

Criticisms of Positive Theory in The Light of International Developments

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Abstract: -

In this article, Bentham's concept of pain & pleasure was discussed as well as his elaborated classification of pleasures and pains were also explained. It emphasized that he explained that many kinds of pleasure and pains could only be experienced by creatures who had some kind of complex concepts, thoughts, and beliefs. Bentham's distinction between extra-regarding and self-regarding pains & pleasures were also important, and discussed carefully.¹ He asserted that only benevolent and malevolent pains & pleasures were extra-regarding. Bentham's remarks suggested that his thought on extra-regarding pleasures and pains were taken in the pleasures and pains of others for their own sake, or no instrumentally, but he did not explicitly say this.²

In this article, we were going to discuss the theory of law propounded by the English jurist Jeremy Bentham, which was known by the various names like the theory of Pleasure and Pain, the theory of Utilitarianism, the principle of greatest happiness, the principle of utility, etc. In this article, we would mention what is pleasure and pain theory? what is the principle of utility? what is the doctrine of hedonism? what is Bentham's theory of law? etc.³

Introduction: -

Humans have grappled with the question of good and bad since gaining conscience. The word 'Ethics' is a branch of philosophy which dealt with defining, organizing and recommending concepts of right or wrong conduct. Ethics seeks to define concepts such as justice and crime, virtue and vice and good and evil to aid our understanding of human morality.⁴

Jeremy Bentham was considered as the **father of Utilitarianism**. Bentham was an English philosopher born in 1748 into a family of lawyers and lived during a time of major economic, social & political changes. He was a lawyer, but he never practiced the profession. While he was in the process of joining the profession, he was dissatisfied with the British law and he started thinking of a way to reform the system. **In An Introduction to the Principles of Morals and Legislation** published in 1789, Bentham wrote "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". This formed the starting point of his inquiry and the foundation for his theory.⁵

Utilitarianism: -

Utilitarianism was a species of consequentialism, the general doctrine in ethics that was a type of action that should be evaluated on the basis of their consequences. Utilitarianism and other consequentialist theories were in opposition to egoism, which was the view that each person should pursue his or her own

¹ <https://academic.oup.com/book/45536/chapter/394656171> Last visited on 4th Feb, 2024

² Bentham's An Introduction to the Principles of Morals and Legislation: A Guide
Steven Sverdlik_ Last visited on 4th Feb, 2024

³ www.lawnotes4u.in/benthams-theory-of-law-pleasure-and-pain-utilitarianism last visited on 4th Feb, 2024

⁴ https://legaldesire.com/benthams-utilitarianism-theory-scope-criticisms_ last visited on 4th Feb, 2024

⁵ <https://legaldesire.com/benthams-utilitarianism-theory-scope-criticisms> last visited on 4th Feb, 2024

self-interest, even at the expense of others, and to any ethical theory that regards some actions or types of action as right or wrong independently of their consequences⁶. In normative ethics, a tradition stemming from the late 18th- and 19th-century English philosophers and economists **Jeremy Bentham and John Stuart Mill** according to which an action was right if it tends to promote happiness or pleasure and wrong if it tends to create unhappiness or pain—not just for the performer of the action but for everyone else who also were affected by it.⁷

Utilitarianism differs from ethical theories that made the rightness or wrongness of an action depended upon the motive of the agent. According to the utilitarian, it was possible for the right thing to be done from a bad motive. Utilitarians however, distinguish the aptness of praising or blaming an agent from whether the action was right.⁸

Principle of Hedonistic: -

Bentham advocates the Doctrine of Hedonistic in two forms which were;

- I. “Psychological Hedonism, which means all human actions are motivated by the desire to enjoy pleasure or prevent pain, and that is the only rational aim of human action,**
- II. Ethical Hedonism, which means rightness or wrongness of an action is determined by whether the action creates happiness or unhappiness.”⁹**

The principle of sympathy and antipathy (the feeling of seamless acceptance or rejection for the expected results of action) was not enough to identify the moral of rightness or wrongness of a type of action. In Bentham’s theory, an action confronted the principle of utility was deemed to be right or not wrong, it ought to be done, or it was not the case that it ought not to be done.¹⁰

