

CHAPTER: TWO

MODERN THEORIES OF JUSTICE

Justice comes from the Latin word 'jus' that means right or law. According to Oxford English Dictionary, 'just' person is one who does the things what is morally right and the word 'fair' is the synonym of justice. But the philosophers consider justice as the moral virtue of character and how it can apply to make ethical and social decision. This chapter is designed to throw light on the controversial social issues like property rights, equal opportunity, slavery, war, civil disobedience and international relationship.

The modern theory of justice is different from traditional doctrine of justice. Modern philosophers give emphasis on the virtuous man as well as on just society. In a way, modern philosophers give a progressive idea about justice. When the idea of justice is applied in the various area of social life then we saw there are manifold dimension of justice (e.g.—legal, political, social, economic etc.).

Hobbes is not in agreeing with two Greek philosophers (Plato and Aristotle) view about justice. According to him, by nature all people are equal as they are the part of nature. He treats justice as an artificial virtue, that is important element for the civil society and necessary equipment which works to make social contract with the voluntary agreement among the people. But Hume presents his theory of justice to protect the public property in a just manner. In short, western modern philosophers treat justice as virtue and offers prominent place to justice among all virtues as it arrange the interpersonal relations among the people and maintaining and establishing a stable ideal society. All the advocator of the theories of justice understood justice in terms of

respecting people as free and rational agents. Though one may not be in agreement with this nature and application of justice, but this is its core essence.

❖ **2.1 Thomas Hobbes's Views on Justice:** As an alternative of Sophist philosopher's theory of justice where Plato, Aristotle represent their own theory of justice, Thomas Hobbes, the radical empiricist reinterprets the Sophist views of justice. He thinks that, Sophist theory has not any moral or political absolute value or any objective knowledge. As he was a radical empiricist, does not accept anything which has not any concrete sense experience ground. In his famous book *Leviathan* he says that, by nature any kind of real thing must be material or concrete. In this connection he adds that, the only sort of reality is nothing but the human body and this type of materialistic monism rejects the probability of any spiritual element. In this respect "a man is a living body", they are different only in kind from other living beings, but not any impure spiritual soul separating them from these beasts. As like animal, human beings are doing any act by their natural instinct and appetite and their capacity of reason has always pushed them towards the desirable ends.

Hobbes does not agree with the Aristotelian theory of natural inequality of the men. He says, all people are the part of nature and by nature all people are equal. As they are equal by nature, so everyone acknowledges with each other, otherwise they are found guilty of the sin of vanity. Human actions are being maintained under the concept of necessity. As like water, people have both the quality—freedom and necessity. Water has the necessity and freedom to flow from the channel, because when a man need to use water he can use the water, just like that everyone is free to perform their actions

voluntarily, but they are proceed themselves to do actions by their choice and sometimes it is determined the causal determinism.

He proclaims another controversial view by saying that, behind all actions of human being there must be present causal determinism, which emphasis on that all actions are causally determined by their antecedent conditions. But the voluntary actions are those which are done by the person own will and there are not present any external restraints. Human beings are free to perform the voluntary actions with their own will and all external restraints are absolutely absent. All of the living beings have possessed the survival instinct and always motivated by this nature and in of their voluntary action self-interest has played a prominent role, this type of matter is known as psychological egoism. He also added a controversial view by saying that, our fundamental motivation should be the self-interest; it is calls as ethical egoism.

Hobbes proceeds to draw a stagy and stressful or puzzling depiction of human life or their behaviour in a state of nature. On the ground of pessimistic human nature it can be said that, the state of nature is glum and inglorious. According to Hobbes, rationally people are mistrustful with each other, attracted to the anti-social activities, seeing others as impendence to their own gratification and well-being. So, Hobbes thinks the relationship among the people as of mutual disbelief and enmity. The individual only follows the one rule, that is--one would take if he had the power and keep it as long as he could do this.

This type of interpersonal animosity would be natural with the people, and in this “ill condition” people forgot the moral values. As a result, they do not able to distinguish between wrong and right, unjust and just. People accept the violent force and fraud deception as the two cardinal virtues. The prime reason of this rivalry is

subsist within human nature. There are three reasons which are present behind this type of contention and hostility, these are --- competition, diffidence and glory. In the competition a man spread violence through which he can dominate on other people, wives, children or cattle. Diffidence helps the people to maintain the safeties and the last one is glory, it makes the men always maintain their own reputation in the society.

The first use Violence, to make themselves Masters of other mens persons, wives, children, and cattell; the second, to defend them; the third, for trifles...⁶

Hobbes does not attribute the situation or condition of the people to either guilt or corruption, but to the human nature. All people are responsible for their own digression or downfall. In fact, this condition is a state of “war of every man against every man” and in this condition we could not expect to survive or enjoy our life for long time. In this respect, Hobbes states that, people life is necessarily poor, nasty, solitary, feral and inferior.

But luckily our natural affections of desire, hope and fear inspires us to apply our reason to relief from this infernal state. Reason helps us to make some basic laws of nature that helps us to act maturely in those situations when we get any feasible chance to subsist. The first basic law is double sided—positive and negative. The positive side holds that, for the sake of our own good one must try to live peacefully with other people. On the other hand negative side holds that, if we are not able to do that then we should take recourse to harm them whoever hinders to fulfil our interest.

⁶ . Hobbes, T., *Leviathan*, Edited with an introduction by C.B. Macpherson, p-185

The second law of nature holds that, if we want to live peacefully with others, then it is necessary to willingly give up the right to do harms for anyone and as a result, others people also agree to give up their right to harm us. This type of reciprocal transmitting of right made by the mutual consent is known as social contract. It is made by the agreement which is made by directly or indirectly for comparable components and this contract establishes the base of civil society.

It has been noted that, in the above discussion we have not seen any sense of natural justice and injustice. Our desires are strictly relative with the all moral values in the state of nature, those things are satisfies our desires, these are 'good' to us and those things are makes frustration instead of producing satisfaction are calls 'evil' to us.

These all are associated with the human inclination or disinclination or contempt. But if we move from this and divert our attention on the social contract then we makes some rules of justice on the basis of agreement. Before social contract human beings are free to do whatever they want to wish and no action is treated as unjust. But after making the covenant if one does not maintain the covenant rules or tries to break it then it is treated as an unjust act. And the just act is exactly opposite to the unjust act. So, here the third law of nature is come into the position which is known as justice, where all people necessarily obey the agreement. According to Hobbes, we cannot claim that a person is unjust, who always intend to do just actions, though he has unintentionally done one or some unjust actions which has been made from a mistake or unexpected passion. On the other hand, a person is called unjust who is always willing to commit unfair actions. But still a question may arise that, as Hobbes states that the human beings are selfishly motivated by fulfilling their own desires, then why they are not

always willing to commit the unjust act? Hobbes replies that, human beings are very conscious that the unjust act may be pay off for them. In this situation it is necessary to preclude the rapid differentiation of the regulations of justice which has made by the social agreement or that may call as the power of the sovereign hegemony. And the laws are also requiring to enacting with the rules of justice and it must be strict as no one can try to violate these. It is true that people do not believe or willing to respect the social agreement, but they compel to respect it as some external forces are imposing on them. In this respect Hobbes comments that, contract is like a glaive and without it there is no severity to secure a man at all.

