



## THE UTILITARIAN THEORY OF DEMOCRACY: BASE AND IMPLICATION

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**ABSTRACT**

The word Democracy is denotes limited government which is depends upon Rule of Law and Constitution. It is not new concept which is found thought of Aristotle, Karl Marks and Maciyawali etc. but they were only described in the form of mass government. In 19th century, when arisen utilitarian theory which talk about very important concept 'law ought to be' and checked of 'law as it is' which means positive law must be judged on principle of utility. Utilitarian theory is demand of smart society; there all member of community can achieved greater happiness and less unhappiness. Jeremy Bentham and John Stuart Mill both have believed democracy is excellent and best form of government, which has been considered and acceptable in present legal system. The Utilitarian has propounded different types of government known as democracy which is concern to security, liability, equality, happiness and avoid to pain. The spirit of Constitutional scheme has also incorporated security, equality and happiness or protection of all interest of individuals; we can say weapons of good governance. Without these weapons cannot imagination ideal legal system. Democracy is symbol of protection of human rights, equal protection, protective discrimination, social security and social justice, etc. Utilitarian has promoted all aspect of good governance which is base of ideal democracy.

**KEYWORDS** : Constitutional scheme, Equality, Security, Rule of law.

**INTRODUCTION**

Literally, democracy means rule by the mass. The term is derived from Greek 'demokratia', which was coined from demos "public" and kratos "rule" in the middle of the 5th century BC to denote the political system then existing in some Greek citystates, notably Athens. The first of all democratic governance concern to choose of representatives of people by secret ballot, as such, is a number game and the rule of this game is majority rule. In unitary systems contrast markedly with federal systems, in which authority is constitutionally divided between the central government and the governments of relatively autonomous sub-national entities. Democratic countries that have adopted federal system include in addition to the United State, Switzerland, Germany, Austria, Spain, Canada and Australia. The world's most populous democratic country, India, also has a federal system.

Bentham's contribution to the development of liberalism is recognized in three important areas:

- He produced a critique of Lock's theory of natural rights and provided an alternative foundation of the liberal theory;
- He produced a new scheme of administrative and judicial organization based on the responsible exercise of power; and finally,
- He envisaged a political structure designed to achieve the ends of legislation including security, subsistence, abundance and equality, and thereby highlighted the needs and aspirations of the modern democratic State.

According to John Lock the concept of Democracy is base on use of government power in responsible nature. If government is liable any activity of administrative authorities than increases protection of interest at large people as well as group of minorities. Utilitarian has influence by thinker of social contractual theory.

**JUSTIFICATION OF THE DEMOCRACY****I. Democracy as Instrumental to Human Development**

Aristotle himself took a more favourable view of democracy in his studies of the variety, stability, and composition of actual democratic governments. In his observation that "the basis of a democratic state is liberty," Aristotle proposed a connection between the ideas of democracy and liberty that would be strongly emphasized by all later advocates of democracy. John Lock was an

unequivocal supporter of political equality, individual liberty, democracy, and majority rule. Jeremy Bentham and John Stuart Mill provided a philosophical foundation for some of the basic freedoms essential to a functioning democracy, such as freedom of association.

John Stuart Mill in his Book "Considerations on Representative Government (1861)", echoed this ancient view, the first element of good government.....being the virtue and intelligence of the human beings composing the community, the most important point of excellence which any form of government can possess is to promote the virtue and intelligence of the people themselves. The first question in respect to any political institutions is how far they tend to foster in the member of the community the various desirable qualities, moral and intellectual.

In Mill's view, by providing opportunities for all to participate actively in political life, democracy fosters, as no other kind of regime can, qualities of independence, self-reliance, and public-spiritedness. The argument that political participation fosters desirable personal and social qualities in democratic citizens has often been advanced since Mill's time, particularly by advocates of participatory democracy. To determine the relation between regime and personal qualities is a formidable task, and modern social scientists have so far made little advance over the speculations and conjectures of Plato, Machiavelli, and Mill. Although modern theorists have sometimes proposed that a "democratic personality" is either necessary to, or is produced by democratic institutions, attempts to define the distinctive qualities of a democratic personality and to verify its relation to democratic regimes or practices have not met with much success.

