

# Reflections on Jeremy Bentham's Philosophy in Modern Times

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**ABSTRACT:** Bentham was able to state and explain his ideas and proposals with a clarity and force which a clearer view of the complexities and innate conservatism of human nature would probably have obscured. There is hardly anything in Bentham's philosophy which is not true. The bad part of his writings is his resolute denial of all that he does not see, of all truths but those which he recognizes. These expressions have been used by J.S.Mill in honour of Jeremy Bentham. His contribution to his times and even contemporary world is paramount. His works extend to various spheres of life – not just legal, but political and more. His thoughts are still influencing and bringing law reforms around the world. He inspired legal renaissance in different countries.

**KEYWORDS:** Bentham, codification, jurisprudence, modern.

## I. INTRODUCTION

Utilitarian philosophy is closely associated with practical ethics and practical politics. Utilitarianism is a moral theory which advocates that the totality of individual utilities ought to be maximized.

Among the Pre Socratics, the first was Democritus. Aristippus was a respected philosopher in later fifth Century in Athens and initiated a hedonistic school. Epicurus is the most central ancient hedonist. He is sometimes called a negative hedonist. A negative hedonist is one who, in some respect, holds that it is more important to avoid pain than to attain pleasure.

The first decisively modern hedonist was Pierre Gassendi. Gassendi was an Epicurean, and in 1647, in *De Vita et Moebris Epicuri*, he defended Epicurus against a line of accusations. Two years later, building on the writings of Cicero, Diogenes, Plutarch, and Lucretius, among others, Gassendi gave a systematic presentation of Epicurus' thought in *Philosophiae Epicuri Syntagma*.

Hedonism had its heyday with the spread of utilitarianism in the 19<sup>th</sup> Century, with Jeremy Bentham, John Mill, and Henry Sidgwick. His utilitarian individualism inspired numerous and vigorous legislative efforts. His acknowledgement of the disappointing nature of existing law came at an early age. The two major works of Bentham namely "Principles of Morals and Legislation" & "Fragments on Government" denote a phase in the development of the diverse aspects of 18<sup>th</sup> century Utilitarianism. It was thus through Hume that doctrine of utilitarianism was passed to Bentham.

Bentham exercised great stimulus upon the development of English law since the nineteenth century till date. It is the extent of this influence which gives to him and his ideas so large a place in this latest phase of the legal history.

Bentham was dissatisfied with English law and English institutions. It was his ambition to lay the foundation and to build the superstructure of a new system, by which the departments of thought, which had too long been the playthings of party spirit, passion, and prejudice, should be subjected to the rules of rigid philosophical inquiry; and those who do not come to the perusal of his Works, with minds prepared to follow him through a rigid and systematic train of reasoning, cannot be said to receive him in the capacity in which he presents himself to their notice.

The subjects touched by Bentham are very wide-ranging from ethics, jurisprudence, logic to political economy.

## II. BENTHAM'S WORKS AND THEIR COMPOSITION

Bentham regarded that every law can be measured in the light of eight different aspects namely source, subjects, extent, aspect, objects, force, remedial state and expression.

### About Bentham

Bentham was an individualist. When he was young, his individualism was descriptive. Later his individualism was prescriptive. He became a sociologist, strongly aware that government shapes the minds and hearts of its citizens through the traditions, laws and subordinate institutions.

### Overview of Bentham's writings

In 1791, Bentham penned an essay - "Anarchical Fallacies", and was published 1816. By it, the French Declaration of the Rights of Man was uncovered, pointing the logical weaknesses innate in a theory of natural rights.

His later works, those written from the year 1810 downwards, exhibit a marked change in style; whether an improvement or a deterioration, the present writer, while endeavouring to explain the nature of the alteration, will not venture to decide. His work *Rationale of Punishments and Rewards* (1775) present inquiries with regard to punishment. Like many of his works, it took almost another thirty six years for publication. Dumont first published it at Paris in 1811, under the title of *Théorie des Peines et des Récompenses*. He was persuaded that colonies were of little or no utility to their mother country.

Bentham's principles had won some victories before 1832; but the major victories of his principles were won in the period which stretches from the Reform Act of 1832 to the Judicature Acts of 1873-77 and 1875. That was the period when his philosophical, legal, and economic ideas were dominant. But his influence has lasted beyond this period, when the individualistic ideas of his followers were dominant, into the new age of collectivism and socialism.

