

## PLACE OF MORALITY IN LAW

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### ABSTRACT

The concept of Law and Morality has intrigued jurists and philosophers for a long period of time. They both are related yet very different. The aim of law and morality is to regulate the social conduct of an individual in the society. The debate is whether they go hand in hand, or one is better of the other. This paper will take a subjective look on whether there is a place of morality in law? Jeremy Bentham was the founder of utilitarianism. He is of the opinion that utility is a tool for happiness and prevention of evil. Every human action is governed and driven by pain and pleasure. He used this quantitative method of psychological hedonism in his study. The paper revolves around the fact that human actions are stimulated by the desire to enjoy pleasure and prevent from pain. He is a positivist who believes, law is not something made by god. The following paper will also help to have an objective look on the four sources of pain and pleasure classified by Bentham i.e. Physical, Political, Moral and Religious. In the end it's going to sum up Bentham's theory on law and morality followed by my take on the theme, I am of the opinion that there is no real & sensible connection between law and morality therefore there shouldn't be any place for morality in law

## INTRODUCTION

Law and morality are two different concepts. According to the dictionary, morality means a set of principles that are responsible for distinguishing between right and wrong or good and bad. Law, on the other hand, refers to a system of rules and regulations which helped in shaping and regulating the actions of human being which may vary from place to place and country to country. However, morals on the other hand are similar for everyone irrespective of country. Morals however may vary from person to person according to their system of belief and culture. Law on the other hand remains constant and equal for everyone subjected to it. Where models refer to one's system of belief, the law refers to regulating rules and regulations. Breach of one's morals does not entitle him to any kind of sanction or punishment however in the case of law, any breach would lead to various applications in forms of punishment. If any action is against law, it has been automatically considered to be immoral. On the other hand, this view has been criticized by one of the most renowned and appreciated jurists such as Jeremy Bentham. The father of utilitarianism believed that morals and laws are completely separate and cannot be used interchangeably. According to him, models are the set of belief which are determined by the human action. If an action leads to the happiness of humans, then in such case those actions would be considered right and good according to morality. But if such actions lead to pain instead of pleasure doors actions are against morality. Whereas law, he explains, is merely to protect the rights of human beings and in case of any hindrance in administration or any breach, the government has the right to punish the culprit. Therefore, it can be summed up as the actions of a human being which leads to happiness and pleasure are considered to be morally valid and the one leading to pain is considered to be morally wrong, to protect people from their rights being violated law becomes an instrument.

## RESEARCH QUESTION

Whether there is a place of morality in law, in the light of theories propounded by jurist Jeremy Bentham?

## **HYPOTHESIS**

In my opinion, there is no real & sensible connection between law and morality therefore there shouldn't be any place for morality in law.

## **JEREMY BENTHAM- AN INTRODUCTION**

Jeremy Bentham (1748-1832) is one of the greatest sociologists and political reformers. He was one of the great philosophers of his time and his work marks the beginning of the modern era. His most appreciated works are the theory of utilitarianism, hedonism, etc. Jeremy Bentham laid down a secular and more systematic theory in very simple terms that is the theory of utilitarianism according to which happiness and right action were proportional to each other. This means that if a person by doing an action feels happy about it that signifies that this action is right and vice versa. He condemned the most valuable and significant theories of the time especially the theory of social contract and the divine theory.<sup>1</sup> He was not a very strong believer in morality. He also condemned the fact that morals and law and consonance with each other. He believed in a very simple yet idealistic framework of the society, i.e. no one has any natural moral rights, and to enforce such law the government is responsible. The rationale behind his theory of utilitarianism was that every man is the best judge of his good.

Jeremy Bentham is also known for his prerogative in reforms of legal code, parliament judiciary prison laws. His first book fragment on government was published in the year 1776 which mark the beginning of philosophical radicalism. This book also idolizes the concept of sovereignty and promotes it. Many of his books such as ' the rational of punishment', 'the rational of reward', and his work on Italy and Constantinople was also commendable.

