

A Critical Assessment Of A Moral Foundation Of Human Rights: A Bentham's Perspective

Chetna Gupta^{1*}, Kumar Neeraj Sachdev²,

^{1*}PhD Research Scholar (Philosophy) Department of Humanities and Social Sciences, Birla Institute of Technology and Science (BITS) Pilani Campus, Pilani– 333 031, Rajasthan, India, p20190504@pilani.bits-pilani.ac.in, 8800943512

²Associate Professor of Philosophy, Department of Humanities and Social Sciences, Birla Institute of Technology and Science (BITS) Pilani Campus, Pilani– 333 031, Rajasthan, India, kns@pilani.bits-pilani.ac.in, 9694096458

Citation:- Chetna Gupta & Kumar Neeraj Sachdev (2024, A Critical Assessment of A Moral Foundation of Human Rights: A Bentham's Perspective), *Educational Administration: Theory and Practice*, 3(5), 2327 - 2330. Doi: 10.53555/kuey.v30i5.3286

ARTICLE INFO

ABSTRACT

This paper critically analyse Bentham's ideas of human rights from the perspectives of select thinkers to examine whether they accommodate a moral foundation of human rights. In the critical analysis, we aim to determine first whether Bentham is correctly attributed with the idea of human rights in their writings and second, whether it is possible to infer particular human rights such as the right to freedom, the right to well-being, and the right to equality from his writings.

1.0 Perspectives of Some Thinkers on Inferring Bentham's Possible Idea of Human rights

I analyse some thinkers' perspectives on Bentham's idea of human rights to assess whether Bentham discusses human rights. According to Amanda, Bentham does not respect rights (Amanda Alexander, 2003, 1). Bentham wrote a book named “*Nonsense Upon Stilts*”. In the book called “*Nonsense Upon stilts*”, Bentham criticizes the concept of natural rights. *Natural rights are those rights that come naturally because of the fact of being human. These rights are not dependent on the laws of any culture and government. These rights are fundamental and universal. Bentham's destruction of the natural foundations of rights is so well-articulated that no one has managed to restore them.* According to Amanda, natural rights are regarded as imaginary fiction seen from Bentham's perspective (Amanda Alexander, 2003, 4).

Bentham did not favour rights because he did not want to understand that human beings have certain a priori and imprescriptible rights, which are a consequence of their humanity. According to Schofield, for Bentham, natural rights do not exist and are considered a fallacy (P. Schofield, 2002, 364). The existence of rights, according to Bentham, is not to be postulated because we may desire rights, but it does not mean that they exist.

According to Bentham, all men are born free is regarded as absurd, miserable and nonsense because men are born into subjection and bound to their families and social positions. Many humans are born into slavery; then how can we claim that humans are born free? Bentham wanted to show the reality of a society where the rich and the poor do not have the same rights, social distinctions exist, and the community cannot provide natural rights. He further says that if all men are not born free, how are all men considered equal? He does not discuss the right to equality because he is not even willing to consider the term "equality."

According to Mack, Bentham constructed a considerable obstacle to belief in natural rights and defined rights as fallacies (M. Mack, 1969, 331). Fallacies as arguments are used for the purpose or with the probability of encouraging misunderstanding. According to Bentham, rights are only a form of argument, and natural rights work as the anarchist's tool to prepare the road to revolution. He cannot provide proof that validates the idea that natural rights create a revolution.

According to Bedau, Bentham's argument that natural rights caused revolution was wrong. He claims that there is no evidence to prove that the idea of natural rights caused the French Revolution or that the *Declaration* led to future rebellions or anarchy (H. A. Bedau, 2000, 261). Denial of the existence of rights will deny their power or purpose. According to Bentham, if we consider natural rights as the ideal of government and also as the inalienable property of individuals, then it gives rise to expectations that no government can fulfil. Every government will fall short because they will think for the welfare of society and not about individual rights. When the government cannot satisfy its individuals, revolt will occur, and political legitimacy will overrule rights. If the government thinks about the greatest happiness for the maximum number of people, then this concept is utilitarian. Bentham advocated the idea of Utilitarianism.

