



# RAMA UNIVERSITY

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## FACULTY OF JURIDICAL SCIENCES

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**LECTURE: 12**

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# Lecture-12



Lecture- 12: Jeremy Bentham

## **JEREMY BENTHAM 1748-1832**

Jeremy Bentham heralded a new era in the history of legal thought in England. He is considered to be the founder of positivism in the modern sense of the term. It has been rightly said that Austin owes much to Bentham and on many points his propositions are merely the “Para-phrasing of Bentham’s theory”. Bentham’s classic work reveals that truly speaking he should be considered to be the father of analytical positivism and not John Austin as it is commonly believed.

Bentham was the son of a wealthy London Attorney. His gene was of rarest quality. He was a talented person having the capacity and acumen of a jurist and a logician. Dicey in his book, “law and Public opinion in 19th century”, has sketched Bentham’s ideas about individualism, law and legal reforms which have affected the growth of English law in the positive direction. The contribution of Bentham, to the English law reforms can be summarized thus- “He determined in the first place, the principles on which reforms should be based. Secondly, he determined the method, i.e., the mode of legislation by which reforms should be carried out in England.”

He defined law as; “A law may be defined as an assemblage of signs declarative of a violation conceived or adopted by the sovereign in a state, concerning the conduct to be observed in a certain case by a certain person or class of persons, who in the case in question are supposed to be subject to his power: such volition trusting for its accomplishment to the expectation of certain events which it is intended such declaration should upon occasion be a means of bringing to pass, and the prospect of which it is intended should act as a motive upon those whose conduct is in question.”

Individualism; Utilitarianism.- Bentham’s legal philosophy is called ‘utilitarian individualism’. He was an individualist. He said that the function of law is to emancipate the individual from the bondage and restraint upon his freedom. Once the individual was made free, he himself shall be looking after his welfare. In this way, he was a supporter of ‘lassiez faire’ principle of economics. He pleaded for codification and condemned judge-made law and customs etc. he was

a utilitarian also. According to him, the end of legislation is the ‘greatest happiness of the greatest number.’ He defined utility as the property or tendency of a thing to prevent some evil or to procure some good. The consequences of good and evil are respectively pleasure and pain. His philosophy may be summed up, in his own words, as follows;-

“Nature has placed man under the empire of pleasure and pain. We owe to them all our ideas; we refer to them all our judgments, and all the determination of our life. He who pretends to withdraw himself from his subjection knows not what he says. His only object is to seek pleasure and to shun pain... These eternal and irresistible sentiments ought to be the great study of the moralist and the legislator. The principle of utility subjects everything to these two motives.”

The purpose of law is to bring pleasure and avoid pain. Pleasure and pain are the ultimate standards on which a law should be judged. All consideration of justice and morality disappear from this approach. For Bentham the right relationship between positive law and morality or moral criticism was expressed in the maxim: “Obey punctuality, censure freely”.

Bentham was a realist and his activities were many sided. His keen desire for law reform based on the doctrine of utility, his ambition for codification based on complete dislike for judge-made law filled his work with a sense of mission. “His work was intended to provide the indispensable introduction to a civil code. He criticised the method of law making, corruption and inefficiency of the administration of justice and restraints on the individuals liberty.

Bentham despite his occasional naivetes, was a profound thinker, an acute social critic, and untiring campaigner for the reform of antiquated law, and he became, and had indeed remained, one of the cardinal influences on modern society. By rejecting both natural law and subjective values and replacing these by standards based on human advantages, pleasures and satisfactions, he provided what may be, as many think, an insufficient substitute for ethics of aesthetics, but was at least a valuable sign post by which men in society might direct the external welfare of the society. Bentham himself was a believer in Laissez faire once the antiquated legal system had been renovated, but ironically, his emphasis on reform and social welfare has made him one of the creators of the modern collectivist welfare state.

## **BENTHAM’S CONTRIBUTION**

Bentham's contribution to legal theory is epoch making. "The transition from the peculiar brand of natural law doctrine in the work of Blackstone to the rigorous positivism of Bentham represents one of the major developments in the history of modern legal theory." He gave new directions for law making and legal research. "With Bentham came the advent of legal positivism and with it, the establishment of legal theory as a science of investigation as distinct from the art of rational conjecture.

