KLE LAW ACADEMY BELAGAVI

(Constituent Colleges: KLE Society's Law College, Bengaluru, Gurusiddappa Kotambri Law College, Hubballi, S.A. Manvi Law College, Gadag, KLE Society's B.V. Bellad Law College, Belagavi, KLE Law College, Chikodi, and KLE College of Law, Kalamboli, Navi Mumbai)

STUDY MATERIAL

for

POLITICAL SCIENCE-3: STATE AND POLITICAL OBLIGATIONS

Prepared as per the syllabus prescribed by Karnataka State Law University (KSLU), Hubballi

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SUBJECT: POLITICAL SCIENCE-III

Major – 03: STATE AND POLITICAL OBLIGATIONS

COURSE OBJECTIVES:

To bring Comprehensive knowledge on Political Obligation in the Students. The Course Carries exclusive knowledge in Statehood and its authority, which will help the Students to understand the Duties with their responsibilities towards the State and authorities. Also, they will be Learning the essentials of Equality and Justice in different aspects with subsequent ideas on ancient medieval and modern interpretations of Justice in the ambit of evolutionary understanding.

SYLLABUS	
Unit-I	
❖ **Introduction**	Meaning, Nature and Characteristics,
❖ **Kinds**	Kinds of Political Obligations,
❖ **Obligation of the State**	Obligation of the State: Under Monarchy (Ancient and Medieval),
❖ **Political Obligation**	Obligation according to Individualism, Socialism and Welfare State, Obligations of Individual Citizens and other members of the State.
❖ **Unit-II**	
❖ **Law**	Meaning Nature and Sources, Kinds-Law and Morality
❖ **Delegated Legislation**	Meaning, Need and Growth, Advantages, Limitations and Safeguards.
❖ **Liberty and Equality**	Liberty-Meaning Importance and kinds, Equality- Meaning Importance and Kinds, Relationship between Liberty and Equality
❖ **Justice**	Meaning and Interpretations and Kinds, Ancient, Medieval and Modern Interpretations

Unit-II	
❖ **Approaches' to Political Obligation**	Individualism i. Background, Statement, Merit and Limitations Utilitarianism i. Background, Statement, Merit and Limitations (Contributions of Jeremy Bentham and J S Mill) Idealism: Background, Statement, Merit and Limitations (Kant, Hegel and T H Green-a Brief Study)
Unit-IV	
❖ **Power** ❖ **Authority** ❖ **Responsibility**	Meaning, Aspects, Sources and Kinds Power Vs Authority Legitimization of Power Limitations and Conditions (Max Weber's Kinds of domination Relationship with Authority Kinds-Institutional and Professional Accountability (as an Adjunct of Responsibility) Meaning, Importance and Kinds
Unit-V	
❖ **Obedience to Law** ❖ **Problem of Punishment** ❖ **Disobedience to Law**	Obedience to law: A Legal Duty Need and importance Why People Obey Law-Reasons Can State Use Force against its Citizens? :i. Arguments, Limitations and Conditions. Kinds of Punishments; Theories of Punishments: Meaning Features, Limitations Civil disobedience to be Contrasted with revolution. Civil Disobedience movement; with reference to Gandhiji's Sathya, Ahimsa and Sathyagraha Influence of David Thoreau. Neo-Gandhian Movements: Martin Luther King (Sr) and Nelson Mandela

UNIT- I

POLITICAL OBLIGATION

SYNOPSIS

- ***Meaning, Nature, Characteristics***
- ***Kinds of Political obligation***
- ***Obligation of the State***
- ***Political Obligation***

POLITICAL OBLIGATION

INTRODUCTION

The moral obligation to obey the law, or as it is generally called, political obligation, is a moral requirement to obey the laws of one's country. Traditionally, this has been viewed as a requirement of a certain kind, to obey the law because it is the law, as opposed to the content of particular laws. This conception of the "content independence" of obligations dates back at least to the time of Thomas Hobbes: "Command is where a man saith, *Doe this* or *Doe not this*, without expecting other reason than the Will of him that says it". In characterizing this as a moral requirement, theorists distinguish political obligation from legal obligation. All legal systems demand obedience from those subject to them. Questions of political obligation concern the state's justification for doing so. Unless citizens have moral requirements to obey the law, the state may be able to compel obedience but is acting unjustly and impinging on their freedom in doing so. Political obligations are also generally distinguished from what we may call prudential obligations. As H. L. A. Hart argues, if a gunman holds you up, you may be *obliged* to turn over your money, as the consequences of not obeying could be dire. In contrast, when the state demands that you pay your taxes, you may again be obliged to pay. But if you have political as well as prudential obligations, there is a sound moral basis for the state's command. In other words, it is right that you comply. On this traditional view, the relationship between the state and the individual is expressed in terms

of "authority." If the state possesses authority, then individuals have moral requirements to obey its commands, and the state has "claim rights" to their obedience.

In recent years, political obligations have generally been conceptualized in a particular way, as applications of familiar moral principles. For instance, as commonly understood, an obligation of gratitude is generated by receipt of benefits from a benefactor, if certain other conditions are met. A gratitude theory of obligation results from taking a general principle of gratitude and applying it to the state, which, on this view, is interpreted as conferring significant benefits on citizens. Citizens have duties to make appropriate returns for benefits received, which they fulfil by obeying the law.

MEANING:

- The term 'obligation' originates from a Latin word 'obligate' which implies performance of an enjoyed duty. Society calls upon the individuals to follow certain do's and don'ts. These are obligations, or duties. For instance, payments of tax are a duty, and so also refraining from committing theft is another form of duty.
- Obligation is something that binds men to an engagement or performing what is enjoyed. It is the duty of a men to fulfil or discharge a duty enjoyed on him by his rational understanding. In legal sense an obligation is the vinculum juris or bond of legal necessity, which binds together two or more determinate individuals. Example the duty to pay a debt to perform a contract, or to pay damages for a tort. It shows the correlative rights, means the right of one party, no less than the liability of the other.
- In its political sense it takes the form of a bond between man as a citizen, and the authority under which he lives to perform an act, or number of acts for the governing authority. Man is a political animal. He is bound to live under some authority. It becomes his obligation to obey the commands of such authority. Benn and peters explained, 'when the authorising rule is a law, and the association is a state, we call it as political obligation.

DEFINITIONS OF OBLIGATION

- **Sir John Salmond -** "An obligation, therefore, may be defined as a proprietary right in personam or a duty which corresponds to such a right." Obligations are all in one class of duties, namely those which are co-relatives of rights in personam.

- **Anson - "**an obligation is a control exercisable by definite persons over definite persons for the purpose of Definite acts or forbearance reducible to a money value"

- **Savigny -** an obligation is the control over another person, yet not over his person in all respects (in which case his personality would be destroyed), but over single acts of his which must be conceived of subtracted from his free will and subjected to our will.

- **Paton -** an obligation is that part of law which creates right in personam.

NATURE OF POLITICAL OBLIGATION

To have a political obligation is to have a moral duty to obey the laws of one's country or state. On that point there is almost complete agreement among political philosophers. But how does one acquire such an obligation, and how many people have really done what is necessary to acquire it? Or is political obligation more a matter of *being* than of *doing* that is, of simply being a member of the country or state in question? To those questions many answers have been given, and none now commands widespread assent.

Indeed, a number of contemporary political philosophers deny that a satisfactory theory of political obligation either has been or can be devised. Others, however, continue to believe that there is a solution to what is commonly called "the problem of political obligation," and they are presently engaged in lively debate not only with the skeptics but also with one another on the question of which theory, if any, provides the solution to the problem. Whether political obligation is the central or fundamental problem of political philosophy, as some have maintained, may well be doubted. There is no doubt, however, that the history of political thought is replete with attempts to provide a satisfactory account of political obligation, from the time of Socrates to the present. These attempts have become increasingly sophisticated in recent years, but they have brought us no closer to agreement on a solution to the problem of political obligation than the efforts of, say, Thomas Hobbes and John Locke in the seventeenth century.

Nor have these sophisticated attempts made it unnecessary to look back to earlier efforts to resolve the problem. On the contrary, an appreciation of the troublesome nature of political obligation seems to require some attention to its place in the history of political thought. It says why men has to accept political obligation. For example, people cannot play the game of cricket without obeying the rulings of the umpire, so they cannot live well without accepting the commands of the

person charged with the job of maintaining peace and order in the society. As **Benn and Peters** observes 'of course there are plenty of good reasons for accepting authority in general. We are often in a situation where it is more important to accept an umpire's judgement then to insist on our own. We accept authority because most social enterprises would be hope less without it.

CHARACTERISTICS OF POLITICAL OBLIGATION

Political obligation is, thus, a frame through which people accept the commands of the "men in authority". This means that it has certain distinct characteristics.