The closing work of Bentham's life was the incomplete 'Constitutional Code'. He turned serious about it in 1820 and he carried on to work until 1832.

It is hard to track in exact chronological order the works of Bentham. From 1790 to 1800 was one of the most fruitful stages of his life and amid these dates, he composed many of the works by which he is best recognized. In 1797-98, he turned his consideration to the flaws of the poor laws.

### III. BENTHAM'S VIEWS ON CODIFICATION

Codification was a main appearance of utilitarian - drew the criminal law, its administration likely, and designed to reconstruct

the relationship between the state and its subjects to enhance public order.

Bentham intrusively advocated for the codification of all of the common law into a comprehensively a set of statutes. He coined the verb "to codify", denoting the procedure of drafting a legal code. He wrote to President James Madison in 1811 to volunteer in drafting a whole legal code for the country. Codification was an important aspect of Jeremy Bentham's ambitious law reform proposals.

He dedicated his life to writing thorough plans for a variety of codes - opening novel fields of philosophical, moral, and legal inquiry. He shaped a distinctive style of codification. His codes proceeded analytically from basic principle to practical corollary to the construction of an internally harmonious and philosophically grounded system.

### Plea for Codification

Jeremy Bentham coined the term 'codification.' A legal code, being a pre-requisite of the principle of utility, Bentham considered carefully the content of such a code along with the criteria to be used. A great portion of his writing focused on enumerating the principles behind the formulation of the perfect utilitarian code.

Bentham proposed a comprehensive code having common applicability. He thought that the principles of utility behind codification were relevant alike to diverse places.

### Views on Judge made Law

Judge-made law, he asserted, was "dog-law". In his *General View of a Complete Code of Laws*, Bentham presented his views against the judge-made law. Such law must always be ex post facto because it is made by judges to apply to particular cases after they have come up. It was also clarified why the legal professionals maintained their high regard for it

### Content of Code

A legal code being an indispensable requirement of the principle of utility, it was, of course, essential that Bentham consider the content of such a code and the criteria to be employed in order to ensure that every provision of the code would be in strict conformity with utility.

He also offered positive stylistic rules to be observed by the legislator drafting the code:

- Avoid all technical or legal terms wherever possible;
- if technical terms must be used, define them carefully in the body of the law; define

technical terms in "common and known words"; and

- if the same idea is to be expressed more than once, express it in exactly the same words.

Bentham argued for shorter sentences to provide greater rest for the mind of the reader and greater ease of understanding.

#### **Criteria and Parameters to be followed by Legislator**

“To promulgate a law, is to present it to the minds of those who are to be governed by it in such manner as that they may have it habitually in their memories, and may possess every facility for consulting it, if they have any doubts respecting what it prescribes. Before laws can be promulgated, they must exist.”

#### **Division of Codes and Universal Applicability**

The general code has been divided into particular codes, that they may be separated or collected together, according to the powers and wants of the individuals whom they respectively concern. The universal code had to be promulgated to all and be set before the classes to which they respectively refer.

#### **Simple and Concise Code**

Simple, concise, and uniform laws may bring within the grasp of those whom they bind. The more clearly the laws are understood, the more easily will they be retained. The reasons attached could serve as a kind of technical memory.

The main remedy proposed by Bentham for the evils arising due to unwritten laws confusion lies in a general revision of the existing laws. The revision must be in precise and intelligible language. The laws should be known and the dissemination of the laws has to be regulated by various concerned persons.

#### **Reasons for Promulgation of Laws from their enactment**

The reasons themselves assist to guide in those cases in which the law was unknown. The reasons would enable the judges beforehand what its regulations and knowing the principles of the legislator.

### **IV. BENTHAM ON LAW REFORMS**

There is within the realm of technique much room for improvement without changing the basic principles on which a legal system is based.

Law reform was Bentham's aim and the success of Bentham and his followers in bringing about reform is remarkable. John Hill Burton in 1843 listed some twenty-six reforms in the law traceable to Bentham's arguments for their adoption

and to count some ten others that had acquired substantial support. He saw that there could be no reform of substantive law without reform of its structure, so analysis of its structure was an essential prelude to reform. Reforms should only be implemented if there was some certainty that the actual gain in happiness resulting from the reforms was significantly greater than the pain caused by altering existing practices.