2.0 Bentham's Ideas of Utilitarianism and Human Rights

Utilitarianism is a concept that deals with an action's moral and political rightness. It talks about the greatest happiness for the maximum number of people. The idea of Utilitarianism exploits humans because it treats humans as a means to an end. Bentham treats humans as a means to satisfy ends, then how can he accept any rights? However, Bentham's concept of Utilitarianism cannot acknowledge and guarantee rights. He talks about the idea of utility. Bentham's utilitarian philosophy is defective because it fails to appreciate humans as Kantian individuals or to understand the value and purpose of rights. Human rights are usually understood and justified in some version of the Kantian individual. Generally, an individual is a rational, autonomous, moral agent endowed with dignity and personal worth. Rights spring from these features. It also recognizes and strengthens these features.

Utilitarians never properly appreciate nor safeguard such an individual. It places happiness over dignity or autonomy. According to Hart, utilitarianism sees people as replaceable possessors of sensory experiences. It ignores the value of individuality, treats them as all one person, and considers their well-being to that extent which increases or diminishes the happiness of society (H.L.A. Hart, 1979, 79). Utilitarianism cannot recognize individuals as separate beings. It assumes people as a means to achieve a social end and ignores the Kantian idea of end in themselves. It cannot understand or appreciate the importance of rights. For utilitarians, doing certain things to people, such as killing them, torturing them, and imprisoning them on false pretexts, is not *wrong* if it promotes the community's best interests.

According to Lyons, Bentham's utilitarianism talks about the form of act utilitarianism (D. Lyons, 1980, 19). Act utilitarianism deals with the performance of the actions that create the most significant net

utility. According to act utilitarianism, the utilitarian principle is applied directly to evaluating individual actions.

Utilitarianism refutes the claim that it neglects an individual's happiness and maintains only the greatest happiness. Utilitarianism is antagonistic to rights and cannot provide absolute protection for rights. Postema highlights that Bentham was against any attempt to incorporate the language of rights into constitutional jurisprudence. Bentham sought to banish from constitutional jurisprudence the very concept of rights (Postema, 2019b, 223). Bentham was against the notion that places some rights above and beyond the legislator's powers and reaches.

Constitutional rights, according to Bentham, are meant to limit the supreme law-making power and will void rights-violating laws. Rights are the children of law and cannot serve as a limit on the power of the leading lawmaker, according to Bentham (Schofield, 2002, 400). Will constitutional rights deny its unlimited status restraining its field of action? If constitutional rights need to be acceptable, they should provide a ground for applying conditions and punishments to the individual legislators who violate the constitution must be incorporated. Apart from constitutional rights, fundamental rights are also mentioned.

Francesco claims that according to Bentham, fundamental rights are undetermined because rights are known through good faith and threaten the rule of law. (Francesco Ferraro, 2022, 40). Rights endanger the rule of law because it undermines conditions of genuine public justification. Rights are created only by the law and are inseparable from the notion of legal duty, from that of offence, and a fictitious entity, according to Bentham (Bentham, 1977, 88). Rights without fundamental law are considered only as expressing an unwarranted moral judgment. Constitutional rights play a significant role because they do not shut the door to argument and provide a principled defence. Rights can link convictions regarding ultimate values with concrete circumstances and social environments.

The rights bring ultimate values and social visions to bear on concrete situations and maintain the structure of social relationships. According to Postema, constitutional rights bind us to depart from our different general moral and political stances to find common ground for discussion and shared solutions to various concrete problems. In contrast, fundamental rights can never meet the conditions of publicity as a demonstration and serve the cause of public justification, understood as a practice of everyday discourse and vital for a democratic community (Postema, 2019b, 243). Rights serve to structure argumentation and public discussion, but for Bentham, they are still names of fictitious entities.

