

Benthammania

A series of write-ups in respect of Bentham's principles of legislation. Every write up will cover one chapter of the book "Bentham's principles of legislation"

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Chapter III

Relation between these ends (subordinate or secondary ends)

Bentham states that the subordinate ends of civil law are distinct in idea but they may not be so in practice. As per him the same law may advance more than one object. As per him the law, which favours security, favours, at the same time, subsistence and abundance. The law of copyright or security to the intellectual property provides security to the individual to create an art or write a book or invent something and create subsistence as well as abundance with the help of his artwork, book or invention as the law has provided security that no other person can copy his artwork, book or invention. The law therefore created for securing intellectual property rights has also achieved the object of creating subsistence and abundance.

Bentham says that in the process of creating legislations there may be circumstances in which it will be impossible to unite all the subordinate objects, for example in order to create subsistence the government may require distribution of property and this aspect of legislation will be incompatible with security. Take the example of the Ceiling on Land Holding Act by which the government imposed a ceiling on holding of agricultural land and acquired the surplus land and distributed it to the peasants. For creating this legislation initially, the government was required to Amend the fundamental right of property in the Constitution and thereby reduce the security provided by the fundamental right and curtail the right to enjoy the property to its fullest extent.

Bentham postulates that the subsistence and security arise together to the same level and for a newly created nation it will be necessary first to take care of legislation achieving the object of providing subsistence to the people and further providing them security. Abundance and equality are of inferior importance because unless there is sufficient wealth for subsistence and proper environment for creating subsistence by the people there are no chances of creating abundance not only for the individual but also for the nation. In case of pandemics, war and other natural calamities survival of the people becomes the objective and therefore in such times the laws are activated which create a security among the people that they will not die because of scarcity of food and supply of food shall be continued in order to achieve the object of subsistence by curtailing liberty and security. Bentham says that without security, equality could not last a day and without subsistence abundance could not exist at all. Security and subsistence are life; equality and abundance are ornaments of life.

As per Bentham the most important object of civil law is security. For example if the laws are created to provide security for the growth of industry subsistence will automatically be achieved.

The State governments in India which succeed in providing a legislative mechanism for the farmers to get secured and appropriate price of their products have succeeded in creating abundance and at the same time instinct amongst the farmers to grow more and more crops.

Bentham postulates that we cannot arrive at the greatest goal except by sacrifice of some subordinate good. Whenever a legislation is required to be created for creating security of the people, liberty to that extent is required to be taken away. As per Bentham liberty has yielded to security, because laws cannot be made except at the expense of liberty. Here example can be cited of the law of defamation. Legislation provides security to the reputed person that his reputation cannot be tarnished by anybody by making any sort of allegations. The law thus takes away liberty of the other individuals to speak any sluggish thing about anybody and keep away from making false allegations. Though the Constitution of India provides freedom of trade throughout the territory of India, in the federal structure of government, the State governments in order to secure livelihood of the people of the State and to avoid unemployment of the people of their state create the laws to disallow people of other State to secure employment in their State or to carry out specified business in their State. The law infringes the right of equality as well as liberty of the people of other States while creating security and subsistence for the people of the State which has made such a legislation.

Bentham provides that the laws are constantly establishing inequalities, since law can't give rights to one without imposing obligation upon another. As per him equality is not to be favoured except in cases in which it doesn't interfere with security. As per Bentham equal distribution of property is not at all possible because if any State tries to distribute all its property to every citizen then a stage will come when no property will be left for division. Similarly the property coming in the hands of the person not suitable for preserving property, the property will be destroyed and the person to whom the property was given and the person from whom property was taken away both will suffer disadvantage. The laws encouraging creation of property and preservation of property make the people industrious. If the property is distributed to the people, without them being industrious, the whole ideal of motive of industriousness will be lost.

Similarly, the much sought-after statement that all have equal rights can never be ideally followed. All have equal rights means there is no such a thing as subordination. The son then has the same rights which his father has to govern and punish and then when the son will also punish his father. Idiot has the same right to govern his family that his family has to govern him. Bentham says that those who maintain the doctrine of equality of right have no intention of establishing absolute equality. The principle of Marxism, which created society based on equality, perished from the world as none of the States following said principle was able to create an ideal governance by implementing the principle of equality for all. The Indian constitution envisages the principle of equality in employment and that means equal opportunity to the persons having equal education and other equal criteria and nothing more than that.