Philosophical Approach of Hedonism: -

The article was part of an important project on the theories of human action based on pain and pleasure, from Hobbes to Pareto. It was one of the assumptions of this project that what was usually considered as a single hedonistic or sensationalist tradition was in fact the result of very different approaches to the analysis of individual decisions. Some of the differences between these approaches were also discussed by the authors whose aim was to improve hedonistic analysis, and intended to use this analysis to discuss ethical and political problems. The interpretation of human action in terms of pain and pleasure was also criticized by the authors who opposed sensationalist philosophy and its utilitarian implications.¹¹

It was known that many sensationalist philosophers, starting **from Locke and Condillac**, were attracted by political economy and used their analysis of pleasure and pain to highlight the principles of economic science. It could be beneficial to understand the role of different approaches to pleasure and pain had their impact on the formulation of economic theories.

⁶ see deontological ethics

⁷ www.britannica.com/topic/utilitarianism-philosophy last visited on 4th Feb, 2024

⁸ Peter Singer’s Britannica entry on ethics_ last visited on 4th Feb, 2024

⁹ www.lawnotes4u.in/benthams-theory-of-law-pleasure-and-pain-utilitarianism_ last visited on 4th Feb, 2024

¹⁰ www.lawnotes4u.in/benthams-theory-of-law-pleasure-and-pain-utilitarianism last visited on 4th Feb, 2024

¹¹ https://www.researchgate.net/publication/23696014_Pain_and_human_action_Locke_to_Bentham last visited on 4th Feb, 2024

- In this paper, I would like to try to elaborate **Bentham's criticism to Locke's and Maupertuis's theories of human action**. Bentham did not agree with the view that pain or uneasiness was the major motive to individual activity. The pessimistic conclusion of this approach was drawn by **Maupertuis**, that 'happiness is nearly impossible inhuman life, and this conclusion is for Bentham destructive of utilitarian ethics and politics'. Such kind of theory was implicitly destructive of political economy, as for Bentham this science aimed at improving the well-being of a nation.¹²

Hobbes's approach and Locke's approach: -

It seemed to be acceptable to say that '**Positive Hedonism**' was initiated by **Hobbes**, while **Locke is the father of the second approach**. It was obvious that these attributions of paternity were to be taken with circumspection: while Locke's ascendancy was recognized by his followers throughout the eighteenth century, the recourse to Hobbes seemed to be more disputable.

As for example, Bentham indicates **Helvetius and Hume** as his masters, whereas he rarely quotes or even mention the author of **Leviathan**. It was obvious that the conclusions that Hobbes drawn from his analysis of human actions were very distant from eighteenth-century reflections on the rationality of individuals acting under the incentive of private interest. However, Hobbes was the first philosopher who stressed the role of "**Future Hunger**" for pleasures in determining human behavior, and some of his conclusions on human unlimited appetites were almost replaced in the context of later reformulations of '**Positive Hedonism**'.¹³

- **Pain and Pleasure are for Hobbes (1588-1679)** the result of the interaction between two causal mechanisms: the action of external bodies on senses, and from there to the head, to heart, and the "**Vital Movement**" of human body. The confrontation of these causal mechanisms took place in the heart. Pleasure was experienced when the external causation seconds the internal movement, while pain is the final outcome of the clash between the two mechanisms. Human bodies react to the influence of pleasurable and painful events, and were urged to approach the objects which were pleasant, or to escape from those which were unpleasant (Hobbes A: 49-50).¹⁴
- **In Locke's (1632-1704) view**, there were three types of sensations: pleasurable, painful and indifferent. "Good" is what increases pleasure or diminishes pain, while "evil" is what diminishes pleasure or increases pain¹⁵. Passion was different modifications of simple sensations. One of these passions was uneasiness, the painful sensation that humans experience for the absence of some object which is expected to be pleasurable.¹⁶