Jeremy Bentham analyses legal terms (such as Power, Right, Prohibition, Obligation, Property and Liberty) and attempts to show what, in fact, they mean in the world practice. This is base of democratic government and the principle of utility also maintained jurisdiction of all government organs Jeremy Bentham has to provide the indispensable introduction to a civil code. John Austin also adopted the theory of utility, but he regarded it as falling outside the sphere of jurisprudence proper. It is must not be forgotten that although Bentham was an individualist, his doctrine of utility carried within it the seeds of collectivism as well as theory of democracy. Jeremy Bentham usually appears as an exponent of a version of Classical democratic theory along with such writers as Paine, Rousseau, Kant, James Mill and John Stuart Mill and the

authors of the federalist. Bentham continued to believe that happiness was the supreme good. Consequently, he would have been obliged to say, we presume, that the production of one's rights and interest is desirable because these rights and interests are instrumental to one's happiness, which is goal of a democratic process or system.

In this context Justice Dipak Misra is rightly says that, in a democratic polity, justice in its conceptual eventuality and inherent forms the bedrock of good governance. In democratic system that is governed by the rule of law, fairness of action, propriety, reasonability, principle of utility, institutional impeccability and non biased justice delivery system constitute the pillars on which its survival remains in continuum. The preamble of the Constitution declares India to be a Democratic Republic. Democracy is the basic feature of the Indian Constitution. Democracies have sustained by free and fair election. Only free and fair elections to the various legislative bodies in the country can guarantee the growth of a democratic polity. It is the cherished of a citizen to participate in the electoral processes, which place persons in the seats of power.

## ii. Democracy as Instrumental to the Protection of Personal Interest

The most common justification given for democracy is that it is essential to the protection of the general interests of the person who are subject to the regulations or actions of the officials of a State. While these include freedom and personal development, they also extend to a broad array of desires, wants, practices, and rights that people in a specific society and historical situation may believe to be importance. It is true that, classical utilitarian like Bentham and James Mill, as well as innumerable successors have justified democracy on the ground that satisfying one's wants is conducive to one's happiness, and that democracy is desirable because and insofar as, it is a political process by means of which people may best satisfy their wants. The reasonable justification, for democracy, then is that to a substantially greater degree than any alternative to it, a democratic government provides an orderly and peaceful process by means of which a majority of citizens can induce the government to do what they most want it to do and to avoid doing what they most want it not to do.

## OBJECTIVES OF DEMOCRACY

Jeremy Bentham has described theory of democracy in the Constitutional Code might best be approach in terms of four systems as below-

- A System of Aptitude (acquired talent) and Economy
- System of Authorities and functions
- System of Subordination
- System of securities

Jeremy Bentham has given preference to the system of securities that intended to prevent the misuse and abuse of power more effectively than any other Constitutional system known at the time and especially the U.S. Constitution. Security means check or limitation of administrative officials. The securities operate on so many different level that it is difficult to see how officials could conspire to avoid their force. Through these four system- aptitude, authorities and functions, subordination and securities, Bentham's theory of constitutional government can be best approached and understood. In *Dinesh Trivedi, M.P. v. Union of India*, the Supreme Court has held that, Democracy is axiomatic that citizens have a right to know about the affairs of the Government which having been elected by them seek to formulate sound policies of governance aimed at their welfare. In short, democracy is demand openness it is concomitant of a free society and the sunlight is a best disinfectant.

## PRINCIPLE OF GREATEST HAPPINESS OF THE GREATEST NUMBER

### I. Happiness

Happiness is very wider term it means interest, peace, justice, desert and rights etc. Jeremy Bentham said that the maximizing of pleasure and the minimizing of pain is the standard of any behaviour should be judged. An individual should perform an action if it looks as if it will make him a happier person. A government may properly compel its citizens to perform certain action if the consequence will be a greater measure of pleasure to a particular person or the total society. An outside observer may pass judgment on the acts of individuals and government on basis of whether they serve to maximize happiness or pleasure. The interest or happiness of community is actually a convenient of fiction; the reality is the sum of the pleasures of the individual citizens, pursue their own interests and to whom the infliction of legal sanctions may be a source of pain.