They are:

- Management of public affairs
- Political Legitimacy
- Resistance to authority

Management of Public Affairs

The art of running any government is not easy. It is a difficult and extensive task and any wrong move or incorrect policy decision would entail serious consequences. On the contrary, a positive and right step taken by the government for the people would bring good results for the development of a nation. Thus, it becomes a duty of every conscientious person to take serious interest in the management of public affairs, government policies and political questions. This interaction would be for the general good. Political obligation, thus, calls for honesty, integrity and public spirit, both on the part of the government and the people.

Political Legitimacy

A study of the concept of political obligation necessarily leads to the investigation of the related theme of political legitimacy and effectiveness. The stability of a democratic political system not only depends upon economic development, but also upon its legitimacy. Legitimacy includes the capacity to produce and maintain a belief that the existing political institutions or forms are the most appropriate for society and is said to rest on the general will. Effectiveness, on the other hand, is judged on how well a system performs the basic functions of government, measured by the reaction of the masses.

Resistance to Authority

The idea of political obligation not only tells people to obey authority, but also desires them to be critical about the way authority is exercised. The people should scrutinize the action of their rulers and resist an invasion on their liberties. Thus, the idea of political obligation also involves the idea of resistance to authority. But of course, the right to protest against the state must be founded on a relation to social well-being in terms intelligible to the masses and the consequences of disobedience should not lead to a total breakdown of the state system.

KINDS OF POLITICAL OBLIGATION

1. **Moral obligation**
2. **Legal obligation**
3. **Positive obligation**
4. **Negative obligation**

MORAL OBLIGATION

Moral obligation is an obligation arising out of considerations of right and wrong. It is an obligation arising from ethical motives, or a mere conscientious duty, unconnected with any legal obligation, perfect or imperfect, or with the receipt of benefit by the promisor of a material or pecuniary nature. Moral obligation springs from a sense of justice and equity that an honourable person would have, and not from a mere sense of doing benevolence or charity.

LEGAL OBLIGATION

Legal Obligation means any requirement or duty created by statute or common law. Legal obligation. A measure of mental capacity, used in deciding the extent to which a person can be held accountable for a crime; see diminished responsibility. Specific duties imposed upon persons to care or provide for others, such as the parents' duty to the child or the guardianship of a ward. A legal obligation exists when not fulfilling that obligation would have legal consequences. Let's say a parent abandons their child. There would be consequences in the sense that many people would think less of them. There is no legal obligation to be a good parent.

However, there is a legal obligation to provide for your child's material needs. If you don't, you risk legal consequences such as wage garnishment.

POSITIVE OBLIGATION

Positive obligations in human rights law denote a State's obligation to engage in an activity to secure the effective enjoyment of a fundamental right, as opposed to the classical negative obligation to merely abstain from human rights violations. Positive obligations in human rights law denote a State's obligation to engage in an activity to secure the effective enjoyment of a fundamental right, as opposed to the classical negative obligation to merely abstain from human rights violations. Classical human rights, such as the right to life or freedom of expression, are formulated or understood as prohibitions for the State to act in a way that would violate these rights. Thus, they would imply an obligation for the State not to kill, or an obligation for the State not to impose press censorship.

Modern or social rights, on the other hand, imply an obligation for the State to become active, such as to secure individuals' rights to education or employment by building schools and maintaining a healthy economy. Such social rights are generally more difficult to enforce. Positive obligations transpose the concept of State obligations to become active into the field of classical human rights. Thus, in order to secure an individual's right to family life, the State may not only be obliged to refrain from interference therein, but positively to facilitate for example family reunions or parents' access to their children.

NEGATIVE OBLIGATION

Negative obligations refer to a duty not to act; that is, to refrain from action that would hinder human rights. For instance, by not returning smuggled migrants to countries where they face risks of persecution, the State will be abiding by the corresponding negative obligation. Importantly, the fulfilment of a negative obligation might very well require positive action. This may include adoption of laws, regulations and standard operating procedures that prohibit push back policies of migrant smuggling vessels found close to the State's maritime border.

OBLIGATION OF STATE: UNDER MONARCHY - ANCIENT AND MEDIEVAL

POLITICAL OBLIGATION IN HISTORICAL PERSPECTIVE

The phrase “political obligation” is apparently no older than T. H. Green's *Lectures on the Principles of Political Obligation*, delivered at Oxford University in 1879–80. The two words from

which Green formed the phrase are much older, of course, and he apparently thought that combining them required no elaborate explanation or defence. In any case, there was nothing novel about the problem Green addressed in his lectures: "to discover the true ground or justification for obedience to law". Sophocles raised this problem in his play *Antigone*, first performed around 440 BCE, and Plato's *Crito* recounts Socrates' philosophical response to the problem, in the face of his own death, some forty years later.

DIFFERENT THEORIES OF POLITICAL OBLIGATION: Under Monarchy from Ancient to Medieval

Various theories have been enunciated on political obligation. These theories explain the kind of sanctions behind the concept of political obligation.

- **DIVINE THEORY:** Sanction in Faith This theory is one of the oldest, explaining the reasons of obedience to a state's ruler. It implied that the ruler has derived his authority directly from God. As such, the people had no right to rebel even against a wicked ruler. In this way, people are bound by religious injunction to obey the authority of the king. This idea of 'divine rights of kings' was prevalent throughout the Middle Ages. However, with the advent of new learning in the modern age, it lost its significance.

  Criticism of the Divine Theory of Political Obligation. The Divine Theory of political obligation received scathing criticism at the hands of eminent thinkers like Grotius, Hobbes, Locke who rejected its metaphysical premises and traced the source of political obligation in consent of the individuals. When the state and the church got separated due to the growth of secularism, temporal powers became supreme to spiritual powers. However, the growth of democracy doomed this theory. Even the other metaphysical bases of obligation, like Fascism or Communism, based on the historic mission of a leader, class or party, received no support from science. They are of the same religious order as the divine rights theory. Thus, the theory lost all its appeal in the modern age.

- **CONSENT/CONTRACT THEORY:** Sanction in Will of the People Though the idea of contract or consent as a basis of obligation is quite ancient and is found in ancient Hindu thought too, it was mainly in the 16th and the 17th century in Europe that sophisticated

theories of contract were developed to explain political obligation. The explicit expression of this theory is found in the writings of Thomas Hobbes and John Locke. They opine, that men who lived in the state of nature entered into a contract whereby political authority came into being, which again was based on the consent of the people. The idea of social contract, however, took a highly philosophical form at the hands of Rousseau, who reposed the fact of political obligation in the "General Will". This meant that man no longer remains a slave to his impulses of appetite after entering into a civil society, but he becomes bound to obey the law of the general good. (Called General Will). Thus, the social contract theory justifies the conception that the ruling authority, if he has to be legitimate, must rest ultimately on the consent of the governed. If the government violates the terms of the contract, the people have the right to resist. The implications of this theory have been in the direction of safeguarding the rights and liberties of the people and checking the arbitrariness of rulers.

Criticism: Though the consent theory had its field day in the seventeenth and the eighteenth centuries and even now, has its own significance on account of constituting the moral basis of a democratic order, it suffers from certain weaknesses. The theory makes the state an artificial organization. Also, the element of consent as enshrined in some contract made in a hypothetical state of nature is nothing else than a fiction, not at all legally binding on the existing generation. Thus, the people may go to the extent of staging a rebellion on the plea that they withdraw their consent in as much as the government has committed such an action in violation of the "general will'. The result is that the theory of political obligation is converted into a theory of rebellion.

- **PRESCRIPTIVE THEORY:** Sanction in Reverence to the Established Conventions and Traditions According to this theory, political authority and reverence to it are based on the principle of "customary rights. Authority is legitimate, if it is sanctioned by long standing custom or tradition. The people obey their rulers because the fact of obedience has become like a well-established convention. The traditionalists view the state as a delicate structure built over the years and which represents a balance of conflicting interest. Institutions like the state evolve gradually and adapt slowly to change; hence, it is a matter of duty to accept state authority and obey it while working only for gradual peaceful change. This

conservative theory of political obligation has its affirmation in the writings of Hegel, who believes that the ideas of morality evolve concretely in the customs and institutions of the state. And since the latest stage in this process is the present established order, it is entitled to receive our obedience. Further, since the state is the embodiment of a long evolved and customary morality, it becomes the duty of everyone to do what the state expects of one. Burke is one of the best-known exponents of conservatism who opines that it is unwise for man to totally disregard custom and tradition. The fact of political obligation is contained in paying unflinching respect to tradition, which is a sacrosanct affair. Thus, he supported the revolt of American colonialists, which was in favour of traditional rights of Englishmen, but opposed the French Revolution because it was inspired by the abstract rights of man "divorced from national traditions". Prof. M. Oakeshott is a contemporary upholder of the traditionalist view of obligation. According to him, political actions can never be anything but traditional, because political reflection cannot exist in advance of political activity. Politics is a skill, which is learned by practice rather than through theoretical maxims or systems. Hence, even when we attempt to comprehend other people's politics, it is always within our own framework.