Maupertuis's Pessimism: -

It was known fact that Maupertuis played a decisive role in the history of felicific calculus. It was perhaps less known that it was through **Beccaria** that this aspect of his thought was transmitted to Bentham.¹⁷ First of all, Maupertuis's definition of pain and pleasure could be regarded as a (partially) undesired extension of

¹² https://www.researchgate.net/publication/23696014_Pain_and_human_action_Locke_to_Bentham last visited on 4th Feb, 2024

¹³ Paper presented on the Fourth Conference of the International Society for Utilitarian Studies, Tokyo, 27th-29th August, 1994 by Marco E. L. Guidi, Università di Pisa

¹⁴ On the problems connected with this reaction see Guidi 1993, note 21

¹⁵ (Locke 1690: II. xx)

¹⁶ www.researchgate.net/publication/23696014_Pain_and_human_action_Locke_to_Bentham last visited on 4th Feb, 2024

¹⁷ (Bentham 1983: 291; Baumgardt 1952:557)

Locke's approach. On the one hand, for Maupertuis every painful sensation was the source of uneasiness and consequently of action: pain constantly generates the pulsion to remove it. But on the other hand, pleasure was "every perception in which [the mind] would like to persist, and during which it does not desire either to pass to another perception, or to sleep".¹⁸ Both the dependence from Locke's approach, and the partial distortion of Locke's arguments were evident in **Maupertuis's Essai de philosophie morale**.¹⁹

Principle of Utility: -

The Principle of Utility was different from egoism which endorsed pleasure for oneself. Utilitarianism provided that one should pursue pleasure not just for himself but for as many sentient beings as possible. Bentham explained that "We should act always so as to produce the greatest good for the greatest number". A utilitarian expected to sacrifice their pleasure for the pleasure of the group.

Bentham created the utilitarian calculus to help in the calculation of pain and pleasure. The individual action was to be judged on 4 elements namely;

- i. Intensity,**
- ii. Duration,**
- iii. Certainty and**
- iv. Propinquity** (whether the pleasure will come soon or will it be a delayed pleasure).

Furthermore, in order to calculate for actions classified into two more elements which needed to be included namely **Fecundity** which meant does the action have any secondary pleasures and **Purity** which meant does it have any secondary pains. Moreover, after considering actions for groups one more element was added and that was Extent which meant number of people were affected.

Bentham did not believe in the concept of interest of the group. He instead proposed that the interest of groups was the sum of the interest of the individual and that groups did not exist independent of the individuals. Moreover, he mentioned that as the main consideration of the theory was suffering, all persons were equal when calculating the pleasure attached to the action.²⁰

Bentham's Criticism: Sensationalism and Utilitarianism Reconciled: -

Bentham's criticism to Locke and Maupertuis were contained in several passages of his works. The most reminiscent among these passages are a page in an early manuscript published by **David Baumgardt**, and a paragraph of **Deontology**. Bentham rejected to consider the reduction of pain as the sole motive of an individual's efforts to obtain a better condition.²¹ This rejection also applied to uneasiness. Bentham repudiates to consider the imagination of future pleasure as pain, and according to him pain was not the necessary condition of pleasure. Humans who were experiencing a pleasure could imagine a greater one and endeavor to attain it.²² This way, Hobbes's accretive approach was restored by Bentham.²³

¹⁸ (Maupertuis 1749: 201)

¹⁹ www.researchgate.net/publication/23696014_Pain_and_human_action_Locke_to_Bentham last visited on 4th Feb, 2024

²⁰ <https://legaldesire.com/benthams-utilitarianism-theory-scope-criticisms> last visited on 4th Feb, 2024

²¹ (Bentham 1983a: 132)

²² (Bentham 1983a: 133)

²³ Pierre Naudin (1975: 25) defines this 'positive' solution as a "sublimation" of desire. See also Callot (1964), p.28. It should be noted that this term was once employed by a follower of Pietro Verri, Emanuele Ortolani (1803: 62-63), to define the transformation of physical love into a moral pleasure

