

Accused Encounter Cases A Crossroad between Utilitarianism & Kantian Jurisprudence

Shambhu Nath Mishra

Assistant Professor, Institute of Education, Bundelkhand University

Abstract

In India, the notion of encounter is multifaceted, encompassing various encounters, such as cultural, religious, and linguistic. Encounters in India have historically shaped its pluralistic identity, fostering tolerance and coexistence among different communities. These encounters have often been marked by mutual influences, leading to the synthesis of ideas, beliefs, and practices. Comparatively, Bentham and Kant offer distinct philosophical lenses through which to understand the concept of encounter. Bentham's utilitarianism emphasizes the pursuit of happiness and the greatest good for the greatest number. His perspective on encounter would likely focus on the consequences and utility of interactions, emphasizing the need for harmony and cooperation. Kant, on the other hand, emphasizes moral duty and universal principles. His perspective on encounter might prioritize ethical considerations, such as treating individuals as ends in themselves, respecting their autonomy, and promoting peaceful interactions. This abstract explores the notion of encounter in the Indian context and compares it with the philosophical perspectives of Jeremy Bentham and Immanuel Kant, highlighting both convergences and divergences.

Keywords: Encounter, Justice, Bentham, Kant, Jurisprudence

Introduction

Every state has a particular set of laws and principles for smooth and efficient functioning of the state administration. These standards are met sometimes with the test of time where the basic tenants of the administrative system looks for overhauling or complete relook. The Hyderabad (rape accused) Encounter Case¹ presents the same test of time. Indian Judicial and Administrative system follows “*Principle of Natural Justice*” and Criminal Justice System, particularly, follows “*Presumption of Innocence*”. An accused is never considered a convict unless declared by the Court and is given all sort of legal protection and right to prove his innocence. An innocent shall not be punished whether thousand criminals are left freed. This philosophy is hard tested in case of an encounter by any civil or armed force.

¹The encounter can elaborately be understood through its coverage in The Hindu Newspaper. Available at <https://www.thehindu.com/news/cities/Hyderabad/a-time-line-of-disha-rape-and-murder-case/article30202989.ece> last visited 9th February, 2023 at 10:00 am.

<https://www.thehindu.com/news/cities/Hyderabad/four-accused-in-hyderabad-vet-rape-and-murder-case-shot-dead/article30202752.ece> last visited 9th February, 2023 at 10:17 am.

<https://www.thehindu.com/news/cities/Hyderabad/vet-rape-and-murder-case-accused-shot-dead-at-Chatanpalli/article30202917.ece> last visited 9th February, 2023 at 10:49 am.

Encounter may be termed as extra-judicial killing of any person by police or military generally in exercise of self-defence. It is a conditional extraordinary power given to police or army to be exercised very cautiously and rarely. But number of cases suggests that police authority has been misusing such powers to their malice. On number of occasions, the Hon'ble Judiciary and National Human Rights Commissions and other institutions have reprimanded the police for coward acts of abuse of such encounters. Section 100 of the Indian Penal Code,² Exception 3 of the Section 300 of IPC³ and section 46 of the CRPC, 1973⁴ provide for the provision of Encounter in the Indian Penal System. Owing to its misuse, the Hon'ble Supreme Court of India in the *People's Union for Civil Liberties v. State of Maharashtra*⁵ laid down sixteen-point guidelines to keep a check upon misuse by police authorities of their extra power. The most significant being the Magisterial Inquiry in every case of Encounter. Interestingly it does not present any specific problem because everything seems to be settled by the Judicial Inquiry and check, but the real problem is not in encounter, but in its affirmative acceptance from the people.

A very different scene was seen in Hyderabad Encounter Case. When these accused were killed in the encounter by the police, people all over the country enjoyed and celebrated. They expressed their happiness, support and even welcome more of such actions. Despite there being many flaws in the theory suggested by the Police, this paper doesn't dwell towards the legal lacunas or political motives behind the Encounter or delay in justice delivery as to the cause of such action and its affirmative acceptance, but focuses on the social and psychological reasoning which accepts and promotes such actions.

