

HAPPINESS MEASUREMENT - A FICTION OF FAKE DEMOCRACIES

Dr. Vijaysinh G. Sodha

LL.M, PhD, NET
I/C. Principal
Shree Dhanjibhai D. Kotiyawala Municipal Law College
Porbandar

Abstract

Happiness measurement positively correlates to Jeremy Bentham's Utilitarian Theory. Modern day democratic countries measure happiness. If most of its citizens are happy then the respective democracy claims that utilitarianism is perceived. Democratic countries in the world are actually Rule of Law propagating nations. The patterns of rule of law are different in different kinds of democracies viz., communist, socialists, republics, unions, etc. The world Democracy usually denotes justness. The justness within people, prevalence of justness, justness in laws, justness in judicial system. Justness in social order, etc. If the said justness is not prevailing then such democracies cannot be coined as real or ideal democracies. Such democracies became fake democracies. Happiness measurement in such democracies becomes fiction. Such a situation denotes failure of constitutional machinery. All rights persist in unjust people. Actually whatever utilitarianism is perceived is for unjust people. Whatever rights are available, enjoyed, etc. by just people becomes meaningless because means available for them are unjust, unethical, unconstitutional, etc.

Keywords: BPL - BELOW POVERTY LINE, BE - BENTHAMITE ERA

INTRODUCTION

The theory of utilitarianism is individual centric theory of Jurisprudence. It means pleasure and pain are individual centric. The nation as a whole is not taken in consideration but individualism or individualistic view point is considered. The main aim of measurement of happiness of individuals is that maximum number of individuals must be happy in the sense they must get pleasure in more proportion and pains in lesser proportions regarding Laissez faire functions of the state. Just people get pleasure in positive aspects and unjust people get pleasure in negative aspects. If maximum numbers of people are unjust and happiness is measured the results are negative. Despite this, the state claims that utilitarianism is perceived. British legislative reforms are based mostly on Jeremy Bentham's utilitarianism. Jeremy Bentham's view on pleasure is the Security provided to the individuals over pains by the state. For a Laissez-faire state it becomes utmost necessary for the state to achieve welfare of the people. The welfare done by the State must be such that it must result into pleasure. But if maximum numbers of people in a state are unjust and happiness is measured it provides negative results. If these negative results are taken into consideration and it is presumed that goals of utility are fulfilled then failure of constitutional norms, principles, ethos, etc can be hide out in effective manner. It thus results into fake democracy wherein measurement of utility is nothing but a fictional. Jeremy Bentham's utilitarianism lasts till the democracy lasts. It is also true that idle democracy nowhere exists in this world. But near to ideal democracy is feasible. If basic principles, norms, etc of democracy are not available to just people or just people are not in a position to enjoy the basic principles, norms, doctrines of democracy then it is nothing but the failure of democracy. Measurement of happiness is not the tool to hide failure of democracy as it is used in modern times by many democracies. Whether people are just or unjust has nothings to do with Jeremy Bentham's utilitarianism theory. But prevalence of democracy in its true sense is the pre-condition of perceiving utilitarianism. The said aspect is missing.

UTILITARIAN THEORY¹

Jeremy Bentham is the ardent proponent of Utilitarianism Theory his contribution is remarkable for modern positivism. He has pioneered the era of new legal thought in the history, especially of England. As far as Analytical School of Jurisprudence is concerned Austin has followed Jeremy Bentham utilitarianism theory.

¹ Introduction to Jurisprudence, Dr. Avtar Singh & Dr. Harpreetkaur, LaxiNexisButterworthswadhwa, Nagpur, 2009 Edition, P.No. 15 to 19

Bentham has viewed law as imperative one. It means law is the assemble of declarations, signs, etc adopted by the sovereign. Bentham has defined law as-

“A law is an assemblage of signs which is conceived or adopted by the sovereign wherein the concern is to conduct observation in a certain case by a certain class of persons, bearing certain powers over the certain subjects assigned to them, it results into the accomplishment of certain expectations for certain events which is pre-intended and there must be a specific motive behind doing so because such conduct is in question”

The above definition of law given by Bentham has many elements. According law means the one which is imposed by the sovereign authority of the state. There are certain power vested people in the state who are assigned the duty of implementation of law whom we called Authority. Implementation of such compulsion aspect is always in question because it is done for achieving obedience in society wherein major conflicts arise. Thus, he has considered only imperative aspect of law. Imperative law means that aspect of law that allows or permits particular type of action and at the same time it also prohibits a particular type of action. In other words imperative law is a command of sovereign backed by powers.

