

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"

-Dr. Ajay Nathani

Chapter I

Object of civil law

The objects of civil laws defined by Bentham are also known as pain and pleasure theory. Unlike the criminal law, civil law basically deals with property and individual rights which include right to inheritance, right to protect the property, right to transfer the property and the right to enjoy the property and such other more rights concerning property, right to enjoy freedom, protect reputation, protect the right of expression, enjoy right to life to its full extent and so on. These rights are required to be regulated by different legislations by the government and Bentham provides some inputs as to how the civil laws should be legislated with an objective to motivate the people to create property.

Whether it is the period when human just evolved and was required to work physically to create for himself or the present a period when many person may or may not have to work physically to generate weight wealth, in every era of gradual evaluation of human race the property is generated by the labour of individual and the economies prosper and fall depending upon the efforts of the people in the nation to generate wealth or property.

The basic instinct which threw a person in aboriginal time to create property, maybe it was the lawless era, was the basic instinct to get food and was created by hunger. Gradually the human beings may have started to mark and protect resources for getting food and this act of the human race gave rise to the concept of creating abundance.

Dr. Spencer Johnson in his famous book "who moved my cheese" taking into consideration the drive created by the basic instinct of hunger to motivate a person to search or create property by making wholehearted efforts not only for the present needs but by keeping himself moving and go on generating wealth for present needs and preserve it for future needs. If a person remains idle and go on enjoying his existing property the property is going to recede with the time and it will be difficult for him to have peaceful enjoyment of life with the help of existing property. He will perish if he doesn't go on creating it by moving in the right direction.

Creation and possession of property always gives pleasure. It is not necessary that the property created or acquired is in present enjoyment or it is generating profits. Existence of a property owned gives the pleasure of possession. The pleasure continues with possession and whenever there is any disturbance to the possession of the property it creates pain. Imagine a person owns a

piece of land by the side of the road and he receives knowledge that the government may take over his land for road widening, this knowledge itself even before acquisition of land will create pain. Suppose a person generates wealth with an intention that his next generation will not have to work hard to create property and the property will help them to generate more property and then he comes to know that the government is creating a law the 50% property will only pass to the next generation and rest of the 50% will be of the government. This knowledge will not only create pain but it will also drive him to minimise his efforts to generate wealth. In the vicinity infiltrated by uncontrolled bandits, nobody will take the risk of putting efforts to generate property as there will be no protection to the property from the bandits, who enjoy taking away the property of each and everyone with the strength of their muscle power. Right to get the fruits of labour, the right to secure subsistence and abundance give pleasure and any erosion of rights gives pain.

Rights and liberty are inherent. These aspects come into existence with the birth of a person. Existence and enjoyment of rights, freedom and liberty gives immense pleasure to the individual, however in a civilised society rights of a person, freedom of a person and liberty which he can enjoy is required to be regulated for the existence of civilised society. It is a famous anecdote that once Abraham Lincoln was walking on the road when he came across a person who was walking by rotating the stick in his hand which was about to hit Abraham Lincoln. Abraham Lincoln stopped him and said that you are having liberty to rotate the stick in your hand, however your freedom ends where my nose begins. So the freedom and liberty are the rights, which in a civilised society, can be enjoyed to the extent they do not cause derogation to the rights of the others. Everyone has the right to protect his body and property and therefore it is necessary for the coexistence of human beings to curtail rights, freedom and liberty of individuals by creating obligations to protect the rights of others. Now the creation of obligation to curtail right, liberty and freedom creates pain. Putting somebody in prison by curtailing his freedom of movement and expression certainly creates immense pain and therefore it is considered to be punishment.

The basic duty of any government is to make its citizens happy. That means creating more and more pleasure for the citizens. This can be done by the government by creating the laws which protect rights, provide security, ensure freedom and give liberty to the citizens. Whenever the government creates laws creating obligations it will create pain for the persons for whom obligations are created. Bentham therefore postulates that the legislature shall confer rights with pleasure and obligation with reluctance. He says that creation of obligation curtailing liberty are not welcomed and when the liberty is curtailed the act of individuals allowed by the society in enjoyment of their liberty will turn into a prohibited act and in some cases an offence attracting punishment and thereby creating pain and expectation of more pain for the persons who were allowed to enjoy their liberty uninterruptedly before banishment.

Citizens cannot acquire right except by sacrificing part of their liberty. Bentham further postulates that person's life, reputation, property, and liberty cannot be safeguarded but at the expense of liberty. Every person therefore has to shed part of his liberty to protect life, reputation and enjoyment of property, freedom and liberty by others. One cannot go on road and play football or sing loudly on the road at night, though he is having a right to enjoy the public road similar to the persons who were sleeping in their homes at night and it is necessary to have legislation in place to restrict the right of a person to enjoy the public road at night in order to protect the right of others to have a peaceful sleep at night in their homes. Bentham says that the government who creates the legislation to take away liberty must give better reasons for curtailment of liberty of citizens, Because the Motto of every government shall be to spread happiness in the society.

To end with the words of Bentham *“government approaches perfection in proportion as the sacrifice of rights, freedom and liberty is less and acquisition is more”*.