Criticism: The Prescriptive Theory of Political Obligation Like other theories, the prescriptive theory has its own weaknesses. The source of political obligation lies not only in paying reverence to well-established practices, but also in doing away with them. People desire change and in case, their hopes are frustrated, they take to the path of revolution. Oakeshott has been particularly criticized on the ground that he treats even a revolution as an experience connected with the past and thereby, makes it a purely conservative affair. This means that the exponents of this theory would even advise the Negroes of African countries to accept racial discrimination laws as 'legitimate' for they are based on the 'well-established traditions of the realm.' However, this is far from the truth. In-fact, people only observe their traditions, in so far as they have their utility and do away with them when their usefulness does not exist.

- **IDEALISTIC THEORY:** Sanction in the Rationality of Man the Idealists trace the source of political obligation in the innate rationality of man. Man is regarded as a 'political and rational creature' and the state as a 'self - sufficing community' identical with the whole

society. As such, there can be no antithesis between the individual and the state. As a consequence, an individual can seek his best possible development in society alone by obeying the command of the state. In other words, the source of political obligation is contained in obedience to the state. Both Plato and Aristotle affirmed that the state and the individuals comprising it 'form an organic whole'. Such an affirmation finds its best manifestation in the hands of Hegel who identifies 'liberty' of the individual with his perfect obedience to state. Green too says, that the idea of political obligation is connected with the case of moral obligation. He suggests that only those actions should be made obligations, which are made to serve a certain moral end.

Criticism: The idealistic theories have been criticized on the ground of being too abstract. It places ordinary things in a highly philosophical or metaphysical form that cannot be understood by a man of average understanding. Also, the idea of political obligation is not only concerned with man's obedience to state, but is also integrally connected with his right to resist abuse of political authority. The idealists are reluctant to accommodate the right to resistance in their doctrine of political obligation. Even if Green and Banquet did recognize the right in certain exceptional situations, their treatment is vague and uncertain and failed to shake off the weight of English liberalism. Treitschke even goes to the extent of saying to fall down and worship the state. Thus, the idea of political obligation is converted into the injunction of blind worship of authority.

- **MARXIAN THEORY:** Eventual Conversion of Political Obligation into Social Obligation. The Marxian theory of political obligation is basically different from other theories on the subject. It sanctions the case of political non-obligation in the pre-revolutionary stage, total political obligation in the revolutionary stage and its eventual conversion into social obligation in the post-revolutionary stage. In other words, the case of political obligation is integrally connected with the character of authority. In Marxian theory of politics, state is decried as a 'bourgeois institution' in capitalist society. It means, after a successful revolution, the working class has the instruments of power in their hands to consolidate the socialist order in a way preparing its 'withering away' in the final stage of socialism. According to Marxism, the idea of political obligation cover the cases of 'discredited state' in the era of capitalism, the 'new state' in the period of 'dictatorship of

the proletariat', and the 'state proper' when the 'classless' society finds its culmination in the 'stateless' pattern of social existence. The starting point of Marxian theory of politics and with it of political obligation 'is its categorical rejection of this view of the state as the trustee, instrument, or agent of society as a whole'. The case of political obligation arises when the 'new state' comes into being after the revolution. The noticeable point in this theory is that what is forbidden in capitalist society is ordained in the socialist order. Not merely this, fundamental changes take place that prohibit any opposition to the state at all. The task of the Marxists is to subordinate the idea of political obligation to the dictates of permanent revolution. In other words, the idea of political obligation ceases to exist with the withering away of the state in the last stage of socialism (called communism) and finds its final conversion into the injunction of social obligation. Thus, society will be composed of the associations of free and equal producers, consciously acting upon a common and rational plan.

Criticism: A critical study of Marxian theory shows that it treats the question of political obligation in a way far away from the real perspective. What is emphatically advocated in the phase of capitalism is firmly denied in the next stage of social development. People who are exhorted to disobey the 'bourgeoisie state' are commanded not to disobey the state at all after the inauguration of the new social system. Thus, Marx is accused of building up a theory of political obligation on the basis of expediency alone, and he ignores the independent individual whose experience only counts in the determination of his obedience to the laws of state.

OBLIGATIONS OF INDIVIDUAL CITIZENS AND OTHER MEMBERS OF THE STATE

Political Obligation: Why should I obey the law? Apart from the obvious prudential and self-interested reasons (to avoid punishment, loss of reputation, and so forth), is there a *moral* obligation to do what the law requires just because the law requires it? If the answer is yes and the mere illegality of an act renders its performance *prima facie* morally wrong, then I am under a political obligation. Political obligation thus refers to the moral duty of citizens to obey the laws of their state. In cases where an act or forbearance that is required by law is morally obligatory on independent grounds, political obligation simply gives the citizen an additional reason for acting accordingly. But law tends to extend beyond morality, forbidding otherwise

morally innocent behavior and compelling acts and omissions that are discretionary from an independent moral point of view. In such cases, the sole source of one's moral duty to comply with the law is his or her political obligation.

1. **Transactional Accounts: Transactional** accounts suggest that political obligation is acquired through some morally significant transaction between the citizen and his compatriots or between the citizen and his state." Three such theories can be distinguished. **a. Fairness**: A political community is a cooperative scheme that is geared towards the production of benefits for its members: security, transport, clean water, and so forth. The venture is fruitful in producing these benefits because those participating observe certain restrictions and pay their taxes. To enjoy the benefits of the scheme without submitting to its restrictions is to free-ride on the sacrifices of others, which is unfair. The demands of fairness thus yield political obligation. **b. Gratitude:** According to this account, a citizen owes a debt of gratitude to the government for the benefits that it provides. This debt is owed regardless of whether these benefits are accepted or merely received, and the debt is repaid through obedience to law. **c. Consent:** On this theory, a citizen that freely consents to his government's authority binds himself to obedience. Though few deny this, the difficulty with consent theory is identifying an action in the personal history of most individuals that might count as a valid token of consent.
2. **Natural Duty:** According to natural duty theories, political obligation is grounded not in a morally significant transaction that takes place between citizens and polity, but either 1) in the importance of advancing some impartial moral good, such as utility or justice; or 2) in a moral duty owed by all persons to all others regardless of their transactional history. a. **Utilitarianism:** Unlike the theories previously discussed, a utilitarian account of political obligation is forward rather than backward looking, deriving political obligation from the future goods to be produced by obedience, rather than from what citizens have done in the past or what has been done for them. Utilitarianism posits that actions that maximize utility are morally required. Utility is maximized by acts that produce more (or at least as much) happiness and well-being than any alternative course of action that is open to the agent. The duty to obey the law is derived from this: since obedience produces more happiness than disobedience, one must obey. **b. Rights-Protecting Institutions:** Political obligation might alternatively be derived from the natural

duties that human rights impose on us. The theory developed by Allen Buchanan in "Political Legitimacy and Democracy" (2002) will serve as an example. To show adequate respect for human rights, it is not enough to refrain from violating them. We must also do what we can to ensure that they are not violated by others, at least when we can do so without sustaining too high a personal cost. This is not a duty that we possess by virtue of having committed ourselves to protecting others. We have it "naturally," regardless of what we have done in the past or what has been done for us.

3. **Associative Theories:** According to associative accounts, a citizen is duty-bound to obey the law simply by virtue of his or her membership in a political community. In many cases, we are willing to concede that the non-voluntary occupation of a social role comes with moral duties attached. The duties of neighbours, friends, and family are all cases in point. (A daughter owes her parents honour and respect simply because she is their daughter, independently of whatever debt of gratitude she may have accrued). Likewise, political associations are "pregnant of obligation," such that occupying the role of a "citizen" within such an association comes with its own set of duties, including a duty to obey the law.
4. **Relationship to Legitimate Authority:** On the traditional view, legitimate authority and political obligation are two sides of the same coin. A state is "legitimate" in the sense of having a right to issue and enforce directives if and only if its citizens are under a political obligation. If citizens do not have a prima facie obligation to obey the law, their government does not have a right to promulgate and enforce it.
5. **The Weight of Political Obligation:** It does not, however, follow from one's being under a political obligation that he or she ought always to obey the law. Political obligation is *prima facie* and countervailing moral considerations always need to be taken into account when assessing the right course of action. The *weight* that should be ascribed to political obligation in any such judgment is, furthermore, an open question. M.B.E Smith argues that it is negligible. A prima facie duty has considerable weight if and only if; 1) "an act which violates that obligation and fulfils no other is seriously wrong;" and 2) "violation of it will make considerably worse an act which on other grounds is already wrong". Running a stop sign when it is perfectly safe to do so and when there is nobody else around to witness and be influenced by the indiscretion, constitutes a transgression of a citizen's political obligation.
6. **Philosophical Anarchism:**

There is today a growing consensus to the effect that no theory of political obligation succeeds. But not everybody infers from this that political obligation does not exist. After all, the source and nature of moral requirements more generally may not be adequately captured by any of our theories, but few advances this as proof that we are not bound by moral requirements. "Philosophical anarchism" is the term used to describe this latter position – that there is no prima facie duty to obey the law, even in a just state, (the flip-side of this being that no state is "legitimate" in the sense of enjoying a right to obedience).