This paper tries to find out a rational behind such actions and look into the legal and justice theories propounded by different Jurists over time for any justification. These theories of justice led to evolution of different legal systems and their principles and are very relevant in understanding any development

²**Section 100 in The Indian Penal Code: When the right of private defence of the body extends to causing death**—“*The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely:—*

1. *Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;*
2. *Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;*
3. *Assault with the intention of committing rape;*
4. *An assault with the intention of gratifying unnatural lust;*
5. *An assault with the intention of kidnapping or abducting;*
6. *An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.”*

³**Section 300 in The Indian Penal Code: Murder**—“*Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death,*

c. If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death...”

⁴**Section 46 in The Code Of Criminal Procedure, 1973: Arrest how made –**

1. *“In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there is a submission to the custody by word or action.*
2. *If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to affect the arrest.*
3. *Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.”*

⁵*People's Union for Civil Liberties v. State of Maharashtra*, AIR 1999 SC 1255. Para 10: “A Magisterial Inquiry must invariably be held in all cases of death which occur in the course of police action. The next of kin of the deceased must invariably be associated in such inquiry.”

happening in the society. In light of this undertaken case of Hyderabad Encounter, two contrary factors or sides are witnessed: one is of Utility and other is of motive as propellant of Justice. One argument is that such killing is justified since it accounts for so much happiness to the majority of people and another argument is that the motive behind such killing is instrumental in determining its justification. These arguments correspond to Utilitarianism (such killing is increasing happiness and therefore justified) and Kantian (Motive behind such action shall decide its justification). This paper discusses there two theories of Justice with respect to this encounter and figure out its impact and possible detrimental effects.

A Case Study

In November 2019, the 26-year-old veterinary doctor (victim) was apprehended and raped by a group of four men followed by her murder near Hyderabad. All four accused were arrested and, according to the local police, confessed to having raped and killed the doctor. The arrest was made on the basis of evidence collected via CCTV footage and the victim's mobile phone. The accused were then taken into judicial custody for fourteen days. Meanwhile, the public demonstrated their outrage through organised protests nationwide, demanding for stricter laws against the accused.

On December 6, 2019, all four accused were killed in a police encounter under a bridge on Bangalore – Hyderabad national highway, while being in police custody. According to the police officers, the suspects were taken to the location for a reconstruction of the crime scene, where two of them allegedly snatched guns and attacked the police. In the ensuing shootout, all four suspects were shot dead and the pursuing impression of extra-judicial execution by the police was felt by some, while thousands of other people celebrated the men's deaths.

Utilitarianism

Jeremy Bentham laid the foundation of Utilitarian Theory and is considered the Godfather of this theory, which was taken to almost a different level of recognition by his disciple **John Stuart Mill**. This theory stands on the footing that “*ends justify the means*”. It is a theory of pleasure and pain. The theory has its foundation in “*maximum happiness to maximum number of people*”. A decision is morally correct if it maximises overall happiness and minimises overall pain. Since the theory depends upon the consequence of the act, it is also known as *Consequential Utilitarianism*. Morality consists in weighing cost and benefits and simply wanting a fuller reckoning of social consequences.⁶

Chief purpose of this theory is the Greater Happiness Principles. People act out of their self-interest. It considers ethical choice is the one which yields the greatest good or happiness for the greater number. Bentham himself provides the factors to be considered to judge the utility or maximum happiness as *intensity, duration, remoteness, certainty or uncertainty*. Overall happiness is created by the pleasure and pain, cause and effect and acts consequences.

The very important essence of the Utility theory which is mostly neglected by various critiques is that “*The Utility Theory moves from individual pleasure and pain to member of community taken together.*” This theory favours killing of cabin boy⁷ and torture to terrorist or his daughter⁸.

⁶ “*JUSTICE: WHAT'S THE RIGHT THING TO DO*”, MICHAEL J. SANDEL, Penguin Books, II Edition, 2010, pp. 33.

⁷ *Ibid*, pp. 31.

⁸ *Ibid*, pp. 38.

