

## J.S. MILL'S ON LIBERTY AND GAMBLING

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### ABSTRACT

*John Stuart Mill's book On Liberty is considered to be an important piece of work to defend free speech and individuality. Mill argues that individuality of members promote the use of their mental faculties which not only promotes the good of the individual but also the society. According to him, he tries to defend 'one very simple principle' in the book which later came to be known as 'harm principle.' This principle states that interference of State with the action of an individual will be justified only if it causes harm to others in the society. Gambling, which is considered as a social evil in many societies, is essentially an activity which may cause self-inflicting harm. This paper discusses the views of J.S. Mill on gambling in the light of harm principle, importance of individuality of members in the society and limitations on the powers of the State.*

## INTRODUCTION

John Stuart Mill is considered to be one of the important philosophers of libertarian school of thought. He was influenced by the work of Jeremy Bentham as he was tutored by him at an early stage. Though he authored number of well received books and articles, *On Liberty*, which was published in 1859 is considered to be one of the most celebrated defence of free speech ever written. In this book, he tries to defend which he considers as ‘one very simple principle’, which came to be known as the ‘harm principle.’ According to this principle, “the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.”<sup>1</sup> Apart from this, Mill also discusses aspects like importance of individuality, limits to State power and application of harm principle in the affairs of the State. He argued that individual autonomy is paramount as it helps in the development of individuals.

In the light of the above principle, we need to consider whether gambling in the society should be interfered with by the State. One of the arguments in favour of non-interference of the State is that gambling is essentially an activity which do not cause harm to any other individual directly. However, in order to understand the complexities involved in the activity of gambling and to understand view of J.S. Mill on it, we need to discuss the importance of free speech, individuality and limitations on State authority as discussed in the book.

## ON LIBERTY

Mill starts his thesis by elucidating the concept of liberty versus authority. Liberty was traditionally defined as “the protection against the tyranny of political rulers.”<sup>2</sup> The question as to the need of limitations on state power was answered by stating that they are necessary in order to attain liberty and such limitations have the effect of turning the perpetual rulers to mere tenants.

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<sup>1</sup> John Stuart Mill, *On Liberty*, Batoche books Ltd. (2001), p. 13

<sup>2</sup> *Id*, p. 6

These limitations can be in the form of recognition of rights of individuals and ‘establishment of constitutional checks.’<sup>3</sup> This idea is also influenced by the fact that the 19<sup>th</sup> century Europe witnessed rise of democratic republics in place of old monarchies.

Though Mill appreciated that the world was moving towards greater equality, the rise of democratic republics witnessed a new threat described as “tyranny of the majority.”<sup>4</sup> This is because the will of the active part of the society, which he called the majority, dominates the will of the minority. Mill believed that this new threat was more threatening than the actual tyranny of monarchy as it has “fewer means of escape, penetrating much more deeply into the details of life, and enslaving the soul itself.”<sup>5</sup> Thus, there is a need to place limitations against the tyranny of majority as it may block the development of individuality and force all the individuals to follow the model set by the majority.

This raises another important question, i.e., how to balance individual liberty and social control. Mill states that there is no recognized principle to determine the conditions under which the State interference is considered valid. As there is no principle, such interference in most occasions is improperly invoked.<sup>6</sup> The object of this book, according to Mill, is to determine the proper limitations on State so as to balance this conflicting interests of individual autonomy and State control. Mill states that “ the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.... In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign”<sup>7</sup> Thus, this principle tried to balance individual autonomy on one hand and allowing State interference on the other if actions of individual cause harm to others.

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<sup>3</sup> *Supra* 1, p. 7

<sup>4</sup> *Supra* 1, p. 8

<sup>5</sup> *Supra* 1, p. 9

<sup>6</sup> *Supra* 1, p. 13

<sup>7</sup> *Id.*

Mill further states that the sphere of liberty includes individual consciousness, liberty of tastes & pursuits and freedom of association.<sup>8</sup> If these liberties are not absolutely available to the individuals, no community is free from unnecessary state control. This is necessary in the society because the society is becoming all-powerful and individual power is suppressed.

In *Chapter II* of the book, Mill discussed the issue of Liberty of Thought and argued in favour of freedom of speech. He is concerned with three cases of free speech- one in which the suppressed opinion is true, one in which it is partly true, and, lastly, one in which it is wholly false.

Mill takes the examples of Socrates to deal with the first kind of free speech, i.e., if the suppressed opinion is true. Socrates was put to death by the State on charges of corrupting the youth and impiety. Mill feels that no person is ‘infallible’, i.e. incapable of making a mistake, despite being an intelligent person and “All silencing of discussion is an assumption of infallibility.”<sup>9</sup> Thus, no individual has a right to silence others. There is no justification to suppress the opinion of dissenters if it is against the opinion of the majority. Mill explains that “all mankind minus one, were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.”<sup>10</sup>

With respect to the second case of free speech where the speech is partly true, Mill believed that as the society continues to progress, the future thinkers would separate the true parts from the false parts of the speech. It can be said that Mill is optimistic in this situation as he feels that the idea of progress does not mean false beliefs would prevail. Instead, he felt that truth would rise and fall in the cyclical process of improvement.