CONCLUDING REMARKS

If political obligation does not exist, what follows? Locke declares that an individual "under the exercise of a power without right" – the power of an authority without a claim to his obedience – is "at liberty to appeal to heaven" or to resort to violent resistance. On this view, philosophical anarchism offers something of a justification for *political* anarchism – disobedience and resistance to the state. But one can have strong moral reasons for complying with directives issued by his government without owing any obligations to that government. A state might *deserve* obedience without being entitled to it. Moreover, the acts and forbearances required by law are in many cases morally required independently of the law. The fact that a citizen is free from political obligation means only that the law's demanding something of him is not in itself a morally relevant consideration for behaving accordingly. But the citizen's pre-existing moral duties will in many (or even most) cases be sufficient to prohibit his acting contrary to the law. Thus, the absence of political obligation does not challenge our understanding of when morality demands conformity with law and non-resistance as dramatically as one might expect. In a strict sense, the idea of political obligation is not a political, but a moral affair. However, the norm of morality differs from time to time, place to place and people to people. The dimensions of political obligation to vary and similarly, the injunctions of popular resistance also differ. The state is a necessary means to the ends of justice and if it does this on the basis of a broad consensus, then there is a kind of contractual understanding that in return for what the state does to promote justice and good, we undertake to obey it.

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UNIT- II

LAW

SYNOPSIS

2.1 Meaning of Law
2.2 Nature and Sources of Law
2.3 Kinds of Law
2.4 Law and Morality

INTRODUCTION

What is Law?

- law is the body of official rules and regulations, generally found in constitutions, legislation, judicial opinions hence Law is a formal mechanism of social control.
- Law is a system of rules created and enforced through social or governmental institutions to regulate behaviour.
- Law is a Set of regulations backed by the State /Authorities
- Law is a rule of behaviour for the members of a state which meets with a penalty which will be enforced by the machinery of State.

Root word of Law: Law derived from the Old Teutonic Word: Lag, which means - To place, to Set, to Fix something in an even manner. The Deeper Sense of Law from - Latin word = Jus, Junger which gives the meaning of Bond or Tie.

DEFINITION'S

Definition of law is a rule of conduct developed by the government or society over a certain territory. Law follows certain practices and customs in order to deal with crime, business, social relationships, property, finance, etc. The Law is controlled and enforced by the controlling authority. Let us explore the various definitions of law by different authors in detail.

- **John Austin's** law definition states "Law is the aggregate set of rules set by a man as politically superior, or sovereign to men, as political subjects." Thus, this definition defines law as a set of rules to be followed by everyone, regardless of their stature.

- **Salmand**; "Law is the body of principles recognized and applied by the state in the administration of justice".
- **Immanuel Kant:** Law is some total of conditions under which the personal wishes of one man can be combined with the personal which of another man.

- **Rudolph Von Ihering's** law definition. – "The form of the guarantee of conditions of life of society, assured by State's power of constraint."

- **Oliver Wendell Holmes** stated – "Law is a statement of the circumstances in which public force will be brought to bear upon through courts."

- **Benjamin Nathan Cardozo** who stated "A principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the courts if its authority is challenged, is a principle or rule of law."

NATURE AND SCOPE OF LAW

What is the nature of law or what is the essence of law is a long-disputed question? Various Greek thinkers have already raised several questions on the topic and the answer is still not clear. That does not mean that there is no clear answer but there is not a complete answer which can be claimed to be absolute. Also, this question has preoccupied Jurisprudence and philosophy of law. There are two kinds of law. One is based on *justice*, the other one is based on *control*. The latter part is in use today. "Might is right" principle is followed. It is retribution instead of restoration which should be followed.

- Justice is a set of universal principles which guide people to analyse what is right and what is wrong. It disregards the culture and society one lives in. *Fiat justitia ruat caelum* is a Latin phrase which means, "Let justice be done, though the sky falls."
- Social control refers to mechanisms which regulate individual and group behaviour. E.A. Ross, the famous sociologist believed that it is not the laws that guide human behaviour but it is the belief systems that guide what individuals do. Social control mechanisms can be adopted as laws and norms which control and define human behaviour.

Law serves many purposes and functions. It helps to maintain peace. Violence should not be allowed in the society and thus, peace is maintained by the orders or we can say the laws of the government. Law also helps to establish standards. It also protects rights of the people. Without laws, people will not even get the basic rights which they deserve. Also, law can be called as a good career option. From Mahatma Gandhi to Barack Obama, all are associated with the career of law. It acted as a stepping stone to their success. There are various career options in law like litigation, civil services, professors or one can go in the corporate sector.

Contemporary legal theories define these two main interests in the nature of law in the following terms. First, we need to understand the general conditions that would render any putative norm legally valid. Is it, for example, just a matter of the source of the norm, such as its enactment by a particular political institution, or is it also a matter of the norm's content? This is the general question about the conditions of legal validity. Second, there is the interest in the normative aspect of law. This philosophical interest is twofold: A complete philosophical account of the normativity of law comprises both an explanatory and a justificatory task. The explanatory task consists of an attempt to explain how legal norms can give rise to reasons for action, and what kinds of reasons are involved. The task of justification concerns the question of whether people *ought* to comply morally speaking or all things considered with law's demands. In other words, it is the attempt to explain the moral legitimacy of law and the subjects' reasons for complying with it. A theory about the nature of law, as opposed to critical theories of law, concentrates on the first of these two questions. It purports to explain what the normativity of law actually consists in.

SOURCES OF LAW

WHERE DOES LAW COME FROM?

Sources of law mean the sources from where law or the binding rules of human conduct originate. In other words, law is derived from sources. Jurists have different views on the origin and sources of law, as they have regarding the definition of law. As the term 'law'has several meanings, legal experts approach the sources of law from various angles. For instance, Austin considers sovereign as the source of law while Savigny and Henry Maine consider custom as the most important source of law. Natural law school considers nature and human reason as the source of law, while theologians consider the religious scripts as sources of law. Although there are various claims and counter claims regarding the sources of law, it is true that in almost all societies, law has been derived from similar sources.

CLASSIFICATION OF SOURCES

Salmond, an English Jurist, has classified sources of law into the following categories: Formal Sources of Law: These are the sources from which law derives its force and validity. Alaw enacted by the State or Sovereign falls into this category. Material Sources of Law: It refers to the material of law. In simple words, it is all about the matter from where the laws are derived. Customs fall in this category of law. However, if we look around and examine the contemporary legal systems, it may be seen that most legal systems are based on legislations. At the same time, it is equally true that sometimes customs play a significant role in the legal system of a country. In some of the legal systems, court decisions are binding as law. On the basis of the above discussion, three major sources of law can be identified in any modern society are as follows:

i. Custom
ii. Judicial precedent
iii. Legislation

CUSTOM AS ASOURCE OF LAW: A custom, to be valid, must be observed continuously for a very long time without any interruption. Further, a practice must be supported not only for a very long time, but it must also be supported by the opinion of the general public and morality. However, every custom need not become law. For example, the Hindu Marriages Act, 1955 prohibits marriages which are within the prohibited degrees of relationship. However, the Act still

permits marriages within the prohibited degree of relationship if there is a proven custom within a certain community. Custom can simply be explained as those long-established practices or unwritten rules which have acquired binding or obligatory character. In ancient societies, custom was considered as one of the most important sources of law; In fact, it was considered as the real source of law. With the passage of time and the advent of modern civilization, the importance of custom as a source of law diminished and other sources such as judicial precedents and legislation gained importance.

Can Custom be law? There is no doubt about the fact that custom is an important source of law. Broadly, there are two views which prevail in this regard on whether custom is law. Jurists such as Austin opposed custom as law because it did not originate from the will of the sovereign. Jurists like Savigny consider custom as the main source of law. According to him the real source of law is the will of the people and not the will of the sovereign. The will of the people has always been reflected in the custom and traditions of the society. Custom is hence a main source of law.

Example; Saptapadi is an example of customs as a source of law. It is the most important rite of a Hindu marriage ceremony. The word, Saptapadi means "Seven steps". After tying the Mangalsutra, the newly-wed couple take seven steps around the holy fire, which is called Saptapadi. The customary practice of Saptapadi has been incorporated in Section 7 of the Hindu Marriage Act, 1955.

