

ANALYTICAL SCHOOL OF JURISPRUDENCE

JEREMY BENTHAM (1748-1832)

- ❖ He was born in 1748 in London.
- ❖ Lawyer but never practiced.
- ❖ English jurist, social reformer, legal scholar, founder of Utilitarianism. He was interested in ways to reform the legal system and law on more rational lines.
- ❖ He used to write a lot but only few were published in his lifetime.
- ❖ In 1768, he came across a political tract by **Joseph Priestley** – Essay on First Principles of Government – Greatest happiness for the greatest number was used. Following this he read the contributions made by Scottish philosopher – **David Hume (1711-1776)** – Treatise of Human Nature, Beccaria – Where he announced that the only valid criterion for evaluating the merits of a law is Greatest happiness.

- ❖ Introduction to the Principles of Morals and Legislation, The Limits of Jurisprudence Defined, A Fragment on Government.
- ❖ He was the founder of Positivism. He should be considered as the Father of Analytical Positivism. He was Austin's intellectual God-father from which Austin borrowed and developed the theory of Analytical Positivism.
- ❖ His body is preserved on his instruction and it is now on permanent display at the University College London.
- ❖ **Bentham**: Utilitarianism, Law, Sovereign and Jurisprudence.

UTILITARIANISM

- ❖ It is a moral theory that talks about what is right and what is wrong and based on this how people and institutions should behave and make decisions.
- ❖ It is a philosophy that aims for the betterment of the society as whole.
- ❖ The entire concept of utilitarianism is based on 'Greatest happiness to the greatest number of people.'

PRINCIPLE OF UTILITY

- ❖ Motive of every individual – Happiness.
- ❖ Bentham says: 'Nature has placed mankind under the governance of two sovereign masters, PAIN and PLEASURE. They govern us in all we do, all we say, all we think'.
- ❖ The principle that approves or disapproves of every action according to the tendency it appears to have to increase or lessen the happiness of the person or group.
- ❖ The right thing to do is whatever will maximize utility. In simple terms utility means happiness.
- ❖ **Utility:** The property of something whereby it tends
 - a. to produce benefit, advantage, pleasure, good or happiness.
 - b. To prevent the happening of mischief, pain or evil or unhappiness.

- ❖ This concept is connected with **hedonism**, which means happiness.
- ❖ Psychological Hedonism: Every man seeks his own pleasure in every action.
- ❖ Ethical Hedonism: It focuses on the fact that our fundamental moral obligation is to maximize pleasure or happiness.
- ❖ Is the concept **egoistic**?
- ❖ According to utilitarianism, utility is the only intrinsic good. Actions are judged right or wrong in proportion to their propensity to produce the **maximum happiness or pleasure for the greatest number**.
- ❖ The moral duty of an individual is to produce not only his own happiness, but rather the happiness of all as far as possible. It is difficult to attain one's own happiness, to the maximum without consideration of the happiness of others. One who does not think of the happiness of others, cannot expect to get any happiness from others. Example.

- ❖ Encyclopedia of Philosophy: Utilitarianism can most generally be described as the doctrine that states that rightness and wrongness of actions is determined by the goodness and badness of their **consequences**.
- ❖ Bentham's utilitarianism is that an action is judged by its consequences, not by the intention behind it.

Is it possible to measure pleasure and pain in **quantitative terms**/ How to calculate the pleasure?

❖ It can be measured by **hedonic Calculus/ felicific calculus**.

❖ There are **seven factors** to measure.

a) Intensity: How strong the pleasure is?

b) Duration: How long the pleasure will last?

c) Certainty: How likely and unlikely the pleasure is?

d) Propinquity: How soon it will occur?

e) Fecundity: Whether it leads to additional pleasure?

f) Purity: Whether there is any chance of being followed by sensations of the opposite kind?

g) Extent: The number of people to whom it extends.

Criticism

- **Friedmann:**

Failed to create a balance between individual and community interests.

Pleasure and pain cannot be the final test of the adequacy of law.

Conclusion

Maximizing utility is a principle not only for individuals but also for legislators. In deciding what laws or policies to enact, a government should do whatever will maximize the happiness of the community as a whole.

LAW

- ❖ A law may be defined as an:
 - a. Assemblage of signs, declarative of a volition, conceived or adopted by the sovereign in a State.
 - b. 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 or are supposed to be subject to his power.

- ❖ Law is the will of the sovereign that regulates the conduct of the people to which it applies.

- ❖ Every law may be considered in 8 different respects:
 - a. **Source:** Law is the will of the Sovereign.
 - b. **Subject:** Person or thing.

- c. **Object:** The acts and circumstances to which it may apply.
- d. **Extent:** The range of its application in terms of the persons whose conduct it is intended to regulate.
- e. **Aspect:** The various ways in which the will of the sovereign as expressed in the law that applies to the objects of that law.
- f. **Force:** The punishments or sanctions which the law relies upon for its compliance.
- g. **Remedial state appendages:** Any other laws as may be created to clarify the requirements of principal law.
- h. **Expression:** The manner in which the will of the sovereign are made known.

- ❖ As regards the force of a law, a law is dependent upon motivations for obedience. It includes political, religious and moral motivations, comprising threats of punishment and rewards.
- ❖ The failure to do or not to do what a law supported by punishment requires is illegal, but it is not illegal to do or not to do what a law supported by rewards requires.
- ❖ Greatest happiness of the greatest number ought to be the object of every legislator and for accomplishing his purpose towards this objective, he possess two instruments: Punishment and Reward.

SOVEREIGN

- ❖ Any person or assemblage of persons to whose will a whole political community are supposed to be in a disposition to pay obedience and that in preference to the will of any other person.
 - a. **Sovereign**: single person or a group of person.
 - b. **Power**: Limited and divisible.

JURISPRUDENCE

- ❖ He uses the term jurisprudence in two sense:
 - **Jurisprudence as a synonym for law:** It refers to the substance and history of a particular legal norm embodied in case law, precedents and other legal commentaries.
 - **Jurisprudence as theory:** The study of general theoretical questions about the nature of laws and legal systems. Jurisprudence is the art of knowing what has actually been done in the way of internal government. It refers to a set of philosophical principles or theories for making sense of laws.
- ❖ He divided Jurisprudence into:
 1. **Expository** : It ascertains what the law is.
 2. **Censorial**: What law ought to be.
- ❖ He divided expository jurisprudence into two:
 - **Authoritative**: When the legislator represents what the state of the law is.
 - **Unauthoritative**: When any other person represents what the law is.