But what about the opinions which are entirely false? Mill answered this question by stating that “however true the received opinion may be, if it is not fully, frequently, and fearlessly discussed,

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<sup>8</sup> *Supra* 1, p. 15, 16

<sup>9</sup> *Supra* 1, p. 19

<sup>10</sup> *Supra* 1, p 18

it will be held as a dead dogma, not a living truth.”<sup>11</sup> He makes a distinction between true belief and knowledge.

The former is merely holding correct belief whereas the latter is a true belief justified by a rational argument. If we follow a belief without discussion and defending it, it would turn into a dead dogma. True beliefs would become living truth as they are defended against false beliefs.

Thus, we can summarize arguments on free speech by stating that even if the opinions of a person are true, false, partly true and partly false, all such opinions must be considered in the society so that we can properly assess the statements as truth would prevail.

*Chapter III* of the book deals with individuality. Mill considers individuality as an important factor for the well being of a person. Mill contemplates that individuals are imperfect (cannot always make right choices) and thus must be allowed to experiment with their choices of conduct, unless it injures others. In short, individuality must prevail in actions which do not concern others. This argument is based on two grounds- Firstly, on utilitarian grounds and secondly, on the absolute value of choice. Mill is also of the view that this principle is only against adults, but not children as they cannot make rational judgments.

Mill considers the view of Wilhelm von Humboldt to emphasize the importance of individuality. He states that the end of every individual is the “harmonious development of his powers to a complete and consistent whole.”<sup>12</sup> This can be achieved through individuality of power and development and there are two stipulations, “freedom and variety of situations.”<sup>13</sup> The union of these two requisites would depict ‘originality’ of an individual.<sup>14</sup>

Mill is of the view that mental faculties of an individual will be used for his development if he is allowed to make his own choices. There would be no such use of his faculties if the society makes his choices on his behalf, except for ‘ape-like’ situation. According to him, “Human nature is not a machine to be built after a model, and set to do exactly the work prescribed for it,

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<sup>11</sup> *Supra* 1, p. 34

<sup>12</sup> *Supra* 1, p. 54

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

but a tree, which requires to grow and develop itself on all sides, according to the tendency of the inward forces which make it a living thing.”<sup>15</sup>

An individual is said to have a character when his desires and impulses are his own. Thus, he is said to have no character, just like a ‘steam-engine,’ if his desires and impulses are coerced by a third person or the society. He would become more valuable to himself with the development of individuality and simultaneously he will be more valuable to others. Mill considers individuality to be absolutely necessary for every person. According to him, “even despotism does not produce its worst effects, so long as individuality exists under it; and whatever crushes individuality is despotism.”<sup>16</sup>

*Chapter IV* of the book is concerned with limitation on the authority of society on individual. Mill discards the idea of social contract for the formation of state and states that since they receive protection from society, they owe certain conduct in return. Individuals should refrain from injuring the interests of other members of the society as they have equal share to defend others from injury. Thus, society is legally permitted to prohibit behavior that injures others. However, interference of the society must be denied if there are any self-inflicting harms or those harms to others for which there is consent. This denial of state interference helps in the development of human faculties as they are allowed to make their own choices. Individuality should be supreme in this sphere as an individual knows himself better than anyone else. The society can offer suggestions to guide his judgement but he will be the final judge. It is desirable to let the person commit mistakes by allowing him to act rather than compelling him to act according to his judgement. However, an exemption can be made for State interference in these situations if the consent is derived without proper appreciation of facts. Thus, temporary interference of State with the liberty of an individual is allowed to determine validity of consent.

There are two kinds of duties as emphasized by Mill- duty to others and duty to self. Duty to self involves self-development or self-respect with regard to which the individual is not accountable to

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<sup>15</sup> *Supra* 1, p. 55

<sup>16</sup> *Supra* 1, p. 59

others. It is so because accountability will arise if good of the mankind is involved. However, in cases of duty to oneself, no such good exists.

Mill states that if an act causes harm to the society, the view of the majority must be considered as it may mostly be right. However, we cannot imply the same in cases of self inflicting harms. In his words, “But the opinion of a similar majority, imposed as a law on the minority, on questions of self-regarding conduct, is quite as likely to be wrong as right; for in these cases public opinion means, at the best, some people’s opinion of what is good or bad for other people; while very of it does not even mean that; the public, with the most perfect indifference, passing over the pleasure or convenience of those whose conduct they censure, and considering only their own preference.”<sup>17</sup>

Mill’s principle of non-interference of State is that State should not interfere in acts which are voluntary and affects his interests alone. However, completely involuntary choices are exempted from the applicability of this principle. Thus, Mill would allow interference of State in the decisions of individuals to protect them from uninformed choices. He takes the example of a person attempting to cross an unsafe bridge. Also, interference of the State in certain actions is allowed if it creates a powerful ‘presumption’ that any reasonable person would not perform such act. Such presumption is rebuttable. The point to be considered is whether the person has made a voluntary choice but not to evaluate the wisdom or worthiness of his choice. Finally, Mill’s form of paternalism is that State has a right to prevent harmful self-conduct only when it is substantially non-voluntary or when temporary interference is necessary to ascertain whether the conduct is voluntary or not.