JUDICIAL PRECEDENT AS A SOURCE OF LAW: In simple words, judicial precedent refers to previously decided judgments of the superior courts, such as the High Courts and the Supreme Court, which judges are bound to follow. This binding character of the previously decided cases is important, considering the hierarchy of the courts established by the legal systems of a particular country. In the case of India, this hierarchy has been established by the Constitution of India. Judicial precedent is an important source of law, but it is neither as modern as legislation nor is it as old as custom. It is an important feature of the English legal system as well as of other common law countries which follow the English legal system. In most of the developed legal systems, judiciary is considered to be an important organ of the State. In modern societies, rights are generally conferred on the citizens by legislation and the main function of the judiciary is to

adjudicate upon these rights. The judges decide those matters on the basis of the legislations and prevailing custom but while doing so, they also play a creative role by interpreting the law. By this exercise, they lay down new principles and rules which are generally binding on lower courts within a legal system. Given this background, it is important to understand the extent to which the courts are guided by precedents. It is equally important to understand what really constitutes the judicial decision in a case and which part of the decision is actually binding on the lower courts.

DOCTRINE OF PRECEDENT IN INDIA - A BRITISH LEGACY

Pre-Independence: According to Section 212 of the Government of India Act, 1919, the law laid down by Federal Court and any judgment of the Privy Council was binding on all courts of British India. Hence, Privy Council was supreme judicial authority - AIR 1925 PC 272.

Post-Independence: Supreme Court (SC) became the supreme judicial authority and a streamlined system of courts was established.

1) Supreme Court: Binding on all courts in India Not bound by its own decisions, or decisions of PC or Federal Court - AIR 1991 SC 2176 2).
2) High Courts: Binding on all courts within its own jurisdiction Only persuasive value for courts outside its own jurisdiction. In case of conflict with decision of same court and bench of equal strength, referred to a higher bench. Decisions of PC and federal court are binding as long as they do not conflict with decisions of SC.
3) 3) Lower Courts: Bound to follow decisions of higher courts in its own state, in preference to High Courts of other states.

LEGISLATION AS ASOURCE OF LAW: In modern times, legislation is considered as the most important source of law. The term 'legislation' is derived from the Latin word legis which means 'law' and latum which means "to make" or "set". Therefore, the word 'legislation' means the 'making of law'. The importance of legislation as a source of law can be measured from the fact

that it is backed by the authority of the sovereign, and it is directly enacted and recognised by the State. The expression 'legislation' has been used in various senses. It includes every method of law-making. In the strict sense it means laws enacted by the sovereign or any other person or institution authorised by him.

RELIGION AS SOURCE OF LAW: The customs find its sanction in the religious books of the people. Since time immemorial people have either faith in God or some supernatural powers and they tried to lay down rules for the regulations of their behaviour. In course of time most of the principles of religious law have been translated by the state in terms of specific rules.

LAW AND MORALITY

In the modern world, morality and law are almost universally held to be unrelated fields and, where the term "legal ethics" is used, it is taken to refer to the professional honesty of lawyers or judges, but has nothing to do with the possible "rightness" or "wrongness" of particular laws themselves. This is a consequence of the loss of the sense of any "truth" about man, and of the banishment of the idea of the natural law. It undermines any sense of true human rights, leaves the individual defenceless against unjust laws, and opens the way to different forms of totalitarianism. This should be easy enough to see for a person open to the truth; but many people's minds have set into superficial ways of thinking, and they will not react unless they have been led on, step by step, to deeper reflection and awareness.

What Is Morality?

Morality is a rule which lays down a standard of behavior which the bulk of society accept and to which its members ought to conform and which justifies. Morality is the concept of what is right or wrong in a particular society - what is acceptable or unacceptable conduct in the society.

THEORY OF RELATIONSHIP BETWEEN LAW AND MORALITY

Ever since the revival of the scientific study of jurisprudence the connection of law and morality has much discussed, but the question is not yet, and perhaps never will be settled. Every variety of

opinion has been entertained, from the extreme doctrine held by Austin that for the purpose of the jurist, law is absolutely independent of morality, almost to the opposite positions, held by every Oriental cadi, that morality and law are one. The question is an important one, and upon the answer which is given to it depends upon the answer which is consequences. The problem is an intensely practical one. The popular conception of the connection between law and morality is that in some way the law exists to promote morality, to preserve those conditions which make the moral life possible, and then to enable men to lead sober and industrious lives. The average man regards law as justice systematized, and justice itself as a somewhat chaotic mass of moral principles. On this view, the positive law is conceived of as a code of rules, corresponding to the code of moral laws, deriving its authority from the obligatory character of those moral laws, and being just or unjust according as it agrees with, or differs from them. This, like all other popular conceptions, is inadequate for scientific purposes, and the jurist, so for at least as he is also a scientist, is compelled to abandon it. For it is contradicted by the facts. positive laws do not rest upon moral laws and common notions of justice furnish no court of appeal from the decrees of the State. The average man confounds law and morality, and identifies the rules of law with the principles of abstract justice.

- **Morality Influences the Law:** Providing ethical reasons as to why the immoral actions are considered illegal by the law. Hence, morality stands as the fundamental basis for the ideal set of laws in a country.
- **Morality uplifts the moral standards of the people:** Morality aims at uplifting the moral standards of the people while the core aim of the law is also the same thing.
- **Functional and historical Relationship:** There is a close relationship between law and morality for both functional and historical reasons. 1. English law is informed by a Judeo-Christian tradition. 2. Law responds to changes in moral attitudes e.g., Rape within marriage, 3. Manufacturers owe a duty of care to consumers. 4. Law is used to promote changes in morality e.g., homosexuality, race relations.

DIFFERENCES BETWEEN LAW AND MORALITY

Behaviour which is commonly regarded as immoral is often also illegal. However, legal and moral principles can be distinguished from each other. For instance, parking on a double yellow line is illegal but not commonly regarded as immoral.

LAW	MORALITY
Law regulates and controls the external human conduct. It is not concerned with inner motives. A person may be having an evil intention in his or her mind but law does not care for it. Law will move into action only when this evil intention is translated into action and some harm is actually done to another person.	Morality regulates and controls both the inner motives and the external actions. It is concerned with the whole life of man. The province of law is thus limited as compared with that of morality because law is simply concerned with external actions and does not take into its fold the inner motives. Morality condemns a person if he or she has some evil intentions but laws are not applicable unless these intentions are manifested externally.
Law is universal in a particular society. All the individuals are equally subjected to it. It does not change from man to man.	Morality is variable. It changes from man to man and from age to age. Every man has his own moral principles.
Political laws are precise and definite as there is a regular organ in every state for the formulation of laws.	Moral laws lack precision and definiteness as there is no authority to make and enforce them.
Law is framed and enforced by a determinate political authority. It enjoys the sanction of the state. Disobedience of law is generally followed by physical punishment.	Morality is neither framed nor enforced by any political authority. It does not enjoy the support of the state. Breach of moral principles is not accompanied by any physical punishment. The only check against the breach of morality is social condemnation or individual conscience. 'Moral actions are a matter of choice of inner conscience of the individual, laws are a matter of compulsion'.
Law falls within the purview of a subject known as Jurisprudence.	Morality is studied under a separate branch of knowledge known as Ethics.

DELEGATED LEGISLATION

INTRODUCTION

Administrative Law is that portion of law which determines the organization, powers and duties of administrative authorities. The most significant and outstanding development of the twentieth century is the rapid growth of administrative law. Though administrative law has been in existence, in one form or the other, before the 20th century, it is in this century that the philosophy as to the role and function of the State has undergone a radical change. The governmental functions have multiplied by leaps and bounds. Today, the State is not merely a police State, exercising sovereign functions, but as a progressive democratic State, it seeks to ensure social security and social welfare for the common man, regulates the industrial relations, exercises control over the production, manufacture and distribution of essential commodities, starts many enterprises, tries to achieve equality for all and ensures equal pay for equal work. It improves slums, looks after the health and morals of the people, provides education to children and takes all the steps which social justice demands. In short, the modern State takes care of its citizens from 'cradle to grave'. All these developments have widened the scope and ambit of administrative law.

MEANING OF DELEGATED LEGISLATION

One of the advances in the realm of administrative process made during these days is that apart from 'pure' administrative function, the executive performs legislative function as well. Due to a number of reasons, there is rapid growth of administrative legislation. According to the traditional theory, the function of the executive is to administer the law enacted by the legislature, and in the ideal State, the legislative power must be exercised exclusively by the legislators who are directly responsible to the electorate. But, in truth, apart from 'pure' administrative functions, the executive performs many legislative and judicial functions also. It has, therefore, been rightly said that the delegated legislation is so multitudinous that a statute book would not only be incomplete but misleading unless it be read along with delegated legislation which amplifies and supplements the law of the land. It is very difficult to give any precise definition of the expression 'delegated legislation. 'It is equally difficult to state with certainty the scope of such delegated legislation. According to Salmond, legislation is either supreme or subordinate. Whereas the former proceeds from sovereign or supreme power, the latter flow from any authority other than the sovereign

power, and is, therefore, dependent for its existence and continuance on superior or supreme authority. Delegated legislation thus is a legislation made by a body or person other than the Sovereign in Parliament by virtue of powers conferred by such sovereign under the statute. A simple meaning of the expression 'delegated legislation' may be given as: 'When the function of legislation is entrusted to organs other than the legislature by the legislature itself, the legislation made by such organs is called delegated legislation.'