Hobbes thinks, to obtain any sort of indemnity we should ready to sacrifice our natural liberty. He represents another aspect of justice in regard of men and their actions. According to Hobbes, if the sense of just or unjust related with men then it implies one thing and when just or unjust incumbent with men's action then it signifies another thing. Just or unjust in relative with men it implies conformity or inconformity of manners to reason. On the other hand, when just and unjust imputed with the actions then it signifies the particular actions, not the manners or manner of life. So, who are careful about their all actions, these may all just and that makes them as a just person. And who neglects all his actions that make him as an unjust person.

Generally most of the people are often verbally use the term righteous and unrighteous instead of using the terms just and unjust, though it bears same meaning. Hobbes pretends, a righteous man is always careful of his actions and does not want to be an unjust person by doing any unjust act. His conscience does not allow him to do any mistake or unlawful act. And an unrighteous man does not abide any restriction or

he does not fear from anything or do not care of anything and he lose his character that allow him to doing the unlawful acts. His intention is just fulfil his desire or getting the benefit of his own that may harmful to any others as his character is not framed by the justice. So, human activities done from the viewpoint of justice makes him a noble person or a gallant man and those actions performed under the shadow of injustice for the satisfaction of his life makes a man to do the spoof act or infringe of promise. Hobbes affirms that, justice is a virtue and injustice is call as a vice. But on other side, on the basis of justice of actions Hobbes states that, not be a just person, but with be a guiltless person and the injustice of action describes the men as the guilty.

Hobbes classified justice of actions into two parts: communicative and distributive. The first one is constructed in proportion of arithmetical basis and the later one is formed in proportion of geometrical basis. Here he distinguishes between these two types of justice of actions. Communicative justice equally distributes the value of all things to the contractors, but the distributive justice equally distributes the benefit to the people by their equal merit. It is injustice to offer more benefit to a man who have less merit than another man. In the communicative justice the value of all things are measured by the contractor's appetite and here the merit is given by their grace only.

But this distinction between these two is not used in the right sense. Properly speaking, communicative justice is for the contractors and the distributive justice is for the arbitrators. Communicative justice is made by the performance of the contractor according to the covenant (e.g. lending or borrowing, buying or selling etc.). Distributive justice says about the acts by defining what is just. Here the arbitrator

distribute the things to everyone which is his own and this calls as distributive justice or clearly speaking it is the Equity and it is also a Law of Nature.

❖ **2.2 David Hume's Thought about Justice:** As an alteration of Hobbes and Hume's theory of justice it is necessary to mention here that an important view about the concept of justice is given by the famous political philosopher John Locke, though he does not give any special theory of justice. In his famous book *Second Treatise of Government*, he discusses that, the state of nature is ruled by laws of God, but these laws which are important components of human life are unable to protect the natural rights of property, liberty and the estates, because there are absence of mechanism that is an important enforcing tool to respect each other's natural rights. In order to secure their rights people get ready to make a social contract with their mutual understanding and it helps to move the people to a state of political society from the state of nature with Government commence to enact the law. It is worth to mention here has another social contract theorist views though he does not give any distinctive theory of justice; he is Jean- Jacques Rousseau. In his famous book *The Social Contract*, he mentions that the general-will must be appeared in a well- order society. According to him, true freedom in the society demands from the people that they should follow the general-will, if anyone does not follow this, then he will be legitimately forced to do so. In this field people move to the civil society from the state of nature. In this civil society for the common good every citizen are deference to assent the laws.

David Hume, the Scottish philosopher, who rejects the social contract theories given by Hobbes, Locke and Rousseau, was highly inspired by Locke's focus on

property. As like Hobbes, Hume is a radical empiricist and a supporter of determinism. As an absolute and objective virtue Hume is suspicious about justice. He refuses the psychological or ethical egoism and embraces materialism and on the basis of historical and philosophical grounds he attacks moral and political obligation of social contract theory. Hume claims that, in history we have seen that force consent is the basis of government. He proclaims that though our predecessors are given their consent, but it does not bind us and the more authentic interpretation of submission is the utility rather than the original agreement.

Hume asserts that, the sole origin of justice is nothing but the public utility. Generally it is our reason or passions from where all of the values (including justice) are being derived. Whereas Plato and Aristotle thought that all of the values are derived from reason, like Hobbes Hume thinks that, it is not our reason, it is our passions from where all of the values are derived. According to him, any kind of virtue is desirable as it gives us the feeling of happiness and any type of vice (i.e., injustice) is not desirable as it gives us pain or unhappiness. To him, a virtue must have the quality that it is pleasant or feasible to the others or the person himself. It may be possible that, some of the virtues are compatible with more than one among of these four categories, as benevolence is pleasant and feasible to both – to the other persons and the benevolence persons. But justice is treated as a virtue only because it is beneficial to the all members of the society. He does not believe that justice is identified as the perfect equality and refused the ideal of egalitarianism as it is impracticable and absolutely disastrous to the human society.

For Hume, to protect the private property is the essential rules of justice, but in case of extreme necessity of the safety of people or common good of the people property rights are not ultimate and even it may be potted. In case of international relation that demands the rules of justice must protect for mutual advantage though the public utility demands that they should be ceased. In this context Hume says that,

Our property is nothing but these goods, whose constant possession is established by the laws of society, that is, by the laws of justice.⁷

There is no doubt that Hume's view is different from Hobbesian theory, but it is forwarded in the direction of sophist views of justice as it is relative and conventional.

Second part of his book 3 of *Treatise*, Hume elaborately discussed the concept of justice. Here he claims that justice is not an 'arbitrary' virtue, it is an 'artificial' virtue, as it is constructed as a virtue for our own needs and situations. To reach to the end of social collaboration justice is an effective means and as a result, it is reciprocally advantageous for the people.

The distinction between an artificial virtue namely justice and many of the natural virtues are the basis of Hume's ethical theory. Justice is an immense issue which covers a large portion of human's life, such as---natural rights, international relations, sexuality and general theory of government. Rather accepted such self- evident determined natural rights Hume is more interested to provide a psychological interpretation about those traditional based natural rights if it is possible. Hume

⁷. Swabey ,W.C., *Ethical Theory from Hobbes to Kant* , p-155

considers the natural rights in a broad manner by bringing it under the concept of property and promises. Apart from this he also concerned about the rights of liberty and life. So, he believes that, as like liberty, property is an important thing to us from which no one can deprive us.

To show that the justice is an artificial virtue Hume presents a fact by saying that often we have not any natural intention to pay our dues, still we have not any self-interest with the payment and have not any love connection with the creator. Here the only motive which is present behind all cases is nothing but our love for justice for its own sake and an “abhorrence of villainy”, but this type of motive is unexpected to the people in their state of nature. Here we understand what Hume wants to inform us. Like recent sociologists and psychologists he wants to say that the training or the conditioning is those things which may help us to do the right thing in such situations. It is a matter of habit- formation or it is the acceptance of those kinds of social standards which are impressed on our mind during the period of our education. But Hume does not actually mean the ideals of justice communicate with the people in this way.