He argued that the marriage laws should be amended to give the right to divorce and use it freely. He also promoted the welfare of women and argued that women shall have representation in the government and shall be allowed to do every task ok as a man does and shall not be discriminated against on any ground. He introduced the concept of women's suffrage and secret ballot for elections. Much of his advice about political judicial economic reforms were well received and enacted by the European countries and the USA.

## BENTHAM'S THEORY ON LAW AND MORALITY

Master of all trades, Jeremy Bentham was not only a great economist, philosopher but was also a great sociologist. He is the father of utilitarianism. Bentham held a view that law is an assemblage of persons, expression of subjective will and sovereign is the author of the law who has allowed the previous sovereign laws to continue. He extended his views on the law as it works by the directions of the legislative bodies and predictions about the occurrences which shall occur in case of any disobedience.

The theory of utilitarianism propagates the idea of pain and pleasure i.e. it promotes the actions which give happiness and satisfaction and condemns the action which leads to insecurities and unhappiness. The fundamental of this principle is to achieve the greatest happiness with the greatest people. Utilitarianism is the most practical approach and as the name suggests it has been derived out of the term utility. Utility means the state of being used for the satisfaction of human wants. By the virtue of the concept of utility Bentham expounded the concept of utilitarianism and argues that human aims at satisfying his wants which signifies pleasure and to achieve those wants whatever action a human take would be considered to be a right action. Utilitarianism has more of an individualistic approach. The principle of utility revolves around the concept of action while pushing an individual to decide and work in a certain manner which results in happiness.<sup>ii</sup>

According to Bentham, we are governed by 2 sovereigns of Mother Nature, i.e. pain and pleasure. These two elements play a role of vital importance in determining for a human being as to what he ought to do and his future actions. The aim of these two factors is twofold i.e. to distinguish between right and wrong and to have preconceived notions as to the cause and effects of the action.

It is responsible for regulating our day-to-day actions and our thought process. In other words, a man may pretend to abjure their empire: but in reality, he will remain subject to it all the while. The principle of utility recognizes this subjection and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and law.<sup>iii</sup>

One of Bentham's most appreciable works is hedonism which is a Greek word, literally means pleasure. He has classified the concept of hedonism into two interrelated categories i.e. psychological hedonism and ethical hedonism. Psychological hedonism suggests that all the actions of human beings are motivated by their desires to enjoy more and more pleasure and

prevent pain. Ethical hedonism suggests that the difference between right and wrong is based on pain and pleasure i.e. if by an action a human being feels pleasure then in such case it is the right action and on the other hand if he is not satisfied with his action or feels insecure or unhappy then in such case that action of his would-be referred as the wrong action. There are various illustrations laid down by Bentham to give the idea of pleasure such as the pleasure of riches, friendships, relationships, knowledge, social affection, and relief from various kinds of pain that one has suffered. On the other hand, he has illustrated pain in the form of physical or mental pain, enmity, disease of any kind, punishment, the feeling of deprivation, etc.

### **SOURCES OF PAIN AND PLEASURE AS IDENTIFIED BY BENTHAM**

Bentham has described four major sources of pain and pleasure in terms of sanctions that are morals, physical, political, and religion. These are the sources from which pleasure and pain are considered to flow. The utility also signifies the approval or disapproval of every action. The standard to consider if the action is a team all pleasure is to see if that action provides happiness for the satisfaction. While taking into account the consequences of the actions done, not only should be seen from the point of view of the one doing that action but others also who are being affected by such actions.