REASONS FOR GROWTH OF DELEGATED LEGISLATION:

Many factors are responsible for the rapid growth of delegated legislation in every modern democratic State. The traditional theory of 'laissez faire' has been given up by every State and the old 'police State' has now become a 'welfare State.' Because of this radical change in the philosophy as to the role to be played by the State, its functions have increased. Consequently, delegated legislation has become essential and inevitable.

i. **Pressure upon Parliamentary Time**: As a result of the expanding horizons of State activity, the bulk of legislation is so great that it is not possible for the legislature to devote sufficient time to discuss all the matters in detail. Therefore, legislature formulates the general policy and empowers the executive to fill in the details by issuing necessary rules, regulations, bye-laws, etc. In the words of Sir Cecil Carr, delegated legislation is "a growing child called upon to relieve the parent of the strain of overwork and capable of attending to minor matters, while the parent manages the main business."

ii. **Technicality:** Sometimes, the subject-matter on which legislation is required is so technical in nature that the legislator, being himself a common man, cannot be expected to appreciate and legislate on the same, and the assistance of experts may be required. Members of Parliament may be the best politicians but they are not experts to deal with highly technical matters which are required to handle by experts. Here the legislative power may be conferred on expert to deal with the technical problems, e.g. gas, atomic energy, drugs, electricity, etc.

iii. **Flexibility:** At the time of passing any legislative enactment, it is impossible to foresee all the contingencies, and some provision is required to be made for these unforeseen situations demanding exigent action. A legislative amendment is a slow and

cumbersome process, but by the device of delegated legislation, the executive can meet the situation expeditiously, e.g., bank-rate, police regulation export and import, foreign exchange, etc. For that purpose, in many statutes, a 'removal of difficulty' clause is found empowering the administration overcome difficulties by exercising delegated power.

iv. **Experiment:** The practice of delegated legislation enables the executive to experiment. This method permits rapid utilization of experience and implementation of necessary changes in application of the provisions in the light of such experience, e.g., in road traffic matters, an experiment may be conducted and in the light of its application necessary changes could be made. Delegated legislation thus allows employment and application of past experience.

v. **Emergency:** In times of emergency, quick action is required to be taken. The legislative process is note quipped to provide for urgent solution to meet the situation. Delegated legislation is the only convenient remedy. Therefore, in times of war and other national emergencies, such as aggression, breakdown of law and order, strike, 'bandh', etc. the executive is vested with special and extremely wide powers to deal with the situation. There was substantial growth of delegated legislation during the two World Wars. Similarly, in situation of epidemics, floods, inflation, economic depression, etc. immediate remedial actions are necessary which may not be possible by lengthy legislative process and delegated legislation is the only convenient remedy.

vi. **Complexity of Modern Administration**: The complexity of modem administration and the expansion of the functions of the State to the economic and social sphere have rendered it necessary to resort to new forms of legislation and to give wide powers to various authorities on suitable occasions. By resorting to traditional legislative process, the entire object may be frustrated by vested interests and the goal of control and regulation over private trade and business may not be achieved at all. The practice of empowering the executive to make subordinate legislation within the prescribed sphere has evolved out of practical necessity and pragmatic needs of the modem welfare State.

HISTORY OF DELEGATED LEGISLATION IN INDIA

The Privy Council was the highest Court for appeal from India in constitutional matters till 1949. The question of constitutionality came before the Privy Council in the famous case of R.Vs. Birah

(1878) 3 AC 889. An Act was passed in 1869 by the Indian Legislature to remove Goro Hills from the civil and criminal jurisdiction of Bengal and vested the powers of civil and criminal administration in an officer appointed by the Legislative Governor of Bengal. The Legislative Governor was further authorized by section 9 of the Act to extend any provision of this Act with incidental changes to Khasi and Jaintia Hills. By a notification the Legislative Governor extended all the provisions of the Act to the districts of Khasi and Jaintia Hills. One Burah was tried for murder by the commissioner of Khasi and Jaintia Hills and was sentenced to death. The Calcutta High Court declared section 9 as unconstitutional delegation of legislative power by the Indian legislature. The ground was that the Indian Legislature is a delegate of British Parliament, therefore, a delegate cannot further delegate. The Privy Council on appeal reversed the decision of the Calcutta High Court and upheld the constitutionality of section 9 on the ground that it is merely a conditional legislation. The decision of the Privy Council was interpreted in two different ways.

(i) Indian legislature was not delegate of British Parliament; there is no limit on the delegation of legislative functions.

(ii) (ii) Since Privy Council has validated only conditional legislation. Therefore, delegation of legislative power is not permissible. So, it did not become clear whether full-fledged delegated legislation was allowed or only conditional legislation was allowed.

Federal Court: The question of constitutionality of delegation of legislative powers came before the Federal Court in Jhatindra Nath Gupta Vs. Province of Bihar, AIR 1949 FC 175. On this case section 1(3) of Bihar Maintenance of public order Act, 1948 was challenged on the ground that it authorized the provincial government to extend the life of the Act for one year with modification as it may deem fit. The Federal Court held that the power of extension with modification is unconstitutional delegation of legislative power because it is an essential legislative Act. In this manner for the first time, it was held that in India legislative powers cannot be delegated. However, Fazal Ali J. in his dissenting opinion held that the delegation of the power of extension of the Act is unconstitutional because according to him it merely amounted to a continuation of the Act. Later on, it is submitted that the minor view was correct and the Supreme Court upheld similar provision in another cases.

Supreme Court The decision in Jatindra Nath Case created doubts about the limits of delegation of legislative powers. Therefore, in order to clarify the position of law for the future guidance of the legislature in matters of delegation of legislative function, the President of India sought the opinion of the Court under Article 143 of the Constitution on the constitutionality of three Acts which conferred extension of area and modification power to the executive.

The Delhi Laws Act case, AIR 1951, among them, is said to be the Bible of delegated legislation. Seven judges heard the case and produced separate judgments. The case was argued from two extreme points. Argument-1: Power of legislation carries with it the power to delegate. If the legislative doesn't abdicate itself, there can be no limitation on delegation of legislative powers. Argument-2: As there is in the Constitution the separation of powers and delegatus non potest delegare, so there is an implied prohibition against delegation of legislative powers.

The Supreme Court took the moderate view and held-

(i) Doctrine of separation of powers is not a part of the constitution.

(ii) (ii) Indian Parliament is never considered an agent of anybody and therefore doctrine of delegatus non potest delegare has no application.

(iii) (iii) Parliament cannot abdicate or efface itself by creating a legislative body.

(iv) (iv) Power of delegation is ancillary to the power of legislation.

(v) (v) The limitation upon delegation of power is that the legislature cannot part with its essential legislative power that has been expressly vested in it by the constitution. Essential legislative power means laying down the policy of the law and enacting that policy into a rule of conduct. So, the delegation was held to be valid except with repealing and modification of legislative power.

DELEGATED LEGISLATION: POSITION UNDER CONSTITUTION OF INDIA

The Legislature is quite competent to delegate to other authorities. To frame the rules to carry out the law made by it. In D. S. Gerewal v. The State of Punjab, K.N. Wanchoo, the then justice of the Hon'ble Supreme Court dealt in detail the powers of delegated legislation under the Article 312 of Indian Constitution. He observed: "There is nothing in the words of Article 312 which takes away

the usual power of delegation, which ordinarily resides in the legislature. The words "Parliament may by law provide" in Article 312 should not be read to mean that there is no scope for delegation in law made under Article312…." In the England, the parliament being supreme can delegated any number of powers because there is no restriction. On the other hand, in America, like India, the Congress does not possess uncontrolled and unlimited powers of delegation. In Panama Refining Co. v. Rayans, the supreme court of the United States had held that the Congress can delegate legislative powers to the Executive subject to the condition that it lays down the policies and establishes standards while leaving to the administrative authorities the making of subordinate rules within the prescribed limits. 4 Art. 13 (3) Defines law and it Includes ordinance, order, byelaw, rule, regulation & notification having the force of law. In Sikkim v. Surendra Sharma (1994) 5 SCC282- it is held that 'All Laws in force' in sub clause (k) of Art. 371 F includes subordinate legislation. Salmond defines law as that which proceeds from any authority other than the Sovereign power & is therefore, dependent for its continued existence & validity on some superior or supreme authority.

TYPES OF DELEGATED LEGISLATION: -

Statutory Instruments: These are made by Government Ministers and they insert the detail to Acts of Parliament. Statutory Instruments make up the majority of delegated legislation that is made. Around 3,000 Statutory Instruments are issued each year.

Orders in Council: Under British-era, they were made by the Queen on the advice of the Government and are usually made when Parliament is not sitting. They can be used by the Government in emergency situations.

Bye Laws: They are made by Local Authorities to deal with matters within their particular locality.