Bentham is the ardent supporter of Laissez-faire. It doesn't like restraint on freedom of individual by the state. It means he has emphasized on individual freedom. As per his said theory the main aim of passing any legislation is utility. In other words, the main aim of passing any legislation is to provide happiness to maximum number of people. It means greatest happiness to the greatest number of people. The principle of utility is discussed at great length in his book “Introduction to the principles of morals and Legislation”

Due to this reason, the aforesaid theory of Jeremy Bentham became more popular in England. The legislative reforms of England started following Jeremy Bentham's said theory. Jeremy Bentham believed that the main aim or function of the state is to provide happiness to maximum number of people in the state. Such happiness is measured in terms of pleasure. It is the pleasure that people derives from the legislation framed by the state. The legislation that does not provide happiness or pleasure naturally turns into pains. Such pains reveal the failure of the state in providing happiness. The enjoyment of happiness or pleasure is nothing but the security that a state avails through its reforms.

The state in Jeremy Bentham's time was known as body politic. According to him, the good body politic is one that promotes maximum happiness to maximum number of people.

In the world if Jeremy Bentham his philosophy is -

“Nature has placed man under the empire of pleasure and pain. We owe to them all our ideas; we refer to them all our judgments, and all the determination of our life. It is who pretends to withdraw himself from his subjection knows not what he says. His only object is to seek pleasure and to shun pain. These eternal and irresistible sentiments ought to be the great study of the moralist and the legislator. The principle of utility subjects everything of these two motives.”

The above words of Jeremy Bentham can be understood that he has clearly made distinction between “what the law is” with that of “what the law ought to be” Maximum number of people seek happiness from “what the law ought to be” because most of the people in the society are not law abiding people. On the other hand law abiding people in the society prefer “what the law is” it has suggested that utilitarian standards can be measured by pleasure and pain gained by the people in the society. According to him happiness can be gained by achieving four major goals viz., subsistence, abundance, equality and security. Amongst these elements, security is of major importance. The main function of the legislation is to promote security. By promoting security honor, properly and status of the people can be protected for which they feel happy. It has not emphasized at all on liberty. It is because, it is not the liberty but it is the security and equality that needs to become happy. Mere promoting liberty through legislation will not make people happy. Liberty is meaningless in absence of security and equality.

Jeremy Bentham was not in favor of Judge-Made law. He believed in codified law. He believed that reforms in law must be based on utility. Therefore, he proposed that if any reforms are to be made in substantive law than it becomes necessary to initiate reforms in its structure then only reforms must be initiated in substantive law. he further proposed that such reforms must be based on the process of analysis of substantive law. He suggested that means to achieve individual liberty is through utility. He noted that entire law-making process is not proper. Besides this there is widespread corruption and inefficiency in administration of justice. Due to all these reasons individual liberty is curtailed.

Many jurists were in favour of Jeremy Bentham's principle of utilitarianism. Jeremy Bentham's standards to attain utilitarianism were the measurements of pleasure and pain. Jeremy Bentham has not given theories on law. But his theories are based on legislation. His theories are based on morality. The period during which Jeremy Bentham proposed his theories became popular as “Benthamite Era” BE in the history of England. He adopted scientific approach of experimenting and reasoning. Due to this reason, his theories and his views were widely recognized till date.

BENTHAM'S VIEWS ON UTILITARIANISM

The views of Bentham on Utilitarianism are as under.

1. The governments and the limits of governments should not be judged with reference to individuals rights But it must be judge in terms of tendency to promote greatest happiness to greatest number of people.
2. Everyone who counts is to be counted equally.
3. Everyone not to be treated equally for distribution.
4. Different sets of distribution may also yield same degree of total happiness
5. The government has to maximize the total not sum of happiness to all their subjects.

BENTHAM'S THEORY IN CONTRAST TO NATURAL RIGHTS THEORY & POSITIVE LAW THEORY²

Jeremy Bentham's theory is in contrast with the Natural Rights Theory. Natural Rights theory consists of distributive and individualizing principle whereas Jeremy Bentham's said theory is not based on distributive aspect but it is somewhat based on individualizing principle of happiness. But for the purpose of calculating happiness entire mass is taken into consideration. Natural Rights theory assigns priority to basic interests of each individual whereas Jeremy Bentham's theory does not take into consideration basic interest of each individual but overall happiness of the society in which each and every individual interests pertaining to law is taken into consideration.