### ii. Human Action in General

The purpose of government is to promote the happiness of the society by punishing and rewarding. That part of its business, which consists in punishing, is more particularly the subject of penal law. In proportion as an act tends to disturb that, happiness in proportion as the tendency of it is pernicious will be the demand it creates for punishment. What happiness consists of we have already seen enjoyment of pleasures, security from pains. The general tendency of an act is more or less pernicious according to the sum total of its consequences. It is according to him the difference between the sum of such as are good and the sum of such as are evil. Of the consequence of any act, the multitude and variety needs be infinite; but such of them only as are material are worth regarding.

### iii. Legislators must be Engineers

Jeremy Bentham has said Legislators must be engineers with a scientific education. The policy making process may be outlined. A survey must be made of the community. To take an exact account then of the general tendency of any act by which the interests of a community are affected; Bentham says take an account of the number of persons whose interests appear to be concerned. The Sociological School known as functional School has adopted legislators as Engineers in frame of Social Engineering theory. Bentham advocated a number of reforms in the spheres of law, justice, prison home, educational curriculum, electoral system etc. by the reason he called first, last and always will be reformer.

## REPRESENTATIVE DEMOCRACY, PUBLIC INTEREST AND PROMOTION OF HAPPINESS

The modern democracies are representative democracies. John Stuart Mill has systematically given the concept of representative democracy in his book *Considerations on Representative Government*. According to him, a representative system along with freedom of speech, press and assembly provides a powerful mechanism whereby government can be watched and controlled. Through electoral competition, it is able to harness leadership qualities for the maximum benefit of all. Jeremy Bentham was the first modern liberal thinker who prepared the ground for the attitude towards democracy. He along with James Mill and John Stuart Mill justified democracy on utilitarian ground. He said that individuals require protection from the governors as well as from each other, and an assurance that those who govern pursue policies that are in consonance with the interests of individual. Thus for him the problem was how to make sure that governments follow the wishes and interests of the community in matters of law and policy.

According to Bentham the proper end of government and democracy is the greatest happiness of all or in case of competition and to the extent of the competition the greatest happiness of the greatest number; it seems to me that made a declaration of peace and good will to all men. Bentham believed that representative democracy is the only form of government that could give greatest happiness to greatest number of people. Democracies have definite goals in general like freedom, equality and dignity of the individual. Since seventh century, the political and legal philosophy associated particularly with the doctrine of natural justice, had an

emphasis on democratic system of Government and on individual liberty and freedom. In the twentieth century this doctrine has resulted in the widespread acceptance of the existence of fundamental rights built into the constitutional democracies and received recognition internationally by means of covenants of human rights agreed upon between the democratic states.

According to John Stuart Mill, democracy is a form of government in which the whole people or some numerous portions of them exercise the governing power through deputies periodically elected by them. A more elaborative and descriptive definition of democracy is given by Abraham Lincoln as 'democracy is the government of the people, for the people and by the people'. According to Dicey democracy as a form of government in which the governing body is a comparatively large section of the entire society. The government should work in such a way, that it promotes good and happiness rather than evil and pains. Bentham stood for elected parliaments based on adult suffrage and ballot system. In the case of *Brij Mohan Lal v. Union of India*, Justice Swatanter Kumar has held that, "the power of judicial review to examine the validity of legislation falls within a very limited compass. It is treated by the court with greater restraint and on a much higher pedestal than examination of the correctness or validity of state policies".

In *Ravi Yashwant Bhoir v. Collector*, Justice Dr. B.S. Chauhan has held that, in a democratic institution, like ours, the incumbent is entitled to hold the office for the term for which, he has been elected unless, his election is set aside by a prescribed procedure known to law or he is removed by the procedure established under law. The proceedings for removal must satisfy the requirement of natural justice and the decision must show that the authority has applied its mind to the allegations made and the explanation furnished by the elected office bearer sought to be removed.

