

JEREMY BENTHAM'S THEORY OF PLEASURE AND PAIN: INDIAN LEGISLATION

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ABSTRACT

Jeremy Bentham's theory of pleasure and pain, rooted in utilitarianism, significantly influences legal frameworks, including Indian legislation. His principle posits that laws should aim to maximize happiness for the greatest number, thereby guiding legislative processes to prioritize collective welfare over individual interests. This perspective is crucial in understanding how Indian laws can be shaped to reflect utilitarian ideals.

Key Words: Pleasure and Pain, Individual Interests, Maximize Happiness, Collective Welfare, utilitarianism

INTRODUCTION

Jeremy Bentham (1748–1832), the English jurist, philosopher, and social reformer, is regarded as the founder of utilitarianism, a doctrine that evaluates human actions on the basis of their consequences. Central to Bentham's philosophy is the Theory of Pleasure and Pain, where he posits that human beings are governed by two sovereign masters: pleasure and pain. According to him, the principle of utility, that action is right when it promotes the greatest happiness of the greatest number should be the foundation of law and governance.¹

This theory profoundly influenced the evolution of modern jurisprudence, including the development of Indian legislation during and after the colonial period. Under British rule, Bentham's utilitarian ideas inspired codification efforts in India, leading to structured legal systems such as the Indian Penal Code (1860),- Now known as Bhartiya Nayay Sanhita, 2023 the Evidence Act (1872), now known as Bhartiya Sakhsya Adhinyam, 2023 and the Contract Act (1872). These laws were framed with an aim to balance deterrence (pain) and reformatory justice (pleasure), aligning with Bentham's utilitarian calculus.

Even in contemporary India, Bentham's principle resonates in legislative practices criminal laws seek deterrence through punishment while welfare legislations such as labour laws, consumer protection, and social justice enactments strive to maximize public welfare and happiness. Thus, Bentham's theory of pleasure and pain continues to underpin the ethical and practical justifications of Indian lawmaking.

HISTORICAL CONTEXT AND INFLUENCE

Bentham's work laid the groundwork for modern legal systems, advocating for a penal code based on utilitarian principles, which can inform contemporary Indian law

(Sverdlik, 2024). His ideas on punishment and legal definitions of offenses continue to resonate, influencing how laws are structured to address societal issues (Binder, 2014). While Bentham's utilitarian framework offers a compelling approach to legislation, it also raises concerns about the balance between collective happiness and individual rights, suggesting a need for a nuanced application of his theories in modern legal contexts.

The paper titled, “Foundations of the Legislative Panopticon: Bentham's Principles of Morals and Legislation,” states that Bentham's view on criminal law suggests that offenses should be defined by reference to “legally protected interests” and the “culpable expectations of injury to those interests”.⁶ However, the paper does not offer a direct, explicit definition of what Bentham considers a “legally protected interest” itself. It rather uses the term as a fundamental component of his proposed criminal code structure. These foundational concepts explain his view that criminal law should be expressed in a code consisting of offenses defined by reference to legally protected interests and culpable expectations of injury to those interests.

Jeremy Bentham is best known as the founding father of utilitarianism, a moral philosophy that values happiness more than all other goals in life. According to this creed, policies should be directed at 'the greatest happiness for the greatest number'. Besides formulating this general principle, Bentham wrote about several specific topics including the death penalty, which he passionately opposed. He did so, however, without applying his own utilitarian method. In this article the relationship between death penalty and happiness is studied empirically. Average happiness of citizens is compared in states with and without death penalty. Comparisons are made across 127 nation states in the early

2000s and among 47 federal states within the US over the years 1970-2000. The results show that Bentham, from the perspective of his own ethical philosophy, was too negative about the death penalty. It hardly undermines the happiness of nation states and it does not undermine the happiness of American states at all. If one opposes the death penalty, it should be done for non-utilitarian reasons.

Utilitarianism and Legal Framework

Bentham's utilitarianism emphasizes that laws should promote the greatest happiness, aligning legal outcomes with societal benefits (Pertiwi & Roemansyah, 2024). In India, this can be seen in laws aimed at social justice,⁷ such as those protecting human rights and regulating economic relations, which seek to enhance overall well-being⁸ (Pertiwi & Roemansyah, 2024).

Jeremy Bentham's ambitious project from around 1780 to create a utilitarian penal code, primarily detailed in his 'An Introduction to the Principles of Morals and Legislation' (IPML). The practical implications of this work, as discussed in the paper, highlight Bentham's systematic approach to law and ethics:

Foundation of a Utilitarian Penal Code

Principle of Utility: The core implication is the application of the principle of utility to criminal law. Actions would be criminalized if they were deemed 'mischievous' and profitable to punish. This means that the law's purpose is to maximize overall happiness and minimize suffering, rather than being based on tradition, divine command, or abstract rights.

Systematic Design: Bentham's project aimed for a comprehensive system of criminal law, where every offense and its corresponding punishment would be justified by its contribution to societal utility. This implies a rational, evidence-based approach to legal reform.