SAFEGUARDS OF DELEGATED LEGISLATION: CONTROL OVER DELEGATED LEGISLATION

There are three kinds of Control given under Delegated Legislation:

1. Parliamentary or Legislative Control

2. Judicial Control
3. Executive or Administrative Control

PARLIAMENTARY OR LEGISLATIVE CONTROL

Under parliamentary democracy it is a function of the legislature to legislate, and it's not only the right but the duty of the legislature to look upon its agent, how they are working. It is a fact that due to a delegation of power and general standards of control, the judicial control has diminished and shrunk its area. In India "Parliamentary control" is an inherent constitutional function because the executive is responsible to the legislature at two stages of control.

1. Initial stage
2. Direct and Indirect stage

In the Initial stage, it is to decide how much power is required to be delegated for completing the particular task, and it also observed that delegation of power is valid or not.Now, the second stage consists of two different parts.

1. Direct control
2. Indirect control

Direct control: Laying is an important and essential aspect under direct control and it is laid down as per the requirement which means that after making the rule it should be placed before the Parliament. It includes three important part as per the degree of control needs to be exercised.

1. Simple Laying
2. Negative Laying
3. Affirmative Laying

And "test of Mandatory" & "Test of Directory" are two main tests.

Test of Mandatory **–** Where the laying demand is a condition pattern to guide the rule into impact then in such a case laying need is mandatory. Where the provision is mentioned that the rules should be drafted in a particular format then it becomes mandatory to follow the format.

Test of Directory – Where the laying need is next to enforce the rule into operation then it will be directory in nature.

Indirect control: This is a control exercised by Parliament and its committees. Another name for such type of committee is Subordinate legislation. The main work of the committee is to examine.

1. Whether rule is according to general object of the act.
2. It bars the jurisdiction of the court in direct or indirect ways.
3. Whether it has retrospective effect or not.
4. Whether it safeguard or destroy the Principle of Natural Justice.
5. Expenditure involved in it is from Consolidated fund.

PROCEDURAL AND EXECUTIVE CONTROL

There is no particular procedure for it until the legislature makes it mandatory for the executive to follow certain rules or procedure. To follow a particular format, it may take a long time which will definitely defeat the actual objective of the act. Hence, procedural control means that under Parent act certain guidelines are given which need to be followed while whether it is mandatory or directory to follow it or not. It includes three components:

1. Pre-publication and consultation with an expert authority,
2. Publication of delegated legislation.
3. Laying of rules.

It can be either Mandatory or Directory, to know, certain specified parameters are given:

1. Scheme of the Act.
2. Intention of Legislature.
3. Language used for drafting purpose.
4. Inconvenience caused to the public at large scale.

And these four parameters were given in the case ***Raza Buland Sugar Co. vs. Rampur Municipal Council.***

JUDICIAL CONTROL

Judicial review upgraded the rule of law. The court has to see that the power delegated is within the ambit of the constitution as prescribed. Judicial review is more effective because court do not recommend but it clearly strikes down the rule which is ultra vires in nature. As per Section 13(3)(a) "Law" is defined under the Constitution of India which clearly indicate that State should not make any law which abridge the right given in Part iii of the Constitution. It is dependent on two basic grounds:

1. It is ultra vires to the Constitution of India, and
2. It is ultra vires to the enabling Act.

In India, Parliamentary control overlaps the delegated legislation then it is mandatory that the committee of parliament need to be strong enough and separate laws should be made and passed which give a uniform rule for laying down and publication purposes. A committee must contain a special body to look on the delegated work whether it's going in the right direction and effectively or not. All the three organs should focus on their work and do not interrupt unnecessarily to prevent chaos in the system.

IMPORTANT CASES ON DELEGATED LEGISLATION

In the case of ***Narendra Kumar v. Union of India,*** it was held by the Supreme Court that the provision under ***Section 3(5) of the Essential Commodities Act, 1955***, which explains that any rules framed under the Act must be presented before both the houses of the Parliament. Therefore, ***clause 4 of Non – Ferrous Control Orders, 1958*** has no effect until it is presented in the Parliament. There are a number of rules in the area of judicial control over the delegation of legislation which is laid down by the judiciary.

In ***Chandra Bhan's case***, it was held that the delegation of legislation must be reasonable and should not suffer from any unreasonableness. Delegated legislation should protect the rule of law and there should be no arbitrariness. Rules framed which violates the Parent Act are illegal. Rules framed which violates any other statute should also be considered as void. Delegated legislation made with mala fide intention is also considered illegal.

ADVANTAGES OF DELEGATED LEGISLATION

- Save time for the legislature.
- Allow for flexibility.
- Expert opinion is required in legislation.
- Parliament is not always present in the session.
- Used as an experimental basis.
- It is restored to use it in a situation of emergency.
- Can be easily Settle down with consulting the required party of the case.

CRITICISM OF DELEGATED LEGISLATION

- It has a long duration of bearing for legislative control because the legislature is the supreme organ of the state as it consists of three main organs which are: Judiciary, Legislative and Executive.
- All of them have to work with or in relation to each other and it should be done in a balanced way on the basis of power given to each organ for working effectively. Instead of various advantages, delegated legislation has weakened the legislative control executive.
- The executive has become stronger with delegated legislation, it can easily encroach the rules and regulation of legislation by making rules.
- This concept opposes the rule of Separation of Power.
- Lack of relevant discussion before framing the law.
- It is not in acceptance with the principle of rule of law.
- It is not stable in nature; it keeps on fluctuating on the ground of Political changes.

CONCLUDING REMARKS

Delegated or subordinate legislation means rules of law made under the authority of an Act of Parliament. Although law making is the function of legislature, it may, by a statute, delegate its power to other bodies or persons. The statute which delegates such power is known as Enabling Act. By Enabling Act, the legislature, lays down the broad guidelines and detailed rules are enacted by the delegated authority. Delegated legislation is permitted by the Indian Constitution. It exists in form of bye rules, regulations, orders, bye laws etc. There are many factors responsible for its

increase: Parliament and State Legislature are too busy to deal with the increasing mass of legislations, which are necessary to regulate daily affairs. Modern legislation requires technicality and expertise knowledge of problems of various fields, our legislators, who are politicians are not expected to have such knowledge. Subordinate legislations are more flexible, quickly and easily amendable and revocable than ordinary legislation, in case of failure or defect in its application. When contingencies arise, which were not forceable at the time of making it, subordinate legislation can pass an act quickly to handle them. Quick, effective and confidential decisions are not possible in body of legislatives. So, executives are delegated with power to make rules to deal with such situations. These are the main factors, besides many others, for the fast increase in delegated legislation today.

LIBERTY

INTRODUCTION:

Liberty is derived from a Latin word "**Liber"**, which means free or independent. The concept of liberty occupies a very important place in civics. It has made powerful appeal to every man in every age. Itis the source of many wars and revolutions. In the name of liberty war, battles, revolutions and struggles have taken place in the history of mankind. Liberty means the unrestricted freedom of the individual to do anything he likes to do. But this sort of unrestricted liberty is not possible in society.

NATURE AND SCOPE: The idea of liberty may be analyzed in terms of: Freedom as the quality of Human Being: Animals, birds, insects are governed 'struggle for existence' and 'survival of the fittest'. Only a human being is capable of freedom. Man as a homoserine has distinguished himself from other living beings as he claims to have an aim in his life. Man has created many social organizations. Man has tamed and controlled animals. Freedom is the distinctive quality of man.

DEFINITIONS:

- **Montesquieu: -** "Liberty means the power of doing what we ought to do".
- **Prof. Seely: -** "Liberty means the absence of restraints".

- **T.H. Green**: - "It is the power to do or enjoy something that is worth doing or enjoying in common with others".

- **G.D.H Cole:** - "Liberty is the freedom of individual to express, without external hindrances, his personality."

- **McKechnie: -** "Freedom is not the absence of all restraints but rather the substitution of rational ones for the irrational."

- **Laski: -** "Liberty is the existences of those conditions of social life without which no one can in general be at his best self."

SIGNIFICANCE OF LIBERTY:

- Liberty does not mean the absence of all restraints.

- Liberty admits the presence of rational restraints and the absence of irrational restraints.

- Liberty postulates the existence of such conditions as can enable the people to enjoy their rights and develop their personalities.

- Liberty is not a license to do anything and everything. It means the freedom to do only those things which are considered worth-doing or worth-enjoying.
- Liberty is possible only in a civil society and not in a state of nature or a 'state of jungle'. State of anarchy can never be a state, of Liberty.
- Liberty is for all. Liberty means the presence of adequate opportunities for all as can enable them to use their rights.
- In society law is an essential condition of liberty. Law maintains conditions which are essential for the enjoyment of Liberty by all the people of the state.
- Liberty the most fundamental of all the rights. It is the condition and the most essential right of the people. Liberty enjoys priority next only to the right to life.

In contemporary times, the positive view of liberty stands fully and universally recognized as the real, accepted, and really productive view of Liberty.