Bentham laid the foundations of this new approach, but, far from containing the solution to problems involving the nature of positive law, his work was only the beginning of a very long and varied series of debates, which are still going on today." Commenting on the Bentham's philosophy, Sir Henry Maine, observed; "Bentham was in truth neither jurist nor a moralist in the proper sense of the word. The theories are not on law but on legislation. When carefully examined, he may be seen to be a legislator even in morals. No doubt his language seems sometimes to imply that he is explaining moral phenomenon, but in reality he wishes to alter or rearrange them according to a working rule gathered from his reflection on legislation."

Bentham proceeded from the axiom that nature has placed mankind under the governance of two sovereign masters, pleasure and pain. They alone point out to us what we ought to do, and what we should refrain from doing. The good or evil of an action, according to him, should be measured by the quantity of pain or pleasure resulting from it.

The business of the government, according to Bentham, was to promote the happiness of the society by furthering the enjoyment of pleasure and affording security against pain. "It is the greatest happiness of the greatest number that is the measure of right and wrong." He was convinced that if the individuals composing the society were happy and contented, the whole body politic would enjoy happiness and prosperity.

Bentham never questioned the desirability of economic individualism and private property. A state, he said, can become rich in no other wise than by maintaining an inviolable respect for the rights of property. Society should encourage private initiative and private enterprise. The laws of the state, he argued, can do nothing to provide directly for the subsistence of the citizens; all they can do is to create motives, that is, punishments and rewards, by whose force men may be led to provide subsistence for them. Nor should the laws direct individuals to seek abundance; all they

are capable of doing is to create conditions that will stimulate and reward man's efforts towards making new acquisitions.

Bentham's philosophy of law created two schools-the pure analyst interested in the analysis of positive law and the theological writers interested in the ends or purposes of law which it should serve. It was a disaster for English jurisprudence that Bentham's work was not taken in its eternity. This disaster was related by Austin who viewed law without social purposes or goals in its barren and isolated fashion. Many of the modern jurists consider Austin as the father of analytical jurisprudence. But it was much before Austin that Bentham had adopted and refined the analytical approach in discovering the good laws from those which were inconvenient and unnecessary. It is, therefore, Bentham who should be rightly designated as the real father of analytical jurisprudence.

### **CRITICISM AGAINST BENTHAM**

Bentham's theory has its weaknesses. "The main weakness of Bentham's work" says Friedmann, "derive from two shortcomings- one is Bentham's abstract and doctrinaire rationalism which prevents him from seeing man in all his complexity, in his blend of materialism and idealism, of nobility and baseness, of egoism and altruism. Bentham underestimates the need for individual discretion and flexibility in the application of law over estimating the power of the legislator. Secondly, his theory fails to balance individual interests with the interests of the community. Bentham's theory suggested that interests of an unlimited number of individuals shall be conducive to the interest of the community. This means that freedom of enterprise will automatically lead to greater equality. Bentham advocated that law should be made exclusively by legislation which was supposed to remove inroad to individual's freedom and provide him opportunities for development of the self. Bentham's view that the law should be made exclusively by legislation has been adopted in most of the countries in the world but it has not remained confined only to the sphere proposed by Bentham. According to him, the aim of the legislation was only to remove the shackles from the individual's freedom and provide him opportunity for his self-progress. But the legislation, in later times, was used restrict the individual's freedom in economic matters and Dicey correctly puts the paradox that the apostle of individualism was destined to become the founder of state socialism.

Whatever may be the shortcomings of Bentham’s theory, which every theory is bound to have, his constructive thinking and zeal for legal reform heralded a new era of legal reforms in England. Legislation has become the most important method of law-making in modern times. In the field of jurisprudence, his definition of law and analysis of legal terms inspired many jurists who improved upon it and laid down the foundations of new schools. A book written by Bentham, “The Limits of Jurisprudence Defined” (though written in 1782, was published in 1945) makes it clear.

### SELF-TEST QUESTIONS

S.N O	Question	Option (a)	Option (b)	Option (c)	Option (d)
1	Social Contract theory.	Hobbes	St. Thomas Acquinas	Socrates	Plato
2	General Will Theory.	J.Rousseau	St. Thomas Acquinas	Socrates	Plato
3	Principle of Hedonism (Pain and pleasure theory)	Bentham	St. Thomas Acquinas	Socrates	Plato
4	Utilitarian Theory	Bentham	St. Thomas Acquinas	Socrates	Plato
5	Greatest happiness of greatest number	Bentham	St. Thomas Acquinas	Socrates	Plato

**Answers: 1-(a),2-(a), 3-(a),4-(a),5-(a)**