Rights work as delusion if they are not translated into actual entities. Law created rights by ascribing duties. Rights cannot be used as normative justificatory grounds because they need justification. Bentham claims that rights cannot be used as an intermediate basis for a reason unless they work as a tool for presenting legal duties. Rights result from corresponding duties and do not justify their existence independently (Bentham, 2010, 316). Fundamental rights cannot be analyzed in terms of precise correlative duties. Because the same right, for example, the right to free speech or social rights in legal systems entrenched in constitutional charters, can be used to justify the ascription of different claims, duties, and powers.

On the other hand, constitutional rights can express the value of equality among citizens and their claim to equal respect as persons. In some sense, it follows Bentham's Utilitarianism, the doctrine of the greatest happiness for the maximum number of people. If equality among citizens is maintained, then maximum happiness will be derived. Still, Bentham do not discuss the right to equality, the right to freedom and the right to well-being.

According to Bedau, Bentham holds that any rights conferred through positive law are enacted, decreed, and enforced by some legitimate government, and all rights are legal. For example, person A has a right in society to do some act x only if there is a law that permits A to do x by conferring on A the right to so act (Hugo Adam Bedau, 2000, 270). Nature gave every man a right before the existence of laws. However, according to Bentham, such a right leads to a war against all. For example, if the right of self-preservation in a state of nature imports anyone's conduct, then how can it not be a right to all; everywhere a correspondent obligation is derived? If person A lacks happiness, because A lacks a right to do x then the lack of right gives A a good reason for wanting the enactment of a law establishing the right. The lawmaker's judgment determines our rights as to whether it is more or less advantageous to society as a whole that an individual, or all persons, has a legal right to do the thing in question. Existing law may fail the utilitarian test because the law creates not conducive to the net general welfare.

According to Miriam, Bentham talked about the political rights of women. He said that women are excluded from their political rights because men lack the maturity to work seriously with women and it is wrong to say that women's intellects are inferior and they lack abilities to do any work (Miriam, 1975, 170). Bentham's advocacy of women's political rights was more theoretical. Bentham applied his greatest happiness principle to women and concluded that their claim to this happiness was equal to the happiness of the male sex (Miriam, 1975, 175).

3.0 Conclusion

According to many thinkers, Bentham talks about rights in the form of denial. There is no logical connection between Bentham's concept of Utilitarianism and the theory of rights. These two theories do not make sense together. Human rights express and protect our nature as free, autonomous, and dignified creatures; happiness plays no role in seeking or enjoying any rights. Happiness and unhappiness are real entities for Bentham, experienced directly. Rights must be considered moral concepts designed for privacy, autonomy, and dignity. However, Bentham claims that rights ought to be created by law if and only if they are to the advantage of some majority in the human community.

4.0 References

1. Alexander A. "Bentham, Rights and Humanity: A Fight in Three Rounds", *Journal of Bentham Studies*, 2003, 6 (1): 1-6.
2. Bedau H. "Anarchical Fallacies: Bentham's Attack on Human Rights", *Human Rights Quarterly*, 2000, 22 (1) 261-279.
3. Bentham J. "The Book of Fallacies". In *A Bentham Reader*, (M. Mack., Ed.), Pegasus: New York. 1969, 331-334.
4. Bentham J. "Nonsense Upon Stilts". In *Rights, Representation and Reform: Nonsense Upon Stilts and Other Writings on the French Revolution*, (Philip. Schofield, Catherine. Pease-Watkin, and Cyprian. Blamires., Ed.), Clarendon Press: Oxford. 2002, 364-401.
5. Bentham, J. "*A Comment on the Commentaries*" and "*A Fragment on Government.*" (J. H. Burns, and H. L. A. Hart., Ed.), The Athlone Press: London, 1977, 88- 95.
6. Bentham, J. "Of the Limits of the Penal Branch of Jurisprudence", Oxford University Press: New York. 2010, 316-317.
7. Ferraro F. "Utility, Predictability, and Rights: Bentham's Utilitarianism and Constitutional Entitlements", *Ratio Juris*, 2022, 35(1): 40- 50.