CLASSIFICATION – TYPES - KINDS OF LIBERTY

1. Natural Liberty,
2. Social / Civil Liberty
3. Moral Liberty.
4. Social / Civil liberty

if further classified in to: -

a. Personal liberty
b. Political Liberty
c. Economic Liberty
d. Domestic Liberty
e. National Liberty
f. International Liberty

1. NATURAL LIBERTY:

It implies complete freedom for a man to do what he wills. In other words, it means absence of all restraints and freedom from interferences. It may be easily understood that this kind of liberty is no liberty at all in as much as it is euphemism for the freedom of the forest. What we call liberty pertains to the realm of man's social existence. This kind of liberty, in the opinions of the social philosophers like Hobbes, Locke and Rousseau was engaged by men living in the "state of nature" – since where there was not state and society. This kind of liberty is not possible at present. Liberty cannot exist in the absence of state. Unlimited liberty might have been engaged only by few strong but not all.

2. SOCIAL/CIVIL LIBERTY:

It relates to man's freedom in his life as a member of the social organization. As such, it refers to a man's right to do what he wills in compliance with the restraints Imposed on him in the general

interest. Civil or social liberty consists in the rights and privileges that the society recognizes and the state protects in the spheres of private and public life of an individual.

Social liberty has the following sub categories:

a. **Personal liberty:** it is an important variety of social liberty. It refers to the opportunity to exercises freedom of choice in those areas of a man's life that the results of his efforts mainly affect him in that isolation by which at least he is always surrounded.

b. **Political Liberty**: It refers to the power of the people to be active in the affairs of the state. Political liberty is closely interlinked with the life of man as a citizen. Simply stated political liberty consists in provisions for universal adult franchise, free and fair elections, freedom for the avenues that make a healthy public opinion. As a matter of fact, political liberty consists in curbing as well as constituting and controlling the government.

c. **Economic Liberty:** It belongs to the individual in the capacity of a producer or a worker engaged in some gainful occupation or service. The individual should be free from the constant fear of unemployment and insufficiency.

d. **Domestic/ Family Liberty**: It is sociological concept that takes the discussion of liberty to the sphere of man's family life. It implies that all associations within the state, the miniature community of the family, is the most universal and of the strongest independent vitality. Domestic liberty consists in: - Rendering the wife a fully responsible individual capable of holding property, suing and being sued, conducting business on her own account, and engaging full personal protection against her husband. It is establishing marriage as far as the law is concerned on a purely contractual basis, and leaving the sacramental aspect of marriage to the ordinance of the religion professed by the parties and Seeing the physical, mental and moral care of the children.

e. **National liberty:** It is synonymous with national independence. As such, it implies that no nation should be under subjection of another. National movements or wars of independence can be identified as struggles for the attainment of national liberty. So national liberty is identified with patriotism.

f. **International Liberty:** It means the world is free from controls and limitation, use of force has no value. Dispute can be settled through peaceful means. Briefly all countries in the world will be free of conflicts and wars. In the international sphere, it implies renunciation of war, limitation on the production of armaments, abandonments of the use of force, and the pacific settlement of disputes. The ideal of international liberty is based on this pious conviction to that extent the world frees itself from the use of force and aggression it gains and peace is given a chance to establish itself.

g. **Moral Liberty:** This type of freedom is centered in the idealistic thoughts of thinkers from Plato and Aristotle in ancient times to Rousseau, Kant, Hegel, Green and Banquet in modern times. Moral liberty lies in man's capacity to act as per his rational self. Every man has a personality of his own. He seeks the best possible development of his personality. At the same time, he desires the same thing for other. And more than this, he pays sincere respect for the real worth and dignity of his fellow beings. It is directly connected with man's self – realization.

TWO ASPECTS OF LIBERTY

1. **Positive Liberty**
2. **Negative Liberty**

1. **Positive Liberty**: - It does not consist merely in the removal of restraints. Liberty is best realized in the enjoyment of certain positive opportunities that are necessary for the development of personality. Positive liberty consists in providing opportunities to the individual where he is incapacitated due to socio-economic conditions. Liberty in its positive aspect means removal of those constraints which obstruct the individual in his pursuit of happiness. Rights are a necessary condition for liberty. The state must, therefore, regulate activities and provide opportunities. The state must restrain those who obstruct social welfare. Hence, the State must create positive conditions for the welfare of all.

2. **Negative Liberty:** Negative aspect of liberty means, 'absence of restraints.' This aspect implies that there should be no limits or control on individual liberty. The supporters of this theory are Locke, De Tocqueville, Edmund Burke, Thomas Paine, Bentham, Spencer and most significantly J.S. Mill. The negative concept of liberty regaled in the hands of the individualists. The state, according to them, is a necessary evil. It must not interfere with the natural liberty of

individuals. The state should not impose restraints on the individuals. 'That government is the best which governs the least.' As long as an individual does not deprive others of their liberty, he is free to do what he wants.

DIFFERENCE BETWEEN POSITIVE AND NEGATIVE

POSITIVE LIBERTY	NEGATIVE LIBERTY
Stresses on social-context of liberty.	Stresses more on personal aspect.
Emphasizes on positive conditions for realization of liberty.	Liberty is absence of restraints.
State is essential for realization of liberty.	State is an enemy of personal liberty.
Emphasizes on social and economic aspect.	Emphasizes on the personal liberty.
Regards rights are pre requisite of liberty.	Does not include the concept of rights.
Supports a state with welfare functions	State must have minimum functions.

BERLIN'S NOTION OF LIBERTY

Isaiah Berlin (1909–97) was a naturalized British philosopher, historian of ideas, political theorist, educator, public intellectual and moralist, and essayist. He was renowned for his conversational brilliance, his defence of liberalism and pluralism, his opposition to political extremism and intellectual fanaticism, and his accessible, coruscating writings on people and ideas. His essay *Two*

Concepts of Liberty (1958) contributed to a revival of interest in political theory in the English-speaking world, and remains one of the most influential and widely discussed texts in that field: admirers and critics agree that Berlin's distinction between positive and negative liberty remains, for better or worse, a basic starting point for discussions of the meaning and value of political freedom.

Berlin's best-known contribution to political theory is his essay on the distinction between positive and negative liberty. This distinction is explained, and the vast literature on it summarized, elsewhere in this encyclopedia; the following therefore focuses only on Berlin's original argument, which has often been misunderstood, in part because of his own ambiguities. It should be stressed that the essay in question is principally concerned with *political* liberty, not with what, late in life, he dubbed 'basic liberty', which is freedom of choice, without which any other kinds of liberty would be impossible: indeed, 'which men cannot be without and remain men'.

In **Two Concepts of Liberty** Berlin sought to explain the difference between two different ways of thinking about political liberty. These, he said, had run through modern thought, and were central to the ideological struggles of his day. Berlin called these two conceptions of liberty negative and positive. Berlin's treatment of these concepts was less than fully even-handed from the start: while he defined negative liberty fairly clearly and simply, he gave positive liberty two different basic definitions, from which still more distinct conceptions would branch out. Negative liberty Berlin initially defined as *freedom from*, that is, the absence of constraints on the agent imposed by other people. Positive liberty he defined both as *freedom to*, that is, the ability to pursue and achieve willed goals; and also, as autonomy or self-rule, as opposed to dependence on others.

EQUALITY

Meaning: - Equality, like liberty, is an important pillar of democracy. In common parlance the term equality is used for identity of treatment and identity of rewards. However, this is not a correct use of the term because absolute equality is not possible. Like liberty, equality has also been assigned both negative and positive meaning. In the negative sense, equality means the absence of special privileges. It implies the absence of special privileges. It implies the absence of barriers like birth, wealth, caste, color, creed, etc. In the positive sense, equality means provision of adequate opportunities for all the members of the society. It may be observed that adequate opportunities do not mean equal opportunities. Therefore, equality really means the provision of

adequate opportunities to all citizens without any discrimination. Nobody should be debarred from certain facilities simply because of his status, caste, creed, etc.

DEFINITIONS OF EQUALITY

- **Raphall: -** "The Right to Equality proper is a right of equal satisfaction of basic human needs, including the need to develop and use capacities which are specifically human."

- **Laski: -** "Equality means that no man shall be so placed in society that he can over-reach his neighbor to the extent which constitutes a denial of latter's citizenship."

- **Barker: -** "Equality means equal rights for all the people and the abolition of all special rights and privileges". -Barker rights for all the people and the abolition of all special rights and privileges".

IMPORTANCE OF EQUALITY

- Equality postulates the grant and guarantee of equal rights and freedoms to all the people.
- Equality implies the system of equal and adequate opportunities for all the people in society.
- Equality advocates an equitable and fair distribution of wealth and resources i.e., Minimum possible gap between the rich and poor.
- Equality helps the weaker sections of the society.

DIMENSIONS-KINDS OF EQUALITY

The concept of equality is dynamic one and has kept on changing according to times. Accordingly, different scholars have suggested different dimensions or kinds of equality. Laski mentions only two kinds of equality – political and economic. Lord Bryce refers to four kinds of equality political, social