Bentham believed in the concept of laissez-faire which means the minimum intervention of the government. According to him, the law is just an instrument to be exercised so that a human being can exercise his rights and achieve freedom in society. However, the state has the only and the most important duty to punish the culprit who creates hindrance in the functioning of the society. The sanction can be exercised by the government in four ways that are as follows, firstly, a physical sanction which is also known as natural sanctions i.e. pains and pleasures which are not imposed by humans but nature and may exist in the ordinary course of nature. Secondly, the morals which signify the pins in pleasures which are experienced by the human being due to his fellows, emotions, expectations, feeling of Revenge hatred enmity, care, friendship, regards, goodwill for others, the effect of opinions, behaviors of others, etc. Thirdly, political sanction i.e. pain or pleasure received at the hands of magistracy, in terms of legal sanctions, equality, division of property, etc. Fourthly and finally, pain and pleasure are received via religion, mostly about promises, these sanctions flow from the will of a human being or any superior invisible being.

Not only has Bentham describe the theory of utilitarianism and the sources but also given way to calculate the pain and pleasures of life in two ways one of them is on felicific calculus which is an approach to identify the complexity of pain and pleasure whereas the arithmetic way is to measure pain and pleasure through various other aspects. According to him, there are two kinds of pains and pleasures which can be categorized as simple pain and pleasure and complex pain and pleasure. Simple pain and pleasure can be illustrated as confidence, pity, enmity, power, helplessness, etc. Whereas the complex pain and pleasure refer to the one resolved into the simple ones.

Bentham described the arithmetic way of calculation in terms of calculating the quantity of pleasure and pain. He listed seven factors that affect and determine the pain and pleasure, they are intensity (more or less intense), Duration (longer or shorter period), extensiveness (more or fewer people affected by it), certainty (less or more probable), purity (accompaniment of both pleasure and pain), propinquity (nearer or remoter), fecundity (consideration in terms of fertility or barrenness). The balance shows an ideal condition according to Bentham. Thus, to calculate pain and pleasure, these 7 factors are determinants for quantitative calculation. For this point of view, Bentham has been harshly criticized.<sup>iv</sup>

Jeremy Bentham by the virtue of his utilitarian theory condemned natural rights and believe that rights do not exist naturally for human beings but they have to be forced by the way of law. He regarded the natural rights as 'rhetorical nonsense upon stilt'. To enforce these rights people do not need any sort of contract but they are themselves obliged for achieving the four fundamentals of life about state and government i.e. security abundance substance equality. He also explained that the ultimate goal is the human happiness of the greatest amount of people. If on one side there is a small group of people about which one action results in happiness and for the other set of people who are larger in number the same action results in pain then such case that action will not be supported by the government and shall be condemned. To keep a check on society the government must inflict some kind of punishment on the wrongdoer.

## **CRITICISM OF BENTHAM'S THEORY OF LAW**

David Hume appreciated the theory of Bentham on the ground that by the way of Bentham's philosophy the government and the society can achieve the welfare of the society. Just like Bentham, David also condemned the theory of social contract. This concept of Jeremy Bentham

aiming at happiness for the greatest set of people has been much appreciated by many philosophers. However, James Mill attempted to narrow down the difference between individual interest and the interest of the public at large.<sup>v</sup>

Bentham has been criticized by various jurists on various aspects. Friedman criticized him for overestimating the government and underestimating the human beings as he has by his theory limited the wants of humans about materialistic ideology and based on ego and altruism.<sup>vi</sup> Whereby he failed to understand the complexities of society and the government. Also, he argued that Bentham had laid down the test of law in terms of pleasure and pain which stands unrealistic. Bentham has continuously talked about pain and pleasure in society but he did not mention the legal system which is prevalent all over the world in the modern era. Pain and pleasure cannot be the only mode to determine a society. Are many other factors such as economy GDP National growth etc. Bentham's notion that law and morals are completely separate aspects did not agree to buy milk and too many other philosophers because they thought that morals were one of the important sources of law and laws are made in consonance with morals. His idea ideology was very idealistic just to measure everything in the scale of happiness and satisfaction.