The actual argument of Hume is based on the dubious premise “that all virtuous actions derive their merit only from virtuous motives and are considered merely as signs of those motives.”⁸

According to Hume, often some of the actions are considered as right though these come from our selfish motives. Thus one can still do the right thing if he paid his due out of an intention to maintain his credit. So, it appears that judging the value of

⁸. Op.cit, p-153

actions Hume is giving so much importance on the motive. In this regard Hume gives an example in favour of his argument by stating that, for the lack of natural affection a father is inattentive toward his child. On account of getting some natural affection one may hate himself and in order to attain the virtuous motive he perform the action in a sense of duty. Here Hume appeals ‘the natural’ as the usual standard. In this respect natural means some collection of conventional or the customary which vary from one society to another society.

One must postulate a will to conformity which supplies a motive for following the rules of justice, whatever they may be, in the absence of any other motive.⁹

From the above interpretation it is clear that Hume draws his observation to the sense of justice and injustice of laws of equity in the following manner. It comes from education and our convention, not from the nature. Like naturalistic sociologist Hume look for an interpretation of morality in terms of the nature of human being. Hume agreed with the view of sophists and Epicurus that the justice including natural right of the people originated from the contrivance or artifice, it is an invention of those intelligent people who remedies those things which are absent in their instincts and emotions. This fact shows the educability of the people. It holds that nature has given a sense of honour to the most number of people that guide them to respect the primitive conventions and these are basis of their future security and their lives. This view is similar with Kant’s respect to the moral laws and intuitionists who teaches us to do those things what is right. Though the natural rights are the creation of the intelligence,

⁹. Op.cit, p-154

but our volition towards the consent to laws which are good for our society are not completely arises from the training, rather some part of it are implicit in human's nature.

Hume does not understand justice in the sense of fairly or equally distribute of good and evil. He thinks that it is made as an abstraction from the tradition and rather than merit on the basis of force or chance the original distribution may be made. According to his basic conception of justice, it maintains the notion of original distribution and it is save in so far as it is modified by a deliberate deference either it is for other goods or out of simply good-will.

In short, justice, for Hume, was by definition the *status quo* and he does not suggest any other idea of justice which might serve as a basis for criticism of the existing distribution.¹⁰

Hume affirms that in a family there is presence of altruism and in their relationship there is family egoism with each other. This type of egoism hinders the people to make a large society. On this account as a remedy, justice has been taken its position.

Hume does not believe on the rationalists conjecture on account of the foundation of justice. They infer that, justice is founded on the basis of invention of the invariable relations of ideas and where the organisation is useless, property does not exist there. In comparison with the desires of human being, property is based on the deficiency of external goods and narrow kindness and selfishness of man. Here it may be remember here that in the golden age of poetic fiction where we finds infinite greatness of man

¹⁰ . Op.cit , p-155

and also present a huge branch of external goods in the society, in this condition it is not the matter for the people that, this thing is mine or yours, in such circumstances there is no need of the property concept. In this sense for their own happiness in life and existence most of the people considered the justice as a system.

Without justice, society must immediately, dissolve and every one fall into that savage and solitary condition, which is infinitely worse than the worst situation that can possibly be supposed in society.¹¹

In society everyone is conscious about their own interest and to maintain this they are doing such acts what others people are doing within the institution. But later when the society becomes larger and men's life is become very complex then they are unable to maintain the justice and involve them into the inferior and more intense desire. But people are never flinch to recognize the danger engaged in the injustice of the others. Hume does not wholly refuse the rationalists notion, rather for regulating the conduct of people he accept some higher principle of reasons.

In fact, justice comprises three principles---- of the stability of possession, of its transference by consent, and of the performance of promises. He does not agree with the traditional views of justice that emphasized on giving others their dues. To him, the traditional definition blindly and wrongly presumes that, the right and property are independent of conventions of justice and these have prior objective reality.

Basically the rules of justice demand us to respecting others' property. The psychological grounds of sense of justice are self- interest and sympathy for others.

¹¹. Op.cit., p-158

Regarding the concept of property rights Hume presents a very conservative views that everyone is allowed to only keep up those things which they have already achieved.

Therefore, Hume presents the justice as the system or corner stone of property and it is based on utility of the individual as well as utility of the society. According to Hume's perspective, basically, property is the alignment of ideas or customs that has a large measure of truth. To him, occupation, prescription, accession and succession are the four basic principles through which justice discerns property. These all principles are easily comprehended as matter of a relation that situated in human's imaginations. Occupation is nothing but a simple method which allows every people to keep what he has; prescription envisages the period of time that a man has had the thing; accession gives the people

The fruits of our gardens, the offspring of our cattle and the work of our slaves. ¹²

And the last one succession is the rules which approve the principles of reversion. Even our alleged right that we have made a strong relationship between ourselves and those things which we are earn by our labour. It seems that Hume's attitude is conservative and in his *Treatise* he mainly focussed on the psychological and sociological interpretation. It has seen that, in Hume's doctrine of property, for the common good by a socialistic state that he does not fully banish expropriation.

Hume thinks that internationally the rules of justice imply the status of the law of nations, where obliging well- mannered regimes are respect the delegates of other countries, assuage to use the venom arms against them, before starting the battle they

¹². Op.cit, p-160

should declare the war etc. In short, diminish the horror and tragic war and set- up the peace are the basic principles of international justice. All administrators of any state wants to reduce the any possibilities of war, so they respect the possessions of other societies and by mutual assent they wants to transference of possessions, as it helps to promote the international trade. As a result by this mutual consent they can capable to make an environment for peaceful alignment.

Hume's conception about justice surprises modern thinkers by its parochialism. He treats justice in equal with respect the rights of others that made by conventional rules. And it denies to discuss the question whether these rules and outcome of distribution of rights are just. According to him, this question has no meaning or sense. Since he has accepted that, the primary rules of justice are received in part for their usefulness. Hume granted that, these rules would never change. In this context, critics assert that, in Hume's conception there is no hint of a broader concept of justice.

Thomas Reid one of the critics of Hume's conception of justice who attacks on Hume's narrow minded view about justice, Reid argues that. Hume gives exclusive focus on property but he excludes that justice has also consisted on certain natural right – liberty and life. So, Reid's position is that Hume should give some weight on natural rights, needs for human being in making judgments of justice.

Aristotle's in his discussion about justice as an individual virtue included the idea of equality and merit, but in Hume's analysis about justice as a virtue it is still a problem why he ignores these broader principles of justice in that analysis.

However, desert and equality are considered as possible criteria of distribution by Hume. In short, in accordance with desert Hume's attitude towards distribution is: attract reason and natural sympathy both of these suggest that material goods

should be allocated in according of desert. But practical perception ascertains that this would be totally unworkable and would shatter the stability of property which is important to Hume. In this connection it would be argues that,

There could never be agreement among men on a standard of merit, or on a method of applying such a standard in a particular case, and so a rule based on merit could not be implemented impartially.¹³

❖ **2.3 William Godwin's Conjecture on Justice:** In the history of political philosophy William Godwin's conjecture about justice famously known as 'political justice'. He thinks that, the fraction of political government works as a brute engine that is responsible for perennial cause of impiety of mankind. He begins his theory by attacking Locke's natural rights tradition. As it is too much egoistical and gives priority on each individual to right to do as they want to do. Godwin considers that, duty, justice and concern for the general good should be the human tendency to other peoples. He rejects the liberal notion of rights and replaces it by his superior claims of justice. He does not grant to permit that, people have the right to do as he wishes. Everyone is crammed by justice to perform their duty, apply their talents, strength, abilities, understanding and gives their time to producing the greatest amount of common good. His moral philosophy is famously known as utilitarianism. In this connection he says that,

¹³ . Miller, D., *Social Justice*, p-167.