The said theory of Jeremy Bentham is also in contrast with the positive law theory. In positive law theory all individuals are not benefit. So, there doesn't a rise the question of maximum number of happiness to maximum number of people. In positive law theory aspect of "what the law is" is taken into consideration whereas under the said theory of Jeremy Bentham aspect of "what me law ought to be" is taken into consideration.

In each and every theory we find tension or clashes between liberty and equality. Similarly, clashes between liberty and dignity are also noticed.

DOCTRINE OF REVEALED PREFERENCES

1. Doctrine of revealed preferences means method of analyzing choices made by individuals. It is helpful in measuring individual preference. The jurists views on doctrine of revealed preferences with reference to Jeremy Bentham's aforesaid theory are as under:

1. Calculation of pleasure and pain is the guide is the guide for the government to conduct each and every aspect.
2. Emphasis must be given on the 'Economically Focused Values'. It includes value of General Welfare.
3. Reflection of wants and preference.
4. There may be practical problem in the process of identification of consequences of an act and estimation the value of such consequences.

HEDONIC CALCULUS

Hedonic Calculus is a Calculus designed to measure pleasure and pain. The said Calculus is also known as Felicific Calculus or Utility Calculus. There are in all seven variables in the said Calculus. Amongst these seven variables first six variables are given by Jeremy Bentham and the seventh variable was given by John Stuart Mill. These variables are as under:

1. Intensity – It is helpful in measuring how strong the pleasure is?
2. Duration – It is helpful in measuring how long will the pleasure last?
3. Certainty or Uncertainty – It is helpful in measuring how likely or unlikely is that the pleasure will occur?
4. Propinquity or Remoteness – It is helpful in measuring how soon will the pleasure occur?
5. Fecundity – It is helpful in measuring the probability that the action will be followed by sensation of the same kind
6. Purity – It is helpful in measuring the probability that it will not be followed by sensation of the opposite kind.
7. Extent – It is helpful in measuring how many people will be affected?

The above six variables given by Bentham were incomplete to give accurate measurements or pleasure or pain. The Seventh variable was missing. After applying the seventh variable to the aforesaid calculus it gives very near results. Thus, calculation of pleasure and pain in any economy where utilitarian theory is applied is calculated on the basis of above variables.

² The Philosophy of Positive Law: Foundations of Jurisprudence by James Bernard Murphy (Author)

CRITICISMS OR NEGATIVE ASPECTS OF UTILITARIANISM³

Unlike each and every theory, utilitarianism also bears various exceptions. There are its criticisms or negative aspects. These are –

- i Bentham has not taken into consideration the complexity associated with human nature or human psychology. Human nature includes nice blend of materialism, idealism, egoism, altruism etc.
- ii Bentham has made overestimation about the powers of the legislator in law making process.
- iii Bentham has underestimated the need for individual discretion regarding application of law.
- iv Bentham has underestimated the need for individual need for individual flexibility pertaining to application of law.
- v Bentham has not clearly developed the balance between individual interests and community interests.
- vi Bentham has proposed that law is made by the legislator and such framed law will provide individual freedom. It will also provide individual all kinds of opportunities for self-development. But, actually legislations also restrict individual's freedom. This is the main aspect of much legislation which is totally ignored by Bentham.
- vii Hedonic Calculus of adding and subtracting pain and pleasure of different persons and to ensure net balance of happiness seems practically unattainable or impossible.
- viii Bentham fails to recognize individual autonomy in its true sense and so as his Hedonic Calculus.
- ix Bentham treats all persons equally. It is feasible only in mathematical equation. He has not considered the sense of attributing to each individual worth individual's desire or welfare may be scarified as long as aggregate satisfaction if welfare is increased.
- x The said theory of Bentham dissolves moral personality of individual into utilitarian aggregates.
- xi The said theory of Bentham is in contrast with the Natural Law Theory. Practically, when natural law is ignored, no theory could last or can be implemented practically for achieving its goals.
- xii The said theory of Bentham can be "implemented only when great number of people in the society bears great morality or great moral values. It means, the said theory cannot be implemented in demoraed society. If the said theory is implemented in demoraed society it will give distorting results."

HAPPINESS MEASUREMENT A FICTION

The pre-condition of applying Jeremy Bentham's utilitarianism is that there must be maximum moral driven people in the society moral driven people means just people in the society. In modern day democracies of the world most or greatest number of people is unjust people. Unjust people get happiness or they gain pleasure from unjust aspects. It may be law or anything else. If law is made inclined to happiness of maximum number of people then actually the law is made inclined towards unjustness. It further gives rise to a situation wherein there are apparently large number of law but the contribution of such laws towards maintaining peace and order in the society, towards attainment of justice, etc is nil. It is the same situation as we find in lawless societies.

