SANCTIONS OF PAIN AND PLEASURES-

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 since 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 termed *sanctions*.

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- *PHYSICAL SANCTION*: As Bentham said if it be in the present life, and from the ordinary course of nature, not purposely modified by the interposition of these will of any human being, nor by any extraordinary interposition of any superior invisible being, that the pleasure or the pain takes place or is expected, it may be said to issue from or to belong to the *physical sanction*.⁴
 - *POLITICAL SANCTION*: According to Bentham if at the hands of a particular person or set of persons in the community, who under names correspondent to that of judge, are chosen for the particular purpose of dispensing it, according to the will of the sovereign or supreme ruling power in the state, it may be said to issue from the *political sanction*⁵.
 - *POPULAR SANCTION*: As per Bentham if at the hands of such chance persons in the community, as the party in question may happen in the course of his life to have concerns with, according to each man's spontaneous disposition, and not according to any settled or concerted rule, it may be said to issue from the moral or *popular sanction*⁶.
 - *RELIGIOUS SANCTION*: According to Bentham if from the immediate hand of a superior invisible being, either in the present life or in the future, it may be said to issue from the *religious sanction*.⁷

⁴ An Introduction to the Principles of Morals and Legislation, available at <https://www.utilitarianism.com/jeremy-bentham/index.html> (Visited on November 22, 2019)

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

2. APPLICABILITY OF DOCTRINE IN INDIAN LEGAL FRAMEWORK:

"Social welfare" according to Utilitarianism, depends entirely upon the degree of satisfaction and discontent of individuals. Thus if men [read majority] take a precise pleasure in discriminating against each other, in subjugating others to lesser liberty as a method of enhancing their self-regards, then the satisfaction of those wishes should be weighed in our deliberations in keeping with their intensity, or no matter, alongside different desires. If society decides to deny them fulfillment or to suppress them, it's as a result of they tend to be socially harmful and larger welfare is achieved in different ways.

India being a welfare state incorporated the doctrine of pain and pleasure under the Indian legal system to ensure the maximization of pleasure and protection against pain.

So, to better understand the applicability of this doctrine under the Indian legal system, we have further subdivided this project under three heads i.e. legislation, policies, and judicial precedents.

LEGISLATIONS-

The chief aim of every legislation is to promote happiness and to reduce misery. These legislations are frame in a way to protect the major interest of society even if it can be achieved at the cost of particular individual interest. Indian legislations are framed under the shadow of Bentham's doctrine of utilitarianism. Many of these legislations ate discussed below:

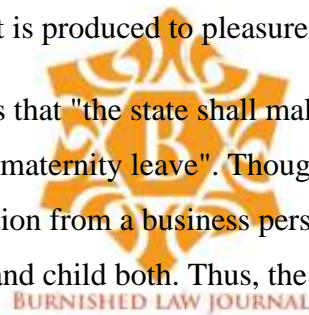
- **CONSTITUTION:** Constitution being a Grundnorm of Indian laws encourages welfare, justice, and equality among people. The provisions of the Indian Constitution incorporate various rights of state and individual but certain rights are not absolute as the constitution itself confines these rights by putting various restrictions in the interest of the general public. For example- Article 14, 21, 16, 15, 39, 38, 41, 42, 51-A, 25, 48, 19 etc.

ARTICLE 15(4) and **ARTICLE 16(4)** of the constitution enable the state and central government to reserve seats in government services and institutions for the members of SC and

ST. the basis of these articles is to remove the age-old caste system and historical injustice with socially and educationally backward classes. Though such provisions seem to be discriminating against others classes and causing pain in the society this pain is much lesser than the pleasure that it provides by uplifting backward classes and enabling them to contribute to national development.

ARTICLE 21: As rightly pointed out by Iyer. J article 21 is a procedural Magna Carta protective of life and liberty. Article 21 states "no person shall be deprived of his life or personal liberty except according to the procedure established by law". Article 21 incorporates the pleasure of a good name, the dignity of any person. A grand step was taken by the court in expanding the scope of article 21 when it argued that "life" in article 21 does not mean merely "animal existence" but living with "human dignity". Some leading cases like Francis Coralie v Administrator, Union Territory of Delhi, Badhua Mukti Morcha v UOI, Chameli Singh v State of UP, etc related to the quality of life that is produced to pleasure in human being.

ARTICLE 42: Article 42 provides that "the state shall make the provision for securing humane condition of work and for maternity leave". Though it may seem arbitrary on gender basis and could arise a tough situation from a business perspective meanwhile it is providing rehabilitation for businesswomen and child both. Thus, the pleasure overlaps the pain.



- **CRIMINAL LAW:** Bentham says that all of these several sorts of pain and pleasure, there is scarce any one who is not liable, one more account than one, to come under the consideration of the law. Thus, all penal laws are based upon the same doctrine by preferring collective interest over individual interests. For example, the pain of piety is the pains that accompany the belief of man being obnoxious to the displeasure of the Supreme Being or the pain of religion. Such pains of religious terrors are secured under section 295 to 298 in IPC. Likewise, the pain of ill repute, the pain of dishonor is protected under IPC and Tort law as defamation. Similarly, by taking account of degrading air quality, stubble burning has been made a crime under Sec 188 of IPC.
- **CIVIL LAW:** Civil law consists of the body of rules to resolve the non-criminal dispute, the dispute can either between individuals or organizations like ordinary issues, private matters, marriage conflicts, etc. This law focuses

more on compensation to



victim rather than giving punishment to the accused. The whole concept of this law is to reduce physical and mental pain on one hand and to increase pleasure by providing compensation on the other hand. For example the law of real estate, business, education, consumer, entertainment, contract, administration, etc. are based on the same doctrine which ensures protection of civilians from any type of breach, unjust, biasness and to provide equal rights and opportunities for all.