One's duty is to see that his every act is 'bound to... the general weal, that is, for the benefit of the individuals of whom the whole is composed.'¹⁴

He believes that, greater evil may be absolutely prevented if each people are ready to do their duty to sacrifices their liberty or life for their neighbours. He in his *Political Justice* described that, in the simple anarchist society injustice and inequality in economic system would dissolve or evaporate. 'Political simplicity', 'public inspection' and 'positive sincerity' are the three fundamental elements; by the help of these Godwin formulates his vision of anarchist society.

It is noted that Godwin presents enquiry of justice is strongly based on the science of morals. To him, morality is the source of its primitive axioms and these will be clear such instance if we accept the term justice for the all moral duties. He thinks that, mercy, temperance, gratitude and the other kinds of duties are not separate from justice. Often we forgive the criminals or abstain us from this type of behaviour--- here a question may be arises that why we should do it? If the answer is, it is the moral aspect of human nature then it must be just or unjust, right or wrong. It must be depends on the benefit of the individual or to be the mass of individuals or benefits for the whole. So, to do this is calls just and abstain from it is calls unjust. Godwin says that,

¹⁴ . Godwin, W. *Enquiry Concerning Political Justice...*, Edited and introduction by Isaac Kramnick, p-XXI

By justice I understand that impartial treatment of every man is matters that relate to his happiness, which is measured solely by a consideration of the properties of the receiver, and the capacity of him that bestows. Its principle therefore is, according to a well known phrase, to be ‘no respecter of persons.’¹⁵

Godwin considers justice as a rule of conduct that connecting one percipient with another percipient. It is a comprehensive maxim which believes in the subject that, as like ourselves we should love our neighbour. Though this maxim considers as a popular principle but it does not form by the enforcement of philosophical propriety.

In a general perspective each and every person must have equal attention. But in reality we saw that one has more worth and get too much importance than another person. As like that a man has more worth than an animal, as the human being have possessed higher faculties than the other living beings and they have the capability to enjoy more genuine and refined happiness. As like that, a famous archbishop of chambrey has more importance than his valet, if both of them life was in endangered and only one could be saved, then what ought to preferred by these two persons. But beside this private consideration, there has been another ground of preference. All human being are not associated with one or two person, rather we are connected with a society or a nation. In short, we are connected with the entire family of mortality. On the ground of consequence we should preferred those life that will be subsidiary to produce the general good. According to Godwin, the valet ought to choose to give up his life and save the life of archbishop, as because archbishop can promote more general good than the valet. Here understanding plays an important role as a faculty

¹⁵. Op.cit, p-102.

which helps the valet to perceive the absolute truth and justice plays as a principle which regulates the conduct of the valet as well as all human being. It is just for the valet to prefer the life of archbishop and if he does not do this, then it's violating the rules of justice.

Presume that the valet is my brother or father or my well-doer, then in that situation what can I do? To reply this question Godwin says still in that situation the life of the archbishop is more valuable than the valet, as the sense of justice taught us to save the Fenelon life at any expense. Here another question may arise that the pronoun 'my' does support us in tumble the judgement of impartial truth? If my brother or father or the benefactor is dishonest, malicious or lying, then can I think that they are mine?

For my existence I am indebted to my father as he protected me in my childhood. During this period he has not any particular motive behind his cares towards me. Godwin admits that, every deliberate help is calls as kindness and retaliation of the bestower. A wilful benefit is an evidence of the bestower's intent and it is a certain degree of virtue. It is one type of quality of mind that is respect. The pertinence of this disposition is equal, as the amenities are placed upon me or another. We both cannot be right in choosing our respective well-doer, as like that at a same time my well-doer cannot be better or worse than his fellow men. My well-doer ought to get honour, not because he helped me, but because he is beneficial to the human being. His disposition of mind preferred the human being is worthy of the distinction conferred. When we consider of those persons with whom justice is cognizant then we have to explore into the dimension in which we are resisted to confer the good of others. As like that, it is just for an individual that he should do the all good for the people by his power. In a distress position of a person it is our duty to help him to overcome from this condition and if we refuse to do it, then it considered as infringe of duty. In respect of universal

application this principle is not applicable, as because in conferring a favour to an individual, sometimes it may reach massive harm on the society. Justice binds each individual with his fellow man as a whole. So, while he is trying to help an individual, it may strike on equitable balance and he will injure the whole. Though his action ceases to be right, but later it becomes completely a wrong act. But how much a man is bound to do the common good for the people and what he do for the benefit of an individual is also a part of the whole. To do good for the people am I neglect my own existence? The answer is no, as because I am also a part of the whole. Everything in my power for helping others, demand not the safeguard of my own existence or it is not possible to me to do more good in one year than in ten years. If situation demands that in exchange of one's life it is possible to produce general good, here justice dictates that one should do that. On the other hand, in some other cases it is generally attributed on me to sustain my life for the future ultimate vigour by giving my best service.

According to Godwin, justice is reciprocal. When I have conferred a benefit for a person it is just that he should receive it, as like that if I resist from him, then he should justly alleged to me. Society is nothing more than the sum total of individuals. No one is insecure and capricious than other and the claims and duties in the society is nothing but the aggregate of the individual's claims and duties. Society demands to everyone that they do everything what is his duty to do. As society is bounded by its members, so its need to perform everything what are beneficial for all its members.

Godwin believes that the principles of justice are mainly focused on equality of mankind, either it physical or moral. He says that, in human species we find that every individual person is different from each other; one is strong and another person is weak, one is fool and another is wise. The strong person has the power to suppress and the weak person stay in need of a benefactor to protect. So, Godwin remarks,

The consequence is inevitable: the equality of conditions is a chimerical assumption, neither possible to be reduced into practice, nor desirable if it could be so reduced. ¹⁶

Godwin defines moral equality in the following ways,

By moral equality I understand the propriety of applying one unalterable rule of justice to every case that may arise.¹⁷

He affirms that equality always be an abstruse fiction. It is generally stated that the capability of the people is not equal and their pretended demands have neither surety nor approbation by which they can be instituted. But the concept of justice in its own nature is sufficiently comprehensive and it contemplatively form the discretion whether it either be or be not attenuate into practice. Justice is related with the beings that are sensitive possessing with perception and susceptible of pleasure and pain. And it is the nature of beings that they always approve pleasure and repellent pain. So, it is just and feasible to the people that they should promote the pleasure for the benefit of each other. Godwin thinks that pleasures are different, some are much pure and some are more subtle and less insecure than others. It is just for the people that these should be preferred.