Analysis of the case with respect to the theory

If this case be studied in the frameworks of Bentham's theory of utility, on the surface, it might appear to some that the killings of the four accused was justified from the perspective that the part of society, consisting of thousands of people, which demanded for quick action against the accused by the sentence of death, implies maximum pleasure simultaneously minimising the pain against the incident that followed. However, this must not be perceived as the just interpretation of what Bentham's Utilitarianism has to say. As, this narrow construction will be both fatal and disrespectful to the principles of interpretation as well as the philosophy of Bentham's jurisprudence which is otherwise plausible and rich in its essence.

Bentham's utilitarian theory, if put simply, is all about establishing maximum pleasure and simultaneously minimising pain which are the only things desirable as ends. Opponents of this theory have understood this "pleasure" in a foul manner, as Mill puts it. He says that human pleasure is of the intellect, feeling, imagination, moral sentiment and not of the mere sensations which is how these accusers have perceived human nature in such degrading light and have called it as the "*doctrine worthy only of the swine*". Also, quality is the assessment factor of how "maximum" and "minimum" is to be measured and not the quantity; of which the only assessor capable of such assessment and deciding preference is the person who has tasted both sides of the pleasure irrespective of any feeling of moral obligations to prefer it.

Although, it is unclear as to whether, at the time of the encounter, the accused were armed or not, since, this fact was itself provided by the police officers who were involved in the extra-judicial killing. If the accused really were armed, that would have undoubtedly constituted as a justified firing from the side of the police officers. Thus, it is better if such debatable situation is excluded from the mind while discussing the utility of the concerned act.

How Bentham would have perceived the current situation is that the quality pleasure is in the fact that the accused could have a fair trial for the sake of rule of law and for the purpose of serving ultimate justice to the society. Because, if encounter is accepted as the solution, one may hope this same solution to be knocking on their doors someday which will leave the public at large in nothing but haphazard? This is what maximum pleasure to all is all about. Justice can never be retribution, and retribution is filthiness. This filthiness serves no one but swine and this swine pleasure is what Mill is arguing against. Mill further justifies against what appears to be retribution is that only the beings capable of higher level of enjoyment will perceive happiness as fallible, always. And this fallibility has to be endured, if at all endurable, which will not make such being resent the one who is senseless of such infirmities. As Mill states –

*"It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied. And if the fool, or the pig, is of a different opinion, it is because they only know their own side of the question. The other party to the comparison knows both sides."*⁹

The person, unaffected by the moral obligations, who knows both the sides, both the pleasures, is capable of choosing the most desirable outcome which in this case could only have been the court, the only temple of justice having such qualities imbibed, and not the police.

Mill further adds that even the men of higher gratification sometimes fell prey to the lower gratifications which are nearer, thus, postponing or neglecting the higher one ironically understanding this nature of their act at the same time. Mill says that such preferences are made either on account that the lower

⁹"UTILITARIANISM", JOHN STUART MILL, Longmans, Green, and Co. London, 1879, 7th Ed, pp. 8.

gratifications are the only ones which they have access to or are not anymore capable of enjoying the higher one. This is what the public outrage caused to the four accused. Since, the *Nirbhaya* incident of 2012, which has still not seen the hanging of the convicts as of February 2020, the public, was led into the assumption that the established concept of justice has not been effective which further buried in them a similar presumption of not getting the higher pleasure they would have otherwise expected, in the present case.

Kantian Jurisprudence

Immanuel Kant is a Prussian philosopher of the 18th century, who propounded “*deontological moral duty theory*” stressing on the fact that ethical and just acts are not measured by the consequences. Kant stresses that doing the right thing is not swayed by the consequences of the decision. Kant talks of Universality of any action and Duty. *He is of firm opinion that we have no control over consequences. Even if the consequence is not favourable, the action can be moral and just. It is the rationality and motive behind the choice that makes an action just and moral.* His theory has two important tenants:

- A. **ACTION AS DUTY:** An action is deemed ethical if it arises from one’s motive to act from duty. This corresponds to *egalitarian ideas*. As per Kant, “*Moral actions are based on reasons*”. The right things reasonably and rationally exist in accordance with fundamental duty.
- B. **UNIVERSAL APPLICABILITY:** An action is just and fair if it can be applicable to each and every one. The act would be considered just if it can be applied to every person in each circumstance. Morality and Justice rest in its universal applicability.