The Constitution accords full faith and credit to the act done by the executive in exercise of its statutory powers, but they have a primary responsibility to save the nation and enlighten the citizens to further strengthen a democratic State. The democratic set-up of the country has always been recognized as a basic feature of the constitution, like other feature for example supremacy of the constitution, rule of law, principle of separation of power, power of judicial review under article 32, 226, and 227 of the Constitution, etc. In the case of *In re Ramlila Maidan Incident*, Justice Swatanter Kumar has observed that, there is a direct and not merely implied responsibility upon the government to function openly and in public interest. The right to information itself emerges from the right to freedom of speech and expression. Unlike an individual, the state owns a multi-dimensional responsibility. It has to maintain and ensure security of the state as well as the social and public order. It has to give utmost regard to the right to freedom of speech and expression that a citizen or a group of citizens may assert. The state also has a duty to provide security and protection to the persons who wish to attend such assembly at the invitation of the person who is exercising his right to freedom of speech or otherwise.

#### DEMOCRACY WITH FREEDOM OF THE PRESS

Utilitarian has believed the freedom related to press is one thing but its biasness or impartiality is another. Bentham acknowledged that people would attend to that in which they are most interested or most sympathetic. However, with omnibus newspapers providing variety, he claims that readers will be exposed, as a by-product, to many other subjects and various other views. The times (perhaps metonymically *The Times* of London) were, in fact, ahead of Bentham, partisan newspapers were slowly dying because they could no longer compete with the bigger circulation of relatively impartial, wide ranging papers. Therefore, he escapes this difficulty but deeper ones wait.

The Freedom is essential to happiness, men are entitled to freedom. But equal freedom of each individual postulates 'equality'; therefore, man's liberty must be limited and conditioned by the ultimate test of general welfare. Most important, Bentham simply

assumes that newspapers would print political information and that rational citizens would bother to read political news and expert opinions. He even admits that the efficacy of the press depends on the number of the minds to which it finds its way. He trusts that newspapers will emerge to take any important position on a particular question. That assumption seems fallible. Bentham is right to point out that legal guarantees of a free press are a necessary condition, but he seems to assume that they are sufficient as well.

John Stuart Mill believed free speech is not absolute as he allows two exceptions-

a. to use of speech as a means (or instrument) to commit criminal acts and

b. to the publication of wrong news and fact, Mill's further says that, there is no corresponding reason for permitting the publication of wrong statements of fact.

To understand the first objection, we have to go back to James Mill's 'Liberty of the Press', extracts of which are quoted verbatim and are wholeheartedly endorsed by his son in 'Law of Libel'. The elder Mill argues that the press 'can be employed as an instrument' in almost any violation described by the penal code. However, it is not necessary to make a special law for punishing the means used in perpetrating an unlawful act. 'It is enough that a law is made to punish him who has been guilty of the murder or theft, whether he has employed the press or anything else as the means for accomplishing his end.

#### PUBLIC OPINION TRIBUNAL AND DEMOCRACY

Jeremy Bentham as a paternalistic utilitarian who wanted to employ a corps of civil servants to measure utility and then govern to maximize it is clearly at odds with a free, indeterminate, public opinion in a mass democracy. According to Rosen, two basic assumptions are crucial to the conception of public opinion that became so important to democratic theory.

a. There is deep egalitarianism manifested in the anti paternalistic claim, no one can know his interest better than himself. The utilitarian public policy is to emerge from an aggregation of those interests; the Constitution should provide the institutions that permit all persons to communicate their interests to government equally.

b. The priority of self-determination permits a dynamic conception of the role of public opinion, it does not require certainty in judgments of prospective utility, and people are adaptive agents. Therefore, the organs of government ought to allow the public to react to what their government is doing constantly steering closer and closer to providing for their interests.

In this context, Bentham has believed right to information it is basic part of Article 19 of the Indian Constitution. Bentham's utilitarianism is a basic theory of democratic ethics that can put into practice through his proposals for liberal democratic institutions including the social institution of a free public opinion. Jeremy Bentham has champion of the legitimacy of the public opinion tribunal that tribunal should be codified and deal four function of the tribunal.

First, all persons have the right to seek information and evidence ("the statistic or say evidence-furnishing function")

Second, the tribunal renders judgment (the censorial function)

Third, it punishes and rewards the people involved by establishing their reputations (the executive function)

Fourth, it proposes improvements on any public matter ("the melioration-suggestive function").

The public opinion tribunal was imagination of utilitarian jurist

which is promoting fill in the gap between public and government.