Under the civil law Special Marriage Act 1954 which promotes inter-religion marriage, though prima facie it appears to cause the pain of sentiments to people its ultimate aim is the pleasure of unity, cooperation, and tolerance among humans. Similarly recent amendment in Motor Vehicle Act which imposes a fine of Rs 10,000 on blocking any ambulance on the road as well as the concept of "Absolute Liability" depends on maximizing the pleasure of society.

▣ **POLICIES:**

Our country is very vast and complex. Each year numerous government schemes or yojanas are announced that take care of the development and prosperity of the people of our country. Policymaking is a continuous process for social, economic and political development. Thus, government policies increase pleasure by removing the barriers to growth in society.

Few policies have been discussed below:

- **POLICY FOR DIFFERENTLY ABLED PERSONS 2006:** under this policy, the central government recognizes that persons with disabilities are valuable human resources for the country and seeks to create an environment that provides them equal opportunities, protection of their rights and full participation in the society. Various pension schemes have been formulated by the government over the years to reduce the pain of the elderly population and to increase their pleasure in the form of financial and social protection at the outset of their life. For example **Senior Citizen Saving Scheme, Pradhan Mantri Vaya Vandana Yojna, Rashtriya Vayoshri Yojna 2017**, etc.
- **ENVIRONMENT POLICIES-** the Ministry of Environment and Forest made various

effective policies for the protection of flora and fauna, forest and wildlife, control of pollution, afforestation and regeneration of degraded areas. These environment policies restrict human selfishness and greed so to provide ultimate pleasure to the future generation. Some of these policies are National Conservations Strategy and Policy Statement on Environment and Development 1992, National Environment Policy 2006.

❏ **JUDICIAL PRECEDENTS:**

It is a decision of a court used as a source for future decision making. In every judgment, a judge sets out the facts of the case, states the law applicable and provides a decision. It is only the ratio decidendi (legal reasoning or the ground for judicial decision) is binding on lower courts. The decision is based on obiter i.e. reasoning for providing maximum benefit. Bentham utilitarian has been followed by judges in various cases; some of them are listed below:

In *Olga Tellis v Bombay Municipal Corporation*⁸ considered the concept of Benthamite philosophy of hedonist utilitarianism, Chandrachud .J. in Para 1 states that the petitioners from almost half of the population of the city. The fact of such a large number of pavement dwellers in question caused the decision to fall their favor. The principle of utility by Bentham stated that out of various possibilities in a given case one must choose the option that gives the utilitarian principle in terms of pleasure and pain calculus or the hedonistic calculus of Jeremy Bentham.

In *K.S Puttaswamy v Union of India*⁹, Right to privacy has given due recognition as fundamental right after a plethora of cases. As per Article 21 right to privacy includes autonomy over the personal decision, bodily integrity as well as the protection of personal information or we can say right to privacy means the right of a person to be free from any unwarranted interference. Thus this decision curbs the pain of excessive state interference as caused by Government Aadhar Scheme to impart the pleasure of an individual's privacy.

In *Naz Foundation v Government of NCT of Delhi*¹⁰, the Indian Constitution being the cornerstone of the nation ensures equality and liberty of every individual. In above-mentioned case Sec 377 of IPC which criminalizes homosexuality declared unconstitutional and violative of article 14, 15 and 21; and allowed consensual

⁸ AIR 1985 SC 180

⁹ (2017) 10 SCC 1

¹⁰ 160 Delhi law Times 277

sexual activity between two homosexual above 18 years of age. This judgment provides equal rights for people of different sexual orientations and provides huge relief against humiliation at a public place. Though it seems inappropriate in traditional Indian society with changing scenario it works for the pleasure of a large section of society.

3. CONCLUSION:

Today, no doubt Bentham's theory of pleasure and pain has its value and is not only used in the legal system but also the social system. He was a foremost eminent jurist who has discussed the moral and social value of human beings by reason he was called champion of individual liberty. We can see, that all democratic countries are considering Bentham's theory of pleasure and pain, without this concept neither democracy, nor society could run and develop.

According to Jhering a theory (Principle of Pleasure and Pain) which looks upon law as a means for the accomplishment of utilitarian purposes will tend to place great faith in the conscious and systematic activity of legislators, it is not mere chance, but necessary, deeply rooted like law that all thorough reforms of the mode of procedure and positive law may be traced back to legislation.

The main aim of the government is the greatest happiness for the people of the nation. However, the government cannot, by and large, bring about that happiness directly. Instead, it must pursue that ultimate goal indirectly, by pursuing more immediately the four 'subordinate' ends of utility, and these ends are just as universally applicable as the greatest happiness principle.

Which is the base of the doctrine of pleasure and pain?

The greatest happiness is a Universal political principle that should be the aim of government everywhere. This uniformity applies not only at the highest level of generality, but also at the lower level of the subordinate ends of government. Subsistence, abundance. Security, and equally are the four subordinate ends which are universally appropriate for facilitating the greatest happiness.

Our constitutional makers also incorporate Bentham's theory of Utility in the constitution of India and Parliament consider when making policy and enactment. Generally, theory of Utility have supported democracy as a way of making the interest they have argued for the greatest individual liberty compatible with an equal liberty for others on the ground that each individual is generally the best judge of his welfare and they have believed in the possibility and the desirability of progressive social change through peaceful political processes. If we think with a healthy mind this theory arises new ideas, manner, control, solution and reform which ultimately forward the state.