CLASSIFICATION OF OFFENCES AND JUSTIFICATION FOR LAWS-

Taxonomy of Offences: A significant practical implication is the development of a detailed taxonomy of possible offenses, as discussed in Chapter XVI of IPML. This systematic classification would serve as the backbone for the penal code, clearly defining what acts are considered 'mischievous' and thus subject to punishment.⁹

Catechism of Reasons: Bentham proposed including a

'catechism of reasons' within the code practically, this means that the law would not only state what is illegal but also explain why each action is mischievous to the citizenry. This aims to educate the public and foster understanding and acceptance of the law, promoting compliance based on reason rather than mere coercion.¹⁰

PROGRESSIVE LEGAL THOUGHT AND SOCIAL REFORM

Treatment of Non-Human Animals: The paper highlights Bentham's progressive stance on animal welfare, noting his argument that non-human animals can be treated wrongly. This anticipates modern animal rights discussions and implies a broader scope for legal protection beyond human interests.¹¹

Decriminalization of Consensual Acts: A remarkable implication is Bentham's argument against criminalizing consensual sex between adult males (paederasty). His manuscripts explicitly argue that such acts are not mischievous and therefore should not be offenses. This demonstrates a utilitarian framework's potential to challenge prevailing moral norms and advocate for personal liberty when no harm to others or society is demonstrated, even considering factors like population size. This approach prioritizes actual harm over moralistic condemnation.¹²

Broader Legal Codes: Bentham's work also suggested the need for other utilitarian legal codes beyond just penal law. This implies a comprehensive vision for legal reform across various domains, all guided by the principle of utility.¹³

The practical implications of Bentham's project lie in its foundational role for a rational, utilitarian approach to lawmaking. It advocates for laws that are systematically designed, clearly justified to the public, and capable of challenging traditional prejudices in favour of policies that genuinely promote societal well-being and minimize harm, even extending to areas like animal welfare and consensual private acts.

CHALLENGES IN APPLICATION

The application of Bentham's principles faces criticism, particularly regarding the potential neglect of individual rights in favour of majority happiness (Pertiwi & Roemansyah, 2024). Measuring happiness objectively remains a challenge, complicating the implementation of utilitarian principles in legislation¹⁴ (Pertiwi & Roemansyah,

2024). The application of Jeremy Bentham's utilitarian theory is to modern legislation, highlighting its enduring relevance despite being considered an older concept, especially in socialist countries.¹⁵

Focus on Pain and Pleasure: Bentham's theory, also known as the Theory of Utility, posits that human actions and societal welfare are fundamentally driven by the pursuit of maximum pleasure and minimum pain.¹⁶ This hedonistic calculus suggests that individuals and, by extension, laws and policies, are evaluated based on their ability to generate happiness and avoid suffering.¹⁷

Societal Application: The theory's essence is retained in today's modern legislation, particularly in social welfare laws, where the goal is to maximize pleasure and minimize pain for the greatest number.¹⁸

Human Nature as Hedonistic Calculus: The paper asserts that modern individuals still operate as 'hedonistic calculi', constantly weighing risks and gains in their decisions, which reflects Bentham's philosophy.¹⁹ The study aims to explore the various junctures where contemporary legislations, directives, judgments, and policies derive their core principles from the Theory of Utility.²⁰ The research primarily employs a doctrinal approach, drawing upon works from scholars like S.N. Dhyani, B.N. Mani Tripathi, Patton, and Carodozo, along with various articles, to analyze the application of utility theory in modern legal contexts. The introduction sets the stage for an exploration of how Jeremy Bentham's utilitarian theory, centered on the maximization of pleasure and minimization of pain, continues to influence and underpin modern legal frameworks and human decision-making, despite its historical origins.²¹

India's legal system especially during the colonial period was deeply influenced by Benthamite utilitarianism through British lawmakers like James Mill and Macaulay. His principles are visible in multiple areas:

(a) Indian Penal Code, 1860 (IPC): Drafted by Lord Macaulay, who was influenced by Bentham's utilitarian ideas. The IPC is structured on the principle that punishments should create deterrence (pain to offender) and thereby protect society (pleasure for the majority). Example: Provisions for proportional punishments (Sections 302 for murder, 378 for theft) reflect the idea that the pain of punishment should outweigh the pleasure of committing the

crime.

(b) Criminal Procedure and Evidence: Bentham advocated codification and rationalization of laws for clarity and certainty. India's Criminal Procedure Code (CrPC) and Indian Evidence Act, 1872 are rooted in this principle creating a uniform system accessible to all, maximizing fairness and reducing arbitrariness.²²

© Codification of Laws: Bentham emphasized that laws should be codified, clear, and systematic to reduce uncertainty (which causes pain). India has comprehensive codified laws in civil, criminal, and commercial matters a direct outcome of Benthamite thinking.²³

(d) Law of Punishment and Deterrence: The idea that punishment is justified only if it prevents greater harm is visible in India's penal laws. Example: Preventive detention laws, though controversial, are often justified by the state on utilitarian grounds "better to restrain one to protect many".²⁴

(e) Social Welfare and Directive Principles of State Policy (DPSPs): Though more influenced by post-independence socialist and Gandhian thought, DPSPs in Part IV of the Indian Constitution also reflect utilitarianism. They seek to maximize welfare by ensuring right to education, health, fair distribution of resources, etc.

Criticisms in Indian Context

Critics argue that a purely utilitarian approach may sacrifice minority rights for the majority's happiness. Example: Preventive detention or restrictions on free speech can be justified on utilitarian grounds, but they often infringe on fundamental rights. Hence, Indian law balances Benthamite utilitarianism with constitutional morality, natural justice, and human rights.

CONCLUSION

Bentham's theory of pleasure and pain shaped India's legal framework during the colonial era, especially through codification, penal laws, and the principle of deterrent punishment. While modern Indian law also draws from constitutionalism and human rights, Benthamite utilitarianism remains a strong foundation in the structure and functioning of Indian legislation.

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