Bentham's criticism against Maupertuis was a radical demonstration of the failures of '**negative hedonism**'. One should notice that the opposition to Maupertuis brought Bentham to abandon the term "happiness", which is replaced by "well-being" (though this change is not a definitive one). Indeed, "happiness" could be intended as a "superlative" degree of pleasure, whereas "well-being" better expressed the idea of a positive balance between pleasure and pain. Only following this formulation, Bentham suggests, we were able to assert that most of individuals live in a situation of greater or lesser well-being.²⁴

Criticism: -

The hedonistic value theory held by Bentham often posed against the value of life was more than a balance of pleasure over pain. Mill, in contrast to Bentham, distinguished differences in the quality of pleasures that made some intrinsically as such preferable to others independently of intensity and duration (the quantitative dimensions recognized by Bentham). Some philosophers in the utilitarian tradition had perceive certain non-hedonistic values without losing their utilitarian credentials. Thus, the English philosopher G.E. Moore, one of the founders of contemporary analytic philosophy, regarded many kinds of cognizant, including knowledge, friendship, and the experience of beauty, intrinsically valuable independently of pleasure, a position labelled "ideal" utilitarianism.

- Even in limiting the recognition of essential value and disvalue to happiness and unhappiness, some philosophers have argued that those feelings could not sufficiently be further broken down into terms of pain and pleasure and had favored to defend the theory in terms of maximizing happiness and minimizing unhappiness. It was substantial to note that, the hedonistic utilitarians, pain and pleasure were not thought of in purely carnal terms; pain and pleasure for them could be elements of experiences of all sorts. Their claim was that, if an experience was neither pleasurable nor painful, then it was a matter of unconcerned and had no intrinsic value.

- Another objection to utilitarianism was that the determent or eradication of suffering should take priority over any preference act that would only increase the happiness of someone already happy. Some modern utilitarians have modified their theory to require this focus or even to limit moral obligation to the deter mentation or eradication of suffering, a view labelled "negative" utilitarianism.²⁵

Development of the Theories based on the Criticism: -

- I. **J.S. Mill**, a student and fervid follower of Bentham, rejected the proposition that all pleasures were the same and could be compared. This originated from Bentham's failure to distinguish between pleasure and happiness and interpreting them as the same thing. Mill in his modification of the principle of utility projected different 'levels' of pleasure and recognized that some pleasures were more delectable and valuable than others.
- II. **G. E. Moore** suggested '**ideal utilitarianism**' where he rejected a purely hedonistic character of utilitarianism and debated for the assimilation of a range of values that may be maximized to

²⁴ On Bentham's hesitation between the terms "utility", "happiness" and "well-being", see the note added to the 1822 edition of *An Introduction to the Principles of Morals and Legislation* (1789: 11).

²⁵ <https://www.britannica.com/topic/utilitarianism-philosophy> last visited on 4th Feb, 2024

attain pleasure. He argued against the hypothesis that pleasure was the only consideration to evaluate morality.

- III. A number of philosophers projected '**rule- utilitarianism**' to redeem Bentham's theory. The theory consolidates the use of rules to aid in the choice of the right action. This alteration is purposed to eliminate the failing emerging from calculating the significance of each and every action resulting in an individual selecting a demureness alternative. Therefore, '**rule- utilitarianism maintains that an action is right if it conforms to a rule that maximizes utility**'.
- IV. **R. M. Hare in 1981** explained that an alternative theory named '**preference utilitarianism**'. He exclaimed the theory as "By this I mean the principle that, in deciding what is good and what is bad for a given individual, the ultimate criterion can only be his own wants and his own preferences." The principle unlike Bentham's utilitarianism which focuses on actions maximizing pleasure, preference utilitarianism converges on promoting actions which fulfilled the interest of an individual person or being involved in this. However, critics have pointed out the theory failed to consider the prospective of persons not holding the agency to make choices like animals or children.

Applicability of the Doctrine in Indian Legal Framework: -

"Social welfare" according to Utilitarianism, depends entirely upon the degree of comfort and disgruntlement of individuals. Thus, if men took an accurate pleasure in prejudice against each other, in enslaving others to lesser liberty as a method of strengthening their self-regards, then the satisfaction of those aspects should be weighed in our considerations in keeping with their severity, or no matter, alongside with different desires. If society determines to deny the fulfillment or to suppress them, as a result, they tend to be socially harmful and larger welfare was accomplished in different ways.