From these assertions we may presume the moral equality of mankind. They possess some common nature that is why their pleasure and pain are similar. They are endowed with reasoning and have the capability to compare or judge and determine something. So, what we desire for one is also desired for other. As like that to do

¹⁶ . Op.cit, p-116.

¹⁷ . Op.cit., P-117.

benefit for one may be beneficial for another person. Human being is prudent for themselves and obligate to each other and it helps us to come out from the arena of prejudices. People in their life get certain amenities and a certain situation which is most convenient for the all people and it is just that these should be cohere to all, as it will permit the general economy. Here it may be remarked that Godwin represents the concept of justice in terms of utility of human being. A person is a part of the great whole and his happiness is part of that complex scenario.

❖ **2.4 Immanuel Kant's Revelation on Justice:** Immanuel Kant, the German Philosopher sets his rationalistic philosophical judgment in a novel way that was deeply challenged by Hume's rampant scepticism as well as it being engrossed by the concept of Rousseau. He was not convinced by it and trying to make a revolutionary way in philosophical thought. It includes a comprehensive and vast practical philosophy which comprises many kinds of matter of elements, theory of justice is one of them. His practical philosophy is well known example of deontology (science of duty). Whereas, teleological theories hold the right thing as relative to good ends, but deontological theory that is (supported by Kant) holds the right thing as independent of what we count to be good.

Justice fairly demands respect for right regardless of incommensurable or distressing situations and desirable or undesirable outcomes. Kant asserts that, justice requires that human rights will be equally applicable to all autonomous rational persons or agents from any kind of differences, regardless of class, creed, gender, race, ethnic identity and socio economic status. In short, he demands the equality of rights to all persons as they are worthy of respect. In order to found a notion of right which regardless of any

desires, interests and empirical needs Kant wants to set a single basic principle of all duty, that is known as “Categorical Imperative”. It means, as a person what we ought to do is unconditional. It is the criteria through which one can rationally differentiate between right and wrong.

Kant offers three different versions of categorical imperative but these three different formulations believe in same thing. These are --- (a) Formula of the universal law of nature--- one should do those acts followed by only one principle what he or she could reasonably will that it should become a universal law; (b) Formula of humanity in terms of respect to all persons --- act in such a way that one never treat the other human being as a means but always treat them as an end at the same time; (c) Formula of autonomy— the *will* of every rational being legislates the universal law.

Beyond this foundation Kant in his *Metaphysics of Morals* develops his ethical system into a doctrine of virtue and a doctrine of right. He subsumes strict duties of justice but later includes broader duties of merit. Obviously, rather than meritorious virtue, justice is a matter of strict right.

Kant in his *Metaphysical Elements of Justice* develops his concept of justice. For him, justice is the essence of those laws through which an exterior enactment or legislation is possible. Justice is inextricably and deeply related with obligations with which all people can properly be required to follow. Every person have duties of justice to other persons means that everyone have rights against each other and every person should perform such duties as that rights and duties of justice are bound up with each other. The concept of justice should be applied mainly under the following three conditions:

(i) We must deal with the external and practical relationship with each other in which their actions can directly or indirectly impact on each other.

(ii) The concept of justice does not take into consideration of one's wishes, desires or needs as these are concerned with the acts of charity and benevolence rather justice applies only on the willed action or on the relationship of one person's will to another person's will.

(iii) Justice does not envisage the matter of will that is the end that an individual want to fulfil by means of the object what he wills. In other word, justice is dealt only with the form of interpersonal relationship instead of their content For example, if someone buy merchandise from a shopkeeper and if that form of relationship is voluntary then justice is satisfied. But the matter of profit from that transaction or the similar issues which are pertains with the content of this transaction are not come under the purview of justice.

In spite of applying the notion of justice, Kant is very much keen to consider only the forms of the relationship among the people's will as they are free and whether the action of an individual among of them can coexist with the freedom of others --- which is followed by the universal law. Therefore, justice is the combination of those condition under which one's will can be coexist with another person's will in accordance with a universal law of freedom. In this context Kant states that ---

Every action is just (right) that in itself or in its maxim is such that the freedom of the will of each can coexist together with the freedom of everyone in accordance with a universal law. ¹⁸

¹⁸. Ladd, J., *Metaphysical Elements of Justice*, P-30.

In accordance with a universal law, if one's act coexists with the freedom of everyone and if anyone obstructs him to perform the act then this type of hindrance treated as injustice, as this hindrance does not conjoin with freedom. Kant's concept of morality and freedom that comes from his ethical theory carries strong implications for justice. He does not support the utilitarian view about theory of justice rather he receives an account of justice that based on a social contract theory.

Kant is a powerful advocator of the approach that connects justice and morality to freedom. Kant's account of justice revolves around the concept of individual freedom. His main principles of justice are used to safeguard and regulate the liberty of individuals.

Thus, one person's right is to freely doing an act that should not violate the rights of other's people or infringe their freedom. This universal law leads to a categorical imperative which is known as the ultimate universal principle of justice.

So, according to universal principle of justice, everything that is unjust is an impediment to freedom. For instance, coercion is a barrier or counteraction against the freedom. Hence, if a particular use of freedom is itself impediment to freedom in accordance with the universal law (it is unjust), then to apply the coercion is to repel it, works as the counteraction of an obstacle to freedom and according to universal law it is compatible with freedom. In a way, this type of application of coercion is just. For example, in punishment, self-defence or even in war such kind of use of coercion is just. It follows by the law of contradiction where a right or justice is conjoined with the authorization to use coercion in against anyone who contravenes justice or the right.

Kant approbates three classical rules of justice that at the same time regarded as duties of justice. These are ---

(a) In dealing with others each and everyone should be honest. This duty maintain the relation to others is interpreted in the proposition:

Do not make yourself into a mere means for others, but be at the same time an end for them.¹⁹

(b) Everyone should avoid being unjust to others, in order to do so even if it requires one should have to leave any association with others or completely avoid the society.

(c) If no one cannot avoid accompanying with others or society then they should necessarily try to respect other's rights, which literally translated as "give to each what is his".

Now, Kant attempts to distinguish between natural or private justice and civil or public justice.

- **2.4.1 Private Justice:** Kant gives a tangle theory of property rights, which is briefly, discussed here. In the name of justice it can claim that, every individual has rights to --- (i) physical property (e.g., your car), (ii) accomplish of a particular deed by another person (e.g., an auto shop gives promise to try to repair your car), and (iii) certain features of interpersonal relationships with those under our dominance (e.g., obedient children and respectful servants). Anybody who steals your car is doing an injustice with you or the auto mechanic who has given promise to fix the car, but he fails to do so should also be treated as doing injustice with you.

A child as a person is a procreation of two person's mutual consent. The procreation in this union invokes a duty to support and care to their products. Thereby, as a dependent person, a child has a right to be cared by their parents until he or she

¹⁹. Op.cit, P-37.

become independent and in turn, he or she also owe obedience to their parents while they are under their authority. In fact, this right comes directly from the law and no special juridical act being necessary for it.