For him, the main object of law is to provide subsistence, to aim at abundance, to encourage equality and to maintain security. To maintain security is of the protective functions.

#### **In England**

Bentham's main object was the reform and the restatement of English law and the institutions of the English state, in order that they might be made to conform to the dictates of the principles of utility. In the pursuit of this objective, he necessarily made incursions into topics on the border line of law and legal theory. Bentham considered exclusively as a reformer of the law of England achieved two ends. He determined, in the first place, the principles on which reform should be based. He determined, in the second place, the method, i.e., the mode of legislation, by which, in England, reform should be carried out.

Churchmen, lawyers, judges alone and together infected the English Constitution. They were well aware that it was in their interest to act in concert to block reform.

- He accepted the view that the sovereign power rested in the King in Parliament.
- He felt that the Church had used its morally corrupting and intellectually enervating education in such a way as to ruin the minds and spirits of a majority of the members of the House of Commons. Church stood in the way of reform.
- Lawyers were people to be unduly enamoured by the alleged excellences of the English Constitution. They were prejudicially blinded to the real interests of the people.
- The lawyers were aided and abetted in their exploitation of the public by their fellow professionals, the judges who also profited financially from the fee paying system.

His ideas as to law reform were not dependent upon his fallacious political ideas or his fallacious economic ideas, partly to the intrinsic sense of many of his ideas as to law reform which have overcome the outworn prejudices which prevented their immediate realization, and partly to the fact that Bentham's individualism and distrust

of the state were necessarily weakened by the fact that the application of his principle of utility to the government of the state had shown him that various social services such as health services, care of the poor, and national education, must be undertaken by the State.

The “Fictions of Law,” of which the English practice is so full, were repeatedly and earnestly attacked by Bentham, both collectively and in detail.

A common feature of both his earlier and later works on judicial reform is, the appointment of Public Prosecutors, and of Advocates for the Poor. The latter proposition is connected with the view, that justice, instead of being sold to the highest bidder, should be presented gratis, whenever this can be done without preponderant mischief. The evil that might occur from offering the assistance of the law to every one who might desire it, without cost or personal exertion, would undoubtedly be the entailment on the community of ceaseless lawsuits, carried on by all its litigious members. On the other hand, there is the consideration, that it is not he who gains it only who profits by a lawsuit, but that the public have an advantage, in the establishment of a precedent, and the exhibition of justice vindicated. The expense of employing lawyers in the vindication of a just claim, is of itself sufficiently oppressive: the addition of taxes on law proceedings, and fees to the court and its officers, is simply the taking advantage of an opportunity for pillaging the oppressed.

#### **Efforts for Publicizing Reform Proposals**

Bentham considered appealing to a range of motives and employing a diversity of strategies in order to gain support. He used appeals to benevolence and honour or the love of reputation to convince the House of Commons in favour of reforms.

#### **Persuasion of People**

He tried to persuade people to judge for themselves with their own minds, uncontaminated by the will of political superiors.

#### **Strong Attempts**

Bentham was moved in his attempt to establish a new science of morals and legislation. He wanted to create a *Novum Organum* – a complete science of human behaviour. He even borrowed from his worst enemies.

In 1793, he made an offer of his services to Dundas, the President of Board of Control. He instructed James Young to expound full details of

the Benthamic principles to the new Governor-General.

### **V. RELEVANCE OF BENTHAM'S PHILOSOPHY WITH REFERENCE TO INDIA**

Utilitarianism is exclusively future-looking. It evaluates actions solely by reference to their likely consequences.

#### **Impact of Utilitarianism in General**

It was India which most clearly exposed the paradox in utilitarianism between the principle of liberty and the principle of authority. It was Fitzjames Stephen on his return from India who challenged the intellectual basis of J.S.Mill's political doctrine. He sought to rally the Utilitarian tradition to the principle of authority and the maintenance of empire.

The Utilitarians were intimately connected with Indian affairs.

#### **James Mill**

In 1819, James Mill to be followed shortly by his son was admitted into the executive government of the Company. Given the post of an Assistant Examiner in 1819 and in 1830 succeeding to the Chief Executive of power and in a position to carry into practice the principle of utility as expounded in History of British India.