So, to better understand the applicability of this doctrine under the Indian legal system, we had further subdivided this project under three heads i.e., legislation, policies, and judicial precedents.²⁶

Research Questions: -

1. **Does Bentham's Utilitarian Theory applicable in Today's Context?**
2. **Whether Bentham's Utilitarian Theory applicable in Indian Legal System?**

Hypothesis

Does Bentham's Utilitarian Theory applicable in Today's Context?

Jeremy Bentham's theory, specifically his principle of utilitarianism, which supports the greatest happiness for the greatest number, remains relevant in today's context. His goals have effect on various aspects of modern legislation and ethical decision-making. The core of Bentham's philosophy is the '**greatest happiness principle,**' which indicates that the right action is the one that results in the greatest happiness for the greatest number of people.²⁷

²⁶ <https://burnishedlawjournal.in/wp-content/uploads/2021/01/...> Last visited on 4th Feb, 2024

²⁷ <https://philosophy.institute/ethics/benthams-utilitarianism-greatest-happiness-principle/> ...Viewed on 29/04/24

In the realm of law, Bentham's theories have contributed to the analytical school of jurisprudence, elaborating the significance of the utility principle in legislation. This principle propound that laws should be directed to promote the largest happiness of the greatest number, a concept that proceed with to be a significant consideration in legal systems around the world.²⁸

Moreover, Bentham's ideas have expanded beyond legal theory into broader ethical discussions. In case of, utilitarianism could inform debates on the distribution of healthcare resources or the implementation of public health measures during a pandemic, where the overall happiness and suffering of society are weighed.²⁹

While some aspects of Bentham's philosophy, such as the felicific calculus, may be seen as overly simplistic for complex modern issues, the essence of his utilitarian approach—maximizing happiness and minimizing suffering—still resonates with contemporary moral and legislative challenges³⁰. Thus, Bentham's theory continues to be applicable and influential in shaping our understanding of ethics and law in the modern world.³¹

- A real-life example of utilitarianism can be seen in the story of the wreck of the Mignonette. In 1884, a crew of four men were stranded at sea over 700 miles away from the nearest land when the ship they were Utilitarianism would endorse this action as morally justifiable because the majority had survived because of this.³²
- Another example that is more relevant in today's society is the requirement to vaccinate children against diseases even if it is considered against their individual religions. Some argue that this is a violation of an individual's rights but utilitarianism would see this as a morally justifiable action because even though it is restricting an individual's right to religion, it serves to help prevent diseases that could potentially be dangerous or fatal to many individuals thus providing the most benefit to the greatest number of people.³³
- Utilitarianism has been applied to global problems like poverty as well. Utilitarian philosophers argue that the wealthy in the world are compelled to end poverty by donating their excess wealth to charity. Furthermore, those donating should give their money to the charities that would do the most with the wealth given in order to do the best that is possible.³⁴

Whether Bentham's Utilitarian Theory applicable in Indian Legal System?

Jeremy Bentham's utilitarian theory has had a significant influence on the Indian legal system. Bentham, an English jurist and philosopher, is known for his principle of **“the greatest happiness of the greatest**

²⁸ <https://www.legalserviceindia.com/legal/article-8756-relevance-of...> Viewed on 29/04/24

²⁹ <https://philosophy.institute/ethics/benthams-utilitarianism-greatest-happiness-principle/> ...Viewed on 29/04/24

³⁰ <https://www.royalliteglobal.com/ilscj/article/download/128/161/>...Viewed on 29/04/24

³¹ https://ijaem.net/issue_dcp/Reflections%20on%20Jeremy%20Bentham%20s%20Philosophy%20in%20Modern%20Times.pdf
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³² <https://www.ipl.org/essay/Is-Utilitarianism-Relevant-In-Todays-Society-FKG39S7428VT...>Viewed on 29/04/24