Parents can not treat their child as their property or their artefact and abandon them or even destroy them as their property. In terms of concept of justice the child can be indifferent. Parent's duty is to manage and educate or provide nourishment and care to bring up their children and when the children become independent children's obligation is nothing but more than only considered a duty of gratitude to their parents. Similarly, head of the household must respect his or her house staff. The house staff may be under contract to serve his or her master, but that legitimately does not mean to give up the personhood of the servant (one cannot justifiably enter into slavery). Though the master has authority over the servant but it never involve the ownership on them or abuse them.

The above narrative is associated with the securing of property right which are regarded as private or natural justice. In this respect Kant demonstrates ----

Something is *juridically mine (meum iuris)* if I am so bound to it that anyone who uses it without my consent would thereby injure me. The subjective condition of the possibility of the use of an object in general is *possession*.²⁰

- **2.4.2 Public Justice:** After focussing on private justice Kant now highlights on public justice or civil justice. According to him,

²⁰ . Op.cit, P-42.

A juridical state of affairs is a relationship among human beings that involves the conditions under which alone everyone is able to enjoy his right. The formal principle of the possibility of this state of affairs, regarded as the Idea of a general legislative Will, is called public legal justice.²¹

Public legal justice has three parts --- protective, reciprocally acquisitive or commutative, and distributive justice. In area of public justice Kant applies his theory of justice on the matters of crime and punishment by involving the protective, commutative and distributive legal justice. When an individual commits a crime, that means he or she is missing his or her freedom by transgress the freedom of others or to contravene their rights. Thus the offender forfeits the right to freedom and become a judicial accused of the state. Kant states that the offenders should be punished for their offensive activities in accordance with a “categorical imperative” which is treated as a matter of just “retribution”. This leads to the ultimate punishment or the death penalty. To him, justice requires that, for the most abominable criminals or the murderers no lesser penalty would be enough or just, so they should get the capital punishment.

Later Kant applies his theory of justice in the case of War. For him, it is the international part of public justice that is known as “The Law of Nation”. He conceives a non-empirical version of the social contract theory and interprets it as a hypothetical idea of what free and equal moral agents could reasonably consent with regards of rules of justice. He opposes to accept that social contract theory is a historical fact and it mysteriously propagates obligations. He does not accept that, it is a basis of all moral duty. It holds the obligation what we have to the state and other citizens. But, there is

²¹. Op.cit., p-113.

an international law of nations as that a state has duties to other state. It is not right to think that, in absence of international law any state can stay in a natural condition without any war occurred in the country. So, without international law anything cannot rightly goes in any state and it is not possible to set up justice and peace in that state. War is a curse to every state and it is not good to involve in war.

Though Kant is not a pacifist and he does not minimize the need of war for the purposes of self-defence. For the mutual protection against external aggression Kant brings in international “league of nation”, that helps to minimize the necessity to go to war and discourage the need of war. By proposing an international “league of nations” Kant offers some goals. These are---- (a) if war cannot be avoided then it should be done by means of sneak attack, (ii) there are some judicial limits that forbid to enslave the all members of antagonist society, (iii) After completion of war the winning party cannot disrespect the civil freedom of the defeating parties as by subjugating them, (iv) certain “rights of peace” must be assured and honoured for all united.

Thus, it may be remarked that, Kant propounds the ultimate goals for strengthening international relationships and League of Nations is ideal for establishing perpetual peace among the different states in the world.

In other words, it is said that, the ultimate aim of justice and law constitute a universal and enduring peace among the different states within the bounds of pure reason. Kant states that,

When a number of people live together in the same vicinity, a state of peace is the only condition under which the security of Mine and Yours

is guaranteed by laws, that is, when people live together under a constitution. ²²

- **2.4.3 Criticism:** Sometime it is observed that, Kant tends to receive severe criticisms. In his theory of social contract Kant advocates hypothetical consent. A law is just on the basis of consent of public as a whole. But this is a puzzling alternative than the original social contract theory. Therefore, how can a hypothetical theory practice the moral task of a real one?

Kant's theory of justice is usually discarded as it is too idealistic for this so-called "real world", because it holds that some things can be fully unjust and categorically unacceptable irrespective of probable outcomes. He has advocated his theory as a paradigmatic example as it basically demands the respect for each and every rational and free person. But in some aspects of application his theory faces difficulties. These are, he considered that, servants and women are absolutely "passive citizens" and unfit to vote, he completely prohibits on against lying to a murderer in order to save an innocent life and his categorically rejection of any right to counteraction against persecution etc. are faces confliction with his basic agenda of theory of justice and these problems are inviting an alternative theory of justice.

- **2.4.4 Conclusion:** It may be observed that, Kant applying his theory in three fields --- (a) Securing the property rights of every individual (private law), (b) retributive punishment for offensive activities and (c) international justice that related with war and peace [(b) & (c) both are under the public justice. From the above analysis we have seen that, Kant attempted to ground justice (that is interpreted in

²². Op.cit., P-163.

terms of individual rights) in field of moral autonomy of rational agents. In this context, Kant was differing from many classical liberal thinkers who tried to favour the rules of justice by appealing to their social usefulness. According to Hume and some other similar thinkers, as rules of justice are inevitable to maintain prosperity and social order so these are justified and that we learn from our experiences. But for the justification of rights and justice Kant does not appeal to social utility or to experience, rather by pure practical reason our basic right to freedom can be justified. The right to freedom logically emanates from our nature as rational and moral autonomous agents. The social benefits are the consequences that accrue from respecting individual rights.

❖ **2.5 Jeremy Bentham's Interpretation of Justice:** There are many defenders of the theory of utilitarianism, but among them Bentham was the top of the list. He was a scholar who excels in different fields like economics, politics, logic, theology, and ethics. Law and government are the main interesting area of Bentham. Throughout his life he tries to reform the legal system. He does not believe in the theory of contemporary law. He thinks that, justice is not possible by the contemporary law. To him, contemporary concept of law is weak and irrelevant. So he wants to make an alternative theory of law. According to him, the purpose of the law is welfare of the people. That law is best which has the social utility. And that law which does not help to the welfare of people – this has not any social utility. Basically, this type of law could not to be the base of justice. As a utilitarianist, Bentham finds justice as a tool that helps to produce and secure the greatest happiness for the greatest number of people. He thinks that, without justice it is absurd to establish good governance solely

on the principle of utility and the absence of justice may open the doors of abuse and all forms of tyranny. Justice is one type of tool which helps the government to protect the individual's natural rights. Bentham understands the meaning of the welfare or utilitarianism as procuring pleasure. So, his opinion is that: that law which helps to increase the pleasure of people, this law has the more social utility. Likewise, that act which helps to increase much more pleasure, this action has the utility and this action has the much more value than other act. As the criterion of utility, Bentham uses the word **Pleasure** in political philosophy and his theory is known as **Utilitarianism**.

According to Bentham, utilitarianism is one of the theories, which is by nature descriptive and normative. It not only describes, but prescribes such actions which gives maximum pleasure and minimize pain. Bentham was highly influenced by Hobbes account of human nature and influenced by Hume's account of social utility. In his famous book *An Introduction to the Principles of Morals and Legislation* he discusses about the variety of human motivation and attempts to demonstrate their importance by saying that pain and pleasure are the two sovereign masters of man.