#### **Edward Strachey**

He was a Utilitarian and Democrat. In 1819, he was placed in charge of judicial matters. With his friend Mountstuart Elphinstone, he discussed the applicability of Bentham's theory of law to Indian circumstances.

### **VI. RELEVANCE OF BENTHAM'S PHILOSOPHY**

Ilbert describes how in one part of the British empire, Bentham has exercised a more direct influence on the form of legislation. In 1835, Lord Macaulay was appointed as Chairman of the First Law Commission of India. He was succeeded by a galaxy of legal luminaries like Sir James Stephen, Sir Henry Maine and others. Influenced by the teachings of Jeremy Bentham, these luminaries came to India and experimented with Benthamite ideas as to law reform and codification which was easier to practice in India rather than in England.

Bentham became a leading theorist in Anglo-American philosophy of law, and a political radical whose ideas influenced the development of

welfarism. Bentham predicted that he would be the “dead legislative of British India.”

**Thomas Babington Macaulay** (the draftsman of the proposed Indian Penal Code of 1837)

Macaulay was a utilitarian in the Benthamite tradition, an influence imparted early as a member of the "Clapham sect" at Cambridge.<sup>7s</sup> He shared fully the premises of the tradition with respect to the unacceptability of judge-made law; the desirability of a root-and-branch legislative remaking of the law responding to what it ought to be, judged by the utility ethic; the distaste for small, piecemeal reforms; and the high regard for clarity, brevity, and simplicity in legal statement as the means of enhancing the knowledge of the law by those it affects. Macaulay, though least the lawyer, was much the most accomplished stylist of the Benthamite codifiers, and came closest to achieving those prescriptions.

The IPC was a product of 19<sup>th</sup> century English law reform debates, in particular, Bentham's ideas about comprehensive codification. The project was realised within an imperial context, and was possible because of the circumstances at the time, in particular Mill's influence on India policy and Bentham's still fresh influence on legal theory and law reform. Macaulay notified his broad objective as member of Law Commission was comprehensive codification, not only of criminal law, but also criminal procedure and civil rights and civil procedure as envisaged by Mill and by Bentham's pannonium. The debt to Bentham is rather to be sought in the design and informing spirit of the Code.”

The scheme of giving to British India a complete and definite system of law probably originated in a correspondence which took place about 1829 between Sir Charles Metcalfe and the judges of Bengal. It was adopted by Parliament on the renewal of the Indian Charter in 1833. The Charter Act of 1833 provided for the appointment by the Governor-General in Council and the establishment of a Law Commission to inquire into the jurisdiction, powers, and rules of the existing courts of justice and police establishments, and into the nature and operation of all laws prevailing in any part of British India; and to make reports thereon, and suggest alterations; due regard being had to the distinction of castes, difference of religion, and the manners and opinions prevailing among different races and in different parts of the said territories.<sup>16</sup>

### **James Mill**

James Mill was a devoted disciple of Bentham. He was examiner of Indian correspondence when Macaulay was sent out with instructions to draw up a code or codes for British India; and it is to the pen of James Mill that is attributed by tradition the dispatch in which those instructions were emphasized and developed. Macaulay's Penal Code, after a long slumber in pigeon-holes, and subsequent revision by experts, became law in 1860, and was followed by the other well-known Indian codes.

### **Sir James Fitz James Stephen**

Sir James Fitz James worked on Criminal Procedure Code, an Evidence Act, and a Contract Act. As the law member of the Supreme Council, on which he served for over two years (1869-1872), his task was to continue the work of codification in India that had been given a fresh impetus in the aftermath of the Indian Mutiny. He took an important role in drafting the Limitation Act and a determining role in drafting the Evidence Act. He made vigorous endeavours to adapt his Indian models to English uses.

He drew a Bill for codifying the English law of evidence, which was introduced into Parliament, but did not advance beyond a first reading, and has never been published. His draft Code of Criminal Law and Procedure was a more ambitious project. After having been introduced into Parliament by Sir John Holker in 1878, it was referred for revision to a Commission consisting of the draftsman and three other judges, who presented their report and draft code in 1879.

## **VII. CRITICAL EVALUATION**

Bentham's view that existing law was hopelessly cumbersome and illogical, and that it advanced only the interests of lawyers, rather than 'the greatest happiness of the greatest number'. The only remedy was not piecemeal reform but the complete replacement of all law with a complete code of laws, what Bentham termed a 'pannomion'. Moreover, unlike previous attempts at codification, Bentham's code was to be 'rationalized': every law was to be accompanied by a set of reasons, to justify it in the eyes of those who were compelled to obey it.