³³ <https://www.ipl.org/essay/Is-Utilitarianism-Relevant-In-Todays-Society-FKG39S7428VT...>Viewed on 29/04/24

³⁴ <https://www.ipl.org/essay/Is-Utilitarianism-Relevant-In-Todays-Society-FKG39S7428VT...>Viewed on 29/04/24

number”. This principle suggests that the goal of legislation should be to promote overall happiness and well-being in society.³⁵

In the context of India, Bentham’s ideas contributed to the development of the penal code as well as the codes of criminal and civil procedure. His emphasis on the utility principle meant that laws were to be crafted with the aim of maximizing societal happiness, which in turn influenced the legislative framework in India during the colonial period and beyond.³⁶

Bentham’s utilitarianism also played a role in the economic sphere, advocating for minimal government interference in economic activities, aligning with the concept of **‘laissez-faire’**. This aspect of his theory resonates with the economic reforms and liberalization that India has undergone in recent decades.³⁷

Overall, Bentham’s utilitarian philosophy has been instrumental in shaping various aspects of the Indian legal system, emphasizing the importance of laws that serve the greater good of society.³⁸

- **Olga Tellis v. Bombay Municipal Corporation**³⁹ was decided in 1985 by the five Judges Bench of the Supreme Court of India. The Hon'ble bench comprised of **C.J., Y.V. Chandrachud, J., A.V. Varadarajan, J., O. Chinnappa Reddy, J., S. Murtaza Fazal Ali and J., V.D. Tulzapurkar**. This case came before the Supreme Court as a writ petition by persons who live on pavements and in slums in the city of Bombay. It was prayed by the petitioners to allow them to stay on the pavements against their order of eviction. The majority judgment (concurring by all the five Judges) was delivered by **Hon'ble Chief Justice Y.V. Chandrachud**.⁴⁰
- The decision of this case essentially falls back on the premise of the positivism. The judgment delivered by C.J., Y.V. Chandrachud is solely based on the concept of the analytical positivism of Britain. The letter of law was considered to be paramount. Justice Chandrachud, observes in **Para 28** that, there can be no estoppel against the Constitution. The Constitution is not only the paramount law of the land but, it is the source and sustenance of all laws. Its provisions are conceived in public interest and are intended to serve public purpose.⁴¹
- Furthermore, it is the theory of the **"Father of the English Jurisprudence" - Jeremy Bentham (1748-1832)** that was reiterated by the Apex Court in true sense. Bentham talked about the reform of the substantive law by the way of reforming the structure of law.⁴²

³⁵ <https://www.legalserviceindia.com/legal/article-8756-relevance-of-theories-given-by-jeremy-bentham-and-john-austin-in-indian-legal-system.html> viewed on 29/04/24

³⁶ <https://www.legalserviceindia.com/legal/article-8756-relevance-of-theories-given-by-jeremy-bentham-and-john-austin-in-indian-legal-system.html> viewed on 29/04/24

³⁷ <https://www.legalserviceindia.com/legal/article-8756-relevance-of-theories-given-by-jeremy-bentham-and-john-austin-in-indian-legal-system.html> viewed on 29/04/24

³⁸ <https://blog.iplayers.in/application-utilitarianism-principle-india> viewed on 29/04/24

³⁹ 1986 AIR 180, 1985 SCR SUPL. (2) 51

⁴⁰ <https://www.legalserviceindia.com/articles/case.htm> viewed on 29/04/24

⁴¹ <https://www.legalserviceindia.com/articles/case.htm> viewed on 29/04/24

⁴² <https://www.legalserviceindia.com/articles/case.htm> viewed on 29/04/24

I. Law in the Reformatory Process: -

This case can be said to be a decision that leads to the reformation of the **substantive law**. Bentham divided the jurisprudence into two parts, that is, **Expositio rial (what law is) and Censorial (what law ought to be)**. The Hon'ble Court clearly indicates the follow up of the Bentham's philosophy of reforming the law through its structure. The law as defined by Bentham is, an assemblage of signs, declarative of violation, conceived or adopted by the sovereign in a state, concerning the conduct to be observed in a certain case by a certain person or class of persons, who in the case in question are or are supposed to be subject to his power. Justice Chandrachud states that, "**no person can live without means of living**", he is applying the Bentham's jurisprudence to reform the law laid down under article 21.⁴³