### FUNCTION OF LAW

The happiness of an individual is increased in proportion as his sufferings are lighter and fewer, and his enjoyments greater the distribution of rights and obligations, the legislator should have for his end the happiness of society. The happiness consist is find four subordinate ends, The more perfect enjoyment is in all these respects, the greater is the sum of social happiness and especially of that happiness Jeremy Bentham has believed that, in democratic country the main function of law -

- To provide Subsistence,
- To aim at Abundance,
- To encourage Equality and
- To maintain Security.

Subsistence means needs for a human life for example food, shelter and cloth; it is basic and fundamental right of any person under Article 21 of the Indian Constitution. It is included also abundance which means quantity of things. It is very necessary to consider it separately, because the laws ought to do many things for subsistence which they ought not to attempt for the sake of Abundance. According to utilitarian equality is main them of democratic country here they have influenced to A.V. Dicey's principle of rule of law. It may be promoted either by protecting subsistence where it where it exists or by seeking to produce it. In other words it is the greatest part to maintained social order. Equality may be considered in relation to all the advantages which depend upon laws. Political equality is an equality of political rights; civil equality is an equality of civil rights. When used by itself, the word is commonly understood to refer to the distribution of property. Indian Constitution guarantees the Right to Equality through Articles 14 to 18. In other words equality is one of the magnificent corner-stones of Indian democracy".

Security admits as many distinctions as there are kinds of actions which may be hostile to it. It relates to the person, the honour, to property, to condition. Acts injurious to security, branded by prohibition of law, receive the quality of offences. Of these objects of the law, security is the only one which necessarily embraces the future. Subsistence, abundance, equality, may be considered in relation to a single moment of present time, but security implies a given extension of future time in respect to all that good which it embraces, Security, than is the pre-eminent object. At the first glance subsistence and security arising together to the same level, abundance and equality are manifestly of inferior importance. In fact, without security, equality could not last a day, without subsistence, abundance could not exist at all. The two first objects are life itself, the two latter, and the ornaments of life.

### CONCLUSION

Jeremy Bentham and John Stuart Mill both jurists have unique quality to explained theory of democracy, which become base of present legal system. They have believed the democratic state is dynamic platform to promote greatest happiness of the greatest number principle in the Country. Democracy concern with individualism as well as collectivism it is base of socialism. Under this concept law is only a means towards an end and the purpose of law human welfare. Bentham and John Stuart Mill known as pluralist thinker, our Indian society is a pluralism society. Participatory and representative government is spirit of good democracy. Indian judiciary has declared democracy is a part of the basic structure of the Constitution and social economic and political justice is essential for the democratic system. Public opinion is most important part of democracy that is firstly propounded by Jeremy Bentham. Happiness of Individual is basic end of any democratic countries. National Commission to Review the Working of the Constitution 2002 report on 'peace of socio- economic change under constitution' has explained glorious point about democracy like that Utilitarian's theory of democracy. The Commission has said democracy has wider moral implications than mere

majoritarianism. A mere majoritarian democracy is likely, eventually, to degenerate into elective despotism. Pluralism is the soul of democracy. Without respect for pluralism, there will be no true democracy or a conflict-free society. The entrenched and justifiable Fundamental Rights are the expedient adopted by self-governing peoples to recognize certain basic human rights as inalienable and place them beyond the reach of an amoral majority.

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### REFERENCES:

1. Dale H. Hoiberg & Michael Levy, Britannica Global Edition, volume 8, 4477 (Encyclopaedia Britannica, Inc. 2011).
2. Id. at 4485.
3. O.P. Gauba, Western Political Thought, 198,199 (1st Reprint, Macmillan Publishers India Ltd.2013).
4. Supra 2, at 4486
5. Id. at 4487
6. Robert A. Dahl, Democracy and its Critics, 92 (1st Indian Reprint, Orient Longman Limited, 1991).
7. A.V. Dicey, Law and Opinion, Lecture IX, 'The Debate of Collectivism Benthamism', Dicey's recognition that Bentham's principle of utility could give justification to collectivism, the majority was the poor, and the society should be organized for their benefit. Some Benthamites, such as Mill, made an attempted to harmonize utilitarianism with working-class goals. Even the creation of large joint stock companies was a danger, since they promoted corporate energy over individual energy. Available at: [http://oll.libertyfund.org/titles/dicey-lectures-on-the-relation-between-law-and-public-opinion-1f-ed#lfDicey\\_label\\_276](http://oll.libertyfund.org/titles/dicey-lectures-on-the-relation-between-law-and-public-opinion-1f-ed#lfDicey_label_276) (last seen on 06/08/2018)
8. F. Rosen, Jeremy Bentham and Democratic Theory, The Bentham Newsletter, The Bentham Committee University College London Conference,46(Issue December No.3,ISSN0141-190x1979) [https://www.ucl.ac.uk/Bentham-Project/Journals/newsletter\\_03](https://www.ucl.ac.uk/Bentham-Project/Journals/newsletter_03) (last seen on 06/08/2018)
9. Supra 6, at 94.
10. Chandra Kumar Chopra v. Union of India, (2012) 6 SCC 369 para 25.
11. Article 326, Constitution of India.
12. Prof. M.P. Jain, Indian Constitutional Law, 872 (6th edn., LexisNexis 2013).
13. Supra 6, at 95
14. Supra 8
15. (1997) 4 SCC 306.
16. Andrew Hacker, Political Theory: Philosophy, Ideology, Science, 401 (1st Indian Reprint, Surjeet Publication New Delhi, 2006).
17. Jeremy Bentham, Introduction to the Principles of Morals and Legislation, 70 (Indian Economy Reprint, Universal Law Publishing Co. Pvt. Ltd. 2004).
18. W.T. Jones, Master of Political Thought, 368, Vol. II (2009).
19. R.C. Vermani, An Introduction to Political Theory, 369 (Reprint ed., Gitanjali Publishing House, 2004).
20. P. Schofield, First Principles Preparatory to Constitutional Code, CW 211, 212 (Oxford, 1990).
21. Anand Ballabh Kafaltiya, Democracy and Election Laws, 2 (1st Reprint, Deep & Deep Publication Pvt. Ltd. New Delhi, 2007).
22. Universal Declaration of Human Rights, 1948, European Convention for the Protection of Human Right and Fundamental Freedoms, 1950, Part III of The Constitution of India, American Bill of Rights, U.S.A. Constitution, 1789, Canadian Bill of Rights, 1982 etc.
23. John Stuart Mill, Consideration on Representative Government, V.D. Mahajan, Recent Political Thought, 260 (1953).
24. Supra 24, at 3.
25. A.V. Dicey, Law and Opinion in England, 50 (Macmillan & Co., 1961).
26. Manoj Sharma, Political Theory and Thought, 265 (1st ed., Anmol Publications Pvt. Ltd. New Delhi, 2004)
27. (2012) 6 SCC 502, para 119.
28. (2012) 4 SCC 407 para 34.
29. (2012) 5 SCC 1, para 26
30. Fred Cutler, Jeremy Bentham and public opinion tribunal, public opinion quarterly, Volume 63, Issue 3, 321-346 (Autumn, University of Chicago Press 1999) available at: <http://www.jstor.org/> (last seen on 5/8/2018).
31. Upendra Baxi, K.K. Mathew on Democracy, Equality and Freedom, 167 (Eastern Book Co. 1978)
32. Filimon Peonidis, A Note on Mill's Early Theory of Free Speech, 33 Australian Journal of Legal Philosophy 62-63, (2008) available at: <http://www.austlii.edu.au/au/journals/AUJLegPhil/2008/11.html> (last seen on 24/8/2018).
33. Bentham and public opinion tribunal, available at: [http://www.politics.ubc.ca/fileadmin/user\\_upload/poli\\_sci/Faculty/cutler/FC\\_Jeremy\\_Bentham\\_and\\_the\\_Public\\_Opinion\\_Tribunal\\_POQ\\_63-3.pdf](http://www.politics.ubc.ca/fileadmin/user_upload/poli_sci/Faculty/cutler/FC_Jeremy_Bentham_and_the_Public_Opinion_Tribunal_POQ_63-3.pdf) (last seen on 21/09/2018)
34. Upendra Baxi, Bentham's Theory of Legislation, 59 (10th Reprint, Lexis Nexis 2013)
35. Indra Sawhney v. Union of India, AIR 1993 SC 477.