According to Bentham, "nature has placed mankind under the governance of two sovereign masters, pain and pleasure". These two are the two aspects which help to determine what we ought to do or what we shall do? On the other hand these are the standard of right and wrong and these are also the chain of cause and effect. Though we pretend to our capability, but in reality pain and pleasure are the two sovereign masters which dominate us on our activities, even on our thinking. The principle of utility identified these sovereign as the subjection of people and assumes these as the system that is fabric of felicity. Utility means which tend to promote pleasure, good, happiness or the benefit for the people and prevent pain, evil, mischief or unhappiness to those parties whose interest is in question. Increasing of happiness depends on the structure

of people, if the party means the community then produce the happiness for the community, if the party means a particular individual then generate the happiness for that individual person. The community is a fictional body which is considered as the sum total of the individuals. So, the interest of community is nothing but the interest of the sum total of different members. Justice is considering the interest of each individual of the society.

Bentham claims that, the principle of utility is considered as a right principle if in all cases it is observed that, it follows from what has been just and on the other hand if it is observed that it does not follow what has been just rather than follow a different principle, then it necessarily be a wrong one.

The end of the legislator of any state produces the pleasure and avoids the pain. It is seen that the legislator gives value on producing the pleasure. He understood that the pleasures and pains are the two primary instruments behind any acts that we perform in life.

Utilitarianism presents a psychological approach to human nature, which treats human beings as creatures of pleasure. It means human being always wants to find the pleasure. Through the principle of utility, Bentham and his followers want to restructure the government and legal institutions and maximize the happiness of individuals'. So they need to modify the laws and making them as a tool of reforms and increasing of happiness.

Bentham asserts that by nature human beings are hedonist .Because everyone seeks pleasure and avoid pain. Every human action has a motivation or aim. Without a desire one does not perform any act. The desire for getting pleasure motivates the human beings to act; pleasure is the cause of all human actions. Each person is

motivated by a desire to get pleasure and avoid the pain. Bentham defines utility or happiness in terms of pleasures. The principle of utility recognizes the approval or disapproval of every action on the basis of happiness.

Bentham was confident that a society in which the individual tried to maximize his *own happiness* would be far better than one in which he had to maximize the happiness of others.²³

Pleasure and pain are the basic aspects which are commonly experienced by human being. These two are the stronger sensations which make a more lasting impression on us. Bentham's theory of utilitarianism is mainly based on the psychological utilitarianism. He follows the psychological utilitarianism's dictum and says that: every people desire to get maximum pleasure for himself and try to avoid the pain for his whole life. Nature binds every people under the rule of pleasure-pain. By these natural sanctions (i.e. - Pleasure, pain) people can determine which act he ought to do or not ought to do. We can't deny the thing that every people who desire to get pleasure and for him the root cause of his every action is fixed. Here one may ask, do the people sacrifice anything for the others? Bentham replies that definitely they do, but they do this only when they get pleasure for that sacrifice. Then another question comes to the forefront: Is Bentham's theory one kind of psychological hedonism? The answer is definitely not. In Bentham's doctrine the essential element of ethical hedonism is accepted. Not only the pleasure – the necessity of temperance, character, justice are accepted by Bentham, but they do not bear (temperance, character, justice etc) any intrinsic value. These properties are valuable, only when they help to increase the pleasure. In other word, it can be said that those action are approved as good only when

²³ . Mukherjee, Subrata, and Ramaswamy, Sushila, *A History of Political Thought: Plato to Marx* (2nd ed.), p-319.

they promote or increase the pleasure or happiness and those actions are regarded as bad only when they produce or increase unhappiness or pain.

In utilitarianism, Bentham's opinion is that, though by nature men want to desire his own pleasure, but he ought to desire the pleasure of the maximum number of people. According to him, as a kind of the utility of product, the pleasure is the standard of ethical judgment.

According to Bentham, there is no qualitative distinction among the pleasures; there is only quantitative difference among pleasures. For example, there is a difference between the red flower and blue flower, but there is no difference between physical and mental pleasure. The value of pleasure is decided only by the quantity of pleasure. Since Bentham does not accept any distinction among the pleasures, so his theory of hedonism is known as "gross altruism" or "utilitarianism". If quantity of physical pleasure is more than mental pleasure, then in this case it is advisable to accept the physical pleasure. Bentham does not give importance to the qualitative pleasures. So, it is better to choose the pleasure, which has more quantity rather than other pleasures.

We find that, according to Bentham, the action that produces excessive pleasures, are much better than other pleasures. But the question is: how to measure the intensity of pleasure? In case of paddy, wheat, jute it is possible to measure the increase or decrease of the production of these grains. But in case of pleasure, how people determine the increase or decrease of pleasure? Is there any scale of pleasure? Bentham answers that, the scale of pleasure is the quantity of pleasure. In terms of quality one cannot able to distinguish between two types of pleasure. That means it is not possible to prove one pleasure (e.g. physical pleasure) far better or worse than another pleasure (e.g. – mental pleasure). In respect of quantity all pleasures (e.g. physical pleasure,

mental pleasure) are identical. So if we want to determine the difference between two pleasures what will be the criteria? For the measurement of these pleasures, Bentham mentions a special method which is known as “**hedonistic calculus**”.

According to Bentham,

Weigh pleasures and weigh pains, and as the balance stands will stand the question of right and wrong.²⁴

If the quantity of happiness is more than pain, then that action is said to be the right action and if the quantity of pain is more than happiness, then that action is said to be the wrong action--- these are decided by the hedonistic calculus. To Bentham, hedonistic calculus are – (i) intensity, (ii) duration, (iii) certainty, (iv) propinquity, (v) fecundity,(vi) purity and (vii) extent – through these seven types of properties it is possible to determine the quantity of pleasure. These seven types of properties not only help people to determine the quantity of the pleasure, these are also needed for the consideration of desirability.

Bentham mentions these seven types of properties and describes their necessity for the measurement of quantity of the pleasure. These are: (i) **Intensity:** Normally people desire that pleasure which is more intensive. For example, physical pleasure is more intensive than the mental pleasure. So, according to Bentham usually people desire the physical pleasure. (ii) **Duration:** It is advisable to seek long-standing pleasure rather than transitory pleasure. (iii) **Certainty:** People desire the unworried or unperturbed pleasure rather than perturbed pleasure. (iv) **Propinquity:** Do not wait for the far-reaching pleasures; try to obtain the extemporaneous pleasure. (v) **Fecundity:** A

²⁴ . Bentham, Jeremy, *An Introduction to the Principle of Morals and Legislation*, p- ch-1

person desires that type of pleasure which brings in its trail other pleasures. This pleasure is known as the fecundity of pleasure. And if any pleasure does not bring in its trail other pleasures, that pleasure is known as non-fecundity pleasures. So, fecundity is much more desirable than the non-fecundity pleasure. (vi) **Purity:** Not a single pleasure is pure pleasure or unmixed pleasure. That means, pleasure is always mixed with pain. Pure pleasure is that which has no admixture of pain and every person desires this pure pleasure. (vii) **Extent:** Extensive pleasure is that which is enjoyable by many persons. Everyone desires this extensive pleasure as this pleasure is more desirable rather than the pleasure which is enjoyed by one individual person or some persons.