Kant ultimately proposes his *Categorical Imperative* mentioning action is not just or unjust based on its consequences, but by its rationality in choice because consequences are not under control.

Kant’s disagreement with Bentham and Utilitarianism: Kant differentiates between an action taken in consideration of consequence and an action taking by rational decision. In his book “*Groundwork*”, he criticized the Utilitarian Theory. He argues “morality is not about maximising pleasure or happiness and reducing pain or utility, but respecting persons as ends in themselves”.¹⁰ Kant makes a comparison between the supreme principles of morality and freedom. He criticises Utilitarianism because of its vulnerability. Rights are left vulnerable because it is dependent on pleasure. Not everything pleasure would be automatically right and moral. He criticises the empirical and consequential notion of Utility theory and argues that putting the notion of morality on interests, desires, wants, and preferences of the people makes it vulnerable and highly unpredictable. It can never serve for Universal rights.

He further argues that Utilitarian Happiness principle contributes nothing towards establishing morality. There is a huge difference in being happy and being just, prudent, virtuous and rational. Utilitarianism doesn’t differentiate between good and wrong rather just makes it an empirical study.

Kant half approves and half rejects the Utilitarian theory and its notion of morality. He agrees that we like pleasure and dislike pain, but disagrees that they are our sovereign masters. He promotes reason to always mark our decision not the consequence. He disproves that what gives us pleasure is just and moral and vice versa. He adds that it is the motive that makes any act just and moral. Morality depends upon the motive and it is always universal. “*For any action to be moral good it is not enough to that it should conform to moral law – it must also be done for the sake of moral law.*”¹¹ He describes these

¹⁰“*JUSTICE: WHAT’S THE RIGHT THING TO DO*”, MICHAEL J. SANDEL, Penguin Books, II Edition, 2010, pp. no. 185.

¹¹“*JUSTICE: WHAT’S THE RIGHT THING TO DO*”, MICHAEL J. SANDEL, Penguin Books, II Edition, 2010, pp. no. 187.

motives as the motives of duty, and describes the supreme principle of morality by establishing a relationship between *Morality, Freedom and Reason*.

Analysis of the case with respect to the theory: Killing of those accused who allegedly committed such heinous crime may receive affirmative response but it cannot be termed justice. An action to be just and moral, must command the support of reason and motive. Country which follows the due process of law or procedure established by law must always support its action by some rational. The consequence shall never determine the justification of any action. Such actions of encounter can never be universally applicable. People while framing their opinion must question their motive and then make an act. Without a profound reasoning, any affirmative action would also lead to injustice.

Conclusion

In the present case, both the theories have their significant rationale and suggestions. Both Bentham and Kant seem to be describing a part or the other of the incident. Where the celebration all across the country corresponds to the maximum pleasure (Bentham), the reason behind the encounter corresponds to the motive behind the act (Kant).

With respect to Bentham, on the surface it appears that the encounter is perfectly justified as it increased the happiness of the individual as well as of the community. But at the same time, it is not a swine theory as put by Mill as it recognises the individual liberty and right. But the very basic foundation of the theory establishes that whatever increases the utility is just and moral. But this connotation would lead to very dangerous precedent. There is lack of rationality behind such principles. In we go by this connotation, even practise of *sati* be justified. This case of Hyderabad encounter, brings about the basic flaw in the Utilitarian theory that it is devoid of any reasoning.

Kant refuses the maximum utility doctrine and says everything that gives you happiness is not always just and moral. He focuses upon the Motive behind any act and that motive makes it just and moral. In the present scenario, the killing by the police had a motive of self-defence, which may or may not be proved true after magisterial enquiry. But application of rationality before making any action makes the Kant theory a little more relevant here.

Moreover, those accused were only accused and not convicts thus were completely protected under the principle of innocence. Thus, the people must not make any opinion unless the procedure is duly followed. Such notion of revenge and malice intent will lead to a society where even long term Utilitarian principle would fail. Thus, Kant theory seems to have a better impact on society than Utility theory.