Government of Gujarat measures happiness count every year. Similarly, India measure its happiness count every year. A brief report of happiness is published every year. Since last two successive years, the Government of Gujarat has published in newspapers that maximum number of people in the state of Gujarat are happy.

If we go through the practical situation prevailing in India inclusive the State of Gujarat, then we find many outstanding and heart breaking as well as shocking realities, amongst these, few are as under:

- i Most of the students in India have lost their keen interest in obtaining knowledge. They are only interested in achieving degrees and more percentage against negligible dedication, involvement and interest and so dues their parents. This has made students quantity conscious rather than quality conscious. Since last decade or two India has not produced any mathematical genius, science genius, etc.
- ii For maximum number of students and their parents Burden less education means total deviation from gaining knowledge and gaining extraordinary good scores is the subject matter of money spend by the after education this has increased the number of Degree holder uneducated in India.
- iii Criminals are not stopped from commission of varieties of crimes. Human Rights of accused and criminals are more considered in India as compared to the Human Rights of complainants. Criminals do not like jails. Therefore, for the purpose of humanitarian reforms for criminals the principal is deprived that 'Jail is an exception and Bail is right'. On the other hand complainant, as a matter of their right demands for jail to accused, which is totally ignored. The conviction rate in India is less then 2% Because Criminals do not like to be convicted.
- iv In the State of Gujarat in the year 2019, the survey based reports indicated that the proportion of mal-nutrition and under-nutrition among children below 14 years of age belongs in majority in urban areas amongst educated families.

³ Indian Jurisprudence by Prof. Fr. G. P. Tripathi Allahabad Law Agency

- v The proposition of filing false complaints and false cases have over burdened India Courts with the number of unsolved cases.
- vi The proportion of intolerance is more amongst the people in society as compared to tolerance.
- vii Perhaps for every problem there is a specific law in our country but still justice remains tangled in cob-web of procedures,
- viii Moral values in human beings are missing. The number of old-age homes is increasing. Our rich cultural norms are now dilapidated. Despite this, we feel proud of what we have lost.
- ix What the Google, YouTube, etc says is right is the modern day norm of joining knowledge. Totally, directionless generation drives the society.

The above list is not a lucid one. In order to solve one problem many now problems are created. All these above aspects impose a question upon us that is really a democracy exists in our country? If the answer is yeas then it is the democracy of unjust people. The main task of the Government is to show and create justness with unjust society. We have lost almost everything for which not only us but the entire world felt pride once. Despite this our happiness count is increasing day-by-day.

Happiness measurement is such society reveals about all essential ingredients of fake democracy. Whatever is prohibited by law legally prevails and practiced in our society. This is one of the greatest realities of fake democracy. It is a universal reality of present time that most of the people are not happy with the fulfillment of their minimal need or requirements. They feel happy by fulfilling what is not at all to their option. This is fulfilled by various illegal means. Thus, happiness measurement is nothing but the fiction of such democracy.

CONCLUSION

Government fools the people as well as the international community by measuring happiness. Existence of democracy at par, democratic values, good morals of maximum number of people, etc are pre-conditions before measuring happiness i.e. pleasure. For example many people living below poverty-line holds BPL cards not out of necessity but out of gaining unnecessary and free benefits from the state. Many BPL cards holders have air conditioners, new and updated version of branded mobile phones, view version of vehicles, etc. They lead luxurious life styles. Such people gain happiness till their maximum number of needs is freely fulfilled. They are fulfilled in India. In other words, there is no specific system of checks and balances for such people in India.

Maximum number of marriages is failing and live-in-relationships are sustained. The norms set forth through legislations are so dilapidated that they make unjust people happy. As per the new Motor Vehicle Act, the Government has become very strict on vehicular pollution but what about industrial pollution? Industrial pollution is many times more than vehicular pollution. If government becomes strict in controlling industrial pollution then most of the industrial plants in India are in obsolete condition. This will create problem for government regarding stability of its future. No per-head rationing of vehicles is done in India because rich class people are habituated in keeping large number of expensive vehicles at their collection. Despite all these, If government claims that maximum number of people in a state in a state or country are happy then in other words it is certifying that a fake democracy exists.