John Mill also stated that not every pleasure or pain can be in terms of quantitative methods. According to him Bentham only talked about materialistic things and ignored be Spiritual well-being of the human being. Mill also argued that Bentham's theory majorly discusses the doctrine of lobbies-faire which in turn negatives his theory because the theory of minimum intervention of the government would in the end lead to exploitation of the poor section of society if everything is left to the societal forces.

Bentham has emphasized pain and pleasure in terms of emotions and feelings apart from materialistic things which are not exactly in consonance with human nature. For instance, when Indians were at the mercy of the British during the British rule, they did all these not for their pleasure but 800 fulfilling the commands of their higher officials. Bentham explains the theory of pain and pleasure with seems very simple however they are full of complexities that were not mentioned by Bentham in any of his theories.

## ANALYSIS

In my opinion, Bentham's theory of calculating pain and pleasure is impossible because we cannot calculate feelings and emotions in terms of numbers. There is no way that people can calculate or even tell if their grief is more than the grief of someone else. However, one can explain their grief or pleasure in terms of quality and if it is more or less, but they cannot quantify it. Jeremy Bentham has also emphasized the least interference of government in society. Without the working of government in the society, the economy may or may not prosper, but the social structure will be shaken up. Since economy politics and society are so intermingled that any change in one would lead to changes in others. The society will become a capitalist society as portrayed by Karl Marx. And the basic feature of capitalism i.e. the rich becomes richer and the poor become poorer would lead to alienation which will further destroy the economy. This change in the economy would lead to inequality and merely making laws and punishing the offender would not suffice. This will also impact the political structure as eventually; they would seize power exploit the vehicle section. Bentham has in his theory kept the idea so narrow that he has failed to analyze its impact on various other essential factors. He has failed to analyze other various complexities prevalent in societies.

## CONCLUSION

The theory of utilitarianism laid down by Jeremy Bentham has although discussed the pain and pleasures of human beings and has given more value to it which are many times neglected by other sociologists. Also, so the motive of every state is to become a welfare state which can only be done if the people are happy and pain-free in the state. Therefore, the idea of Bentham has been appreciated on this aspect. But as pointed out by other sociologists Bentham has been ignorant to many other important essential factors which are prevalent in and along with society. He has not discussed its impact on various other fields of life such as economy politics culture etc. His theory seems very idealistic because there are many complexities in society. Moreover, pain and pleasure cannot be the only scale to measure every other complexity. Thus, in the theoretical aspect, the theory of Bentham seems very appealing but not when it comes to the practical implementation of the theory.



## ENDNOTES

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<sup>i</sup> Eldon J. Eisenach, *The Dimension of History in Bentham's Theory of Law*, *Eighteenth-Century Studies* Vol. 16, No. 3 (Spring, 1983), pp. 290-316 Published By: The Johns Hopkins University Press, <https://www.jstor.org/stable/2738350?seq=1> (last visited May 1, 2021).

<sup>ii</sup> Edward Jenks, *Review: Bentham's Theory of Legislation*, *Journal of Comparative Legislation and International Law* Vol. 14, No. 4 (1932), pp. 289-291 Published By: Cambridge University Press. <https://www.jstor.org/stable/754204> (last visited May 1, 2021).

<sup>iii</sup> Jeremy Bentham, <https://plato.stanford.edu/entries/bentham/#Int> (last visited May 1, 2021).

<sup>iv</sup> A brief notes on Utilitarianism: A study on Bentham and J.S.Mill views, Legal Service India - Law, Lawyers, and Legal Resources, <http://www.legalserviceindia.com/legal/article-3093-a-brief-notes-on-utilitarianism-a-study-on-bentham-and-j-s-mill-views.html> (last visited May 1, 2021).

<sup>v</sup> Bentham's Utilitarianism: Theory, Scope & Criticisms, Legal Desire, <https://legaldesire.com/benthams-utilitarianism-theory-scope-criticisms/> (last visited May 1, 2021)

<sup>vi</sup> Suri Ratnapala, *Jurisprudence*, p. 365, 2<sup>nd</sup> Edition, 2013, Cambridge University Press.