During his lifetime, Bentham's codification efforts were completely unsuccessful.

### **Shortcomings of Bentham's Philosophy**

- Bentham himself acknowledged in Introduction to the Principles of Morals and Legislation that the constraints of language

were such that concise codes would need to be accompanied by detailed explanation of the import of provisions. In the 1820's he also acknowledged the tension between inductive and deductive logics and admitted that the articulation of general principles and the application of rules in myriad real situations would invariably involve some judicial discretion (but ideally grounded in the principles of utility).

- Bentham tried all institutions and all laws by one criterion and one standard-his own opinion as to what will make for the greatest happiness of the greatest number.
- He overestimated the need for individualizing discretion and flexibility in the application of law.
- He failed to solve the problem as to how far the State would ensure by deliberate and planned action, the attainment of equality of opportunity without the destruction of fundamental freedoms.
- Prof. Upendra Baxi is of the opinion that Benthamite condemnation, of a Judge as usurper, who substitutes his will for that of the legislator as a conscious overtaker who produces and reproduces arbitrariness is clearly addressed to a context where the legislator has, in fact followed Bentham's Counsel of producing clear laws. It is only in such contexts that judicial activism, rightly thus stands condemned.

#### Contribution/Merits

Bentham, devoted a great part of his life to the drafting of codes for a large number of countries, from Czarist Russia to the newly emergent republics of Latin America. While most of these efforts were not immediately successful, notably in his own country, whether in the field of civil law, criminal law, evidence or poverty law, his philosophy became increasingly influential as the nineteenth century progressed. It was Bentham's philosophy, and that of his disciples, which turned the British Parliament - and similar institutions in other countries - into active legislative instruments, effecting social reforms, partly in response to, and partly in stimulation of, felt social needs.

- He was a positive reformer who suggested remedies for the abuses which he criticized. He accomplished results far greater than any merely critical thinker has ever accomplished. He forced the faith in scientific legislation upon the attention of a generation of

Englishmen by whom its truth or importance was denied or forgotten.

- The characteristics of Bentham's early style were, power, simplicity, and clearness. There was no writer of his age whose style had less of mannerism; and the absence of all peculiarity in that of his earliest work — the Fragment on Government. Halevy pointed-Bentham had discovered a simple positive principle on which all men would be able to agree so as to reform society on a system plan.
- He is original so far as he expounded the theory of utility apart from theological accessories, and drew boldly all the consequences of his theory, declaring that increase of happiness should be the sole object in view of the legislator and the moralist; that quantity and intensity being equal, one pleasure was as good as another; and that, pleasure for pleasure, 'push pin was worth as much as poetry.' Utilitarianism might not be presented to-day in the fashion in which Bentham described it; never has it perhaps been stated more logically.
- He laid the basis of sociological jurisprudence by his emphasis on social purposes and balance of interests. He stressed the need for social reform through conscious law making by codification.
- There exists unity of thoughts between Bentham's first principles and his practical efforts as a legal and social reformer.
- He tried to create a new logic, an all inclusive formal analysis of everything that man can do.

#### VIII. CONCLUSION

It would take more time to read what he wrote than it took him to write it, so a complete examination of his work would take a lifetime. Tough in a sense the greatest codifier of all, he was, in the end, a codifier manque. Bentham freely acknowledged his indebtedness to Locke, Hume, Hartley, Voltaire, Barrington, Helvitius, Montesquieu, Beccaria to Priestley. From each of them, he derived inspiration, more so a principle which he was weld into a single amalgam. The special quality of the Utilitarian school and Bentham in particular is that they were not so much as greater inventors as great arrangers of ideas. It is due to this genius for logical arrangement, that current philosophy of their country and century had been reduced to form a school which could unite in the profession of a common doctrine.

Bentham never drafted a code, despite the centrality of codification to his reform agenda. Some of the defects of Bentham's philosophy

helped to make him the more effective as a legal philosopher and a law reformer. The services rendered by Bentham to the philosophy of law and to the machinery of law reform largely outweigh his defects. He put abroad a questioning spirit which has conferred immense benefits on mankind, and the wisdom in his works is not yet fully utilised.

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