According to Bentham, if any person wants to measure his own amount of pleasure or pain, then he takes the help of the first four properties (i.e.-intensity, duration, proximity, certainty). It means that the intensity of pleasure is determined by its intensity, duration, certainty and proximity. In regard to purity and fecundity, Bentham opinion is that, basically these two are not the properties of pleasure-pain, rather these two are the properties of that action from which the pleasure-pain is produced. In fact, pleasure is not produced from the pleasures which originate from an action. Since, purity and fecundity are not the characteristics of pleasure-pain; so, the roles of these two are the secondary properties in regard to the value of pleasure-pain. But these two properties have much more important role in determining the value of action, from which the pleasure-pain are produced. To measure the pleasure-pain of every individual, one can take the help of those six properties (i.e. - intensity, duration, certainty, proximity, purity and fecundity). Moreover, in this field extension is also necessary property. It is noteworthy that, in case of one's own measurement of pleasure extension does not play any role, but in case of others extension plays a significant role.

Bentham's position becomes free from egoistic hedonism when he extends his view towards all. If Bentham does not mention the 'extension' or he was indifferent towards measuring the social pleasure, then he was identified as an egoistic hedonist. He admits that, it is natural for a human being to seek his own pleasure; but at the same time he promotes the dictum: **“maximum happiness for maximum number of people”**. It is not only enough to observe that how much a person able to enjoy the pleasure from an action, but it is necessary to consider how the maximum number of people is benefited or able to enjoy the pleasure from an action. According to Bentham, if any action hinders to promote the **“greatest happiness for the greatest number of people”**--then that action has no importance.

Without acknowledging the postulate, that the universal approval and a safeguard of individual right are the best way to increase or achieve the greatest happiness utilitarianism does not imply the democratic ideas. There is lack of security of property if we just assert the greatest happiness of the greatest number as our standard; so it is necessary to combine utilitarianism with the postulate which is unquestioned rules, that is ideals of individual liberty by which it is possible to achieve the greatest good.

In this context, Hume comments that, justice does not directly envisage the utility. He claims that, “fitness” is not an active demonstrator. According to him,

“Fitness,” in the sense of giving each person what he can best make use of...²⁵

²⁵. Swabey, William, Curtis, *Ethical Theory from Hobbes to Kant*, p-203.

It creates chaos within the society and people are so greedy to conflict with each other and as a result it breaks all social peace. Justice is guided by some specific universal principles, but it does not allow the fitness of object for the particular persons.

On this account, Bentham in his *Theory of Legislation* exemplifies that, a big boy having a coat which is small, but there is a small boy who has a too large coat that does not fitted. Eventually the big boy gave his small coat to the small boy. Is this is justice? The answer is: though that convenience had been appreciated, but it does not follow the essence of justice. It is unjust to take anyone's property by force or without his or her permission. Here Bentham gives his definition of right in terms of utility. Right action is that action which produces more happiness, so here we can take direct utility as well as indirect utility and also takes some certain useful principles for the society as a whole. And this congeniality or mischievousness may well outweigh the utility of a certain re-distribution of property. According to Bentham, without giving compensation to the person whose property has been forfeited, this act is treated as unjust act, though its consequence is advantageous to the state.

How happiness should be distributed to the maximum number of people, it does not offer any guidance to achieve the greatest happiness principle. If we distribute sum of happiness to the half population and deprive the half population from this happiness, then this distribution would be less desirable to us, rather it is more desirable that this same amount of happiness is distributed equally to the people in the whole society. Furthermore, it is worst desirable that the sum of happiness is distributed to those people who are cruel persons, instead giving the happiness to the veridical and noble persons. From the ethical perspective justice has an end in itself that is universal happiness. Suppose that the happiness for the maximum people is depending on the misery of few people. It may be happen that, there are some people who will be more

moved by the misery of the several people than by advancement of many people.

Bentham thinks that,

They feel that it would be better for the majority to forego some of their pleasure for the sake of a more equitable distribution even though the total happiness in the world is thereby diminished. ²⁶

As we naturally think in terms of system of right, an individual may feel that it is unjust that, for the sake of maximum number of people we are interfering in the welfare of an innocent person.

As far as, it is not infallible to made human justice, though it implies unjust penalties for some innocent person, but the justification is that, it only produce greater good in this whole system, which automatically comprises justice as well as happiness. The right distribution of happiness with an impartial attitude is the fundamental demands of justice. The ideal demand of justice says that, when we judge another person, then we should put ourselves in the place of that particular person and then judge justly.

Bentham as a legalist and reformer of law offers an objective criterion of right which is alternative of the previous philosopher's views. These philosophers discuss the criterion of right in terms of "the eternal fitness of things" (e.g. natural justice, natural rights, laws of nature etc.). According to Bentham, justice is absolutely a subsidiary aspect of utility as he does not accept the matter of individual's human rights. He placed the principle of justice as an implicit part of utility which is incorporated in the legislation. In according of his theory of justice it seems that justice maintain the laws

²⁶. Op.cit, Pp-204-205.

and it is laid down in legislation. As he does not give any preference to the natural right, so he is not interested to make any specific or general human right to justice. Even he in his book *Anarchical Fallacies* criticizes the French Declaration of the rights of man and calls this as “nonsense upon stilts”. In his writing the American Declaration of Independence Bentham remarked that, all the just government reft its rebel from the assent of the governed as well as deprives from the utility of its acts in enhancing the happiness in its subjects. The happiness of the body formed with the substance abundance, amplifying security and more specially equality. These are the important preliminary object which is needed for the legislator while making a particular piece of legislation.

Kant does not agree with the utilitarian concept in respect of the basis for personal morality and as a basis for law. He argues that, maximizing happiness or any other end is not the morality, it is all about the respecting persons as ends in themselves. Something produces pleasure or happiness for many people does not mean that it is right, though it favours the interest of many people, but intensely it does not make the law as just.

Kant asserts, morality cannot be based on such empirical considerations like, drives, wants, interests and preferences of the people. As these factors are contingent and variable so these cannot be counted as the basis of universal moral principles or universal human rights. Kant thinks that moral principles do not depend on drives or desire for happiness and preferences and these factors do not understand what morality is about. Kant states that, making a man happy is different from making him prudent or making him good or seeking advantage for him is different from making him virtuous. Therefore, Kant asserts that, if interests and preferences are taken as the basis for

morality then these factors ruin the human dignity. It only teaches us to become better at calculation but it fails to teach us how to distinguish right from wrong.

For Kant, a just constitution aims to harmonize each individual's freedom with everyone else. He believes that utility cannot be the basis of rights and justice. As basing on utility rights would require the society to hold or support one conception of happiness over others. Depending on one definite conception of happiness constitution would fail to respect the right of individuals to pursue their own ends. In accordance with the conception of welfare of others no one can force me to be happy. In this context Kant comments ---

For each may seek his happiness in whatever way he sees fit, so long as he does not infringe upon the freedom of others to do the same.²⁷

Another prominent political thinker Michael Sandel argues that, Bentham's notion of utility stands on a single scale that take us to go back to the question whether all values is to be explained in pecuniary term.



²⁷ . Sandel, M., *Justice: What's the Right Thing to Do?*, P-139.