II. Hedonist Utilitarianism: -

Olga Tellis brought the concept of Bentham's philosophy of the Hedonist Utilitarianism. Justice Chandrachud while deciding this case entirely followed the **Principle of Utility** as given by Bentham and held that the end aim of the legislator should be Happiness of the people and the **General Utility** must be the guiding principle. Apex Court by making a balance sheet between the happiness or the utility of the slum dwellers with the aim and object of the particular legislation came to a conclusion that justice must be done only by giving the redressal to the poor and needy pavement dwellers.⁴⁴

In the above-mentioned finding by the Hon'ble Supreme Court, it is evidently clear that the reliance was placed on the "**destiny of millions of fellow creatures**". It signifies the application of the Bentham principle of utility in the outcome of the judgment of Olga Tellis. Bentham's justification of his utilitarianism is founded upon four propositions. These are as follows,

- i. All agents (as agents) seek a personal good.**
- ii. Ultimately, all self-conscious agents aim at the same goal (irrespective of the particular context in which the particular action is performed).**
- iii. That same ultimate goal is always the maximization of personal pleasure (and the avoidance of personal pain).**
- iv. The proper role of the state is to promote the greatest aggregate pleasure within its community.**⁴⁵

The four commands of utility for civic society in the Bentham's Utilitarianism, upon which the aggregate happiness depends are security, subsistence, abundance and equality. Out of the above, security was the most important. Subsistence, abundance and equality, however, all depended, in Bentham's view, on the paramount directive of security. The decision given by the Supreme Court heavily relies on the entire four propositions given by Bentham.⁴⁶

Conclusion: -

It can be concluded the Supreme Court adopted the Utilitarian Principle in terms of the pleasure and pain calculus or the hedonistic calculus of Jeremy Betham⁴⁷. Bentham freely acknowledged his indebtedness to

⁴³ <https://www.legalserviceindia.com/articles/case.htm> viewed on 29/04/24

⁴⁴ <https://www.legalserviceindia.com/articles/case.htm> viewed on 29/04/24

⁴⁵ <https://www.legalserviceindia.com/articles/case.htm> viewed on 29/04/24

⁴⁶ <https://www.legalserviceindia.com/articles/case.htm> viewed on 29/04/24

⁴⁷ <https://www.legalserviceindia.com/articles/case.htm> viewed on 29/04/24

Locke, Hume, Hartley, Voltaire, Barrington, Helvetius, Montesquieu, Beccaria to Priestley. From each of them, he derived inspiration, more so a principle which he was weld into a single amalgam. The special quality of the Utilitarian school and Bentham in particular is that they were not so much as greater inventors as great arrangers of ideas. It is due to this genius for logical arrangement, that current philosophy of their country and century had been reduced to form a school which could unite in the profession of a common doctrine. There is huge utility of the theory even today.⁴⁸

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17. [\(Bentham 1983: 291; Baumgardt 1952:557\)](#)
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21. [\(Bentham 1983a: 132\)](#)
22. [\(Bentham 1983a: 133\)](#)

⁴⁸https://ijaem.net/issue_dcp/Reflections%20on%20Jeremy%20Bentham%20s%20Philosophy%20in%20Modern%20Times.pdf viewed on 29/04/24

23. [Pierre Naudin \(1975: 25\) defines this 'positive' solution as a "sublimation" of desire. See also Callot \(1964\), p.28. It should be noted that this term was once employed by a follower of Pietro Verri, Emanuele Ortolani \(1803: 62-63\), to define the transformation of physical love into a moral pleasure](#)
24. [On Bentham's hesitation between the terms "utility", "happiness" and "well-being", see the note added to the 1822 edition of An Introduction to the Principles of Morals and Legislation \(1789: 11\).](#)
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