It is worth quoting Mill’s view on constructive injury to elucidate his idea on the limitations on State interference, “But with regard to the merely contingent, or, as it may be called, constructive injury which a person causes to society, by conduct which neither violates any specific duty to the public, nor occasions perceptible hurt to any assignable individual except himself; the inconvenience is one which society can afford to bear, for the sake of the greater good of human freedom.”<sup>18</sup> Thus, he considers human freedom paramount in such cases.

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<sup>17</sup> *Supra* 1, p. 77

<sup>18</sup> *Supra* 1, p. 76

## J.S. MILL'S VIEW ON GAMBLING

There are two maxims that can be derived from *On Liberty* as emphasized by Mill. The first is that an individual is not accountable to the society for his actions that concerns only himself. The second is that if any action of an individual affect the interests of others in the society, he will be held accountable and may be subjected to legal or social punishment, as the case may be.<sup>19</sup>

Mill in *Chapter V* of the book discussed the issue of gambling. However, to consider all the complexities involved in regulation of it, we need to consider arguments from each chapter of the book to determine Mill's view on gambling.

In Chapter II of the book, Mill discussed in detail regarding the importance of free speech in the society. According to him, it does not matter whether the opinion is true, partly true or false. In case of gambling, many societies consider it as unnecessary evil and it has become a belief that no advantage exists in the regulation of gambling. However, as mentioned above,<sup>20</sup> if we do not discuss the issue without considering all the arguments, it would become a dead dogma. Thus, we cannot just deny regulation of gambling in the society without considering all the arguments.

Chapter III of the book argues the importance of individuality in the society and it must be paramount with regard to actions which concerns the individual himself. Gambling can be considered as an activity which concerns only the individual and thus, it can be allowed in a closed space. However, Mill felt that gambling houses should not be allowed to function in the society "to exclude the influence of solicitations which are not disinterested, of instigators who cannot possibly be impartial- who have a direct personal interest on one side, and that side the one which the State believes to be wrong, and who confessedly promote it for personal objects only."<sup>21</sup> Mill was also of the view that prohibition of gambling houses can never be effectual even if unlimited power is given to the authorities to suppress it.<sup>22</sup>

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<sup>19</sup> *Supra* 1, p. 86

<sup>20</sup> *Supra* 10

<sup>21</sup> *Supra* 1, p. 91

<sup>22</sup> *Id.*

It is so because gambling houses can function in the shadows and due to this constrain, gambling operations can be allowed to function under secrecy.

However, with respect to the arguments mentioned by Mill, development of the society is a cyclical process. The views of the society constantly change with the change in time. Gambling houses were considered immoral in the past, but with the advent of internet in the 21<sup>st</sup> century, there has been a rise in the number of gambling and betting operations offered to the citizens. Thus, we need to allow gambling both in closed spaces to promote individuality and also in the market.

Chapter IV of the book discusses the limitations on the authority of the State. Interference of state with the actions of an individual will be allowed if such actions cause harm to others in the society. No society can be justified if they interfere in self-inflicting harms. However, State can interfere if the action which causes self-inflicting harm is done by the individual without proper appreciation of facts or which was done involuntary. If an individual gambles voluntarily and after considering all the effects of gambling, the State cannot justify interference.

## CONCLUSION

J.S. Mill's *On Liberty* argued for the promotion of individuality, freedom of speech and limitations on State power. He argued that limitations on State can be put by following a simple principle which later came to be known as 'harm principle.' According to it, the interference of State with the actions of an individual is justified if such actions cause harm to others in the society.

Gambling is considered to be an evil and most of the societies consider it to be a menace to its members. However, it is essentially an activity which affects only the person who gambles. It is not the activity itself which causes harm, but the effects of such activity in certain situations. We can explain this by considering the example of drunkenness and driving. In these situations, consumption of alcohol is not prohibited but driving while drunk may potentially cause harm to other and thus, it is criminalized. In the same way, gambling per se should not be criminalized and proper regulations can ward off the negative effects of gambling. This is also supported by the arguments of Mill promoting individuality of the members in the society and limitations on State power.

Mill's *On Liberty* can be considered to protect the members of the community from a paternalistic State by providing limitations on its power. In the words of Mill, "It is only because the institutions of this country are a mass of inconsistencies, that things find admittance into our practice which belong to the system of despotic, or what is called paternal, government, while the general freedom of our institutions precludes the exercise of the amount of control necessary to render the restraint of any real efficacy as a moral education."<sup>23</sup>

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<sup>23</sup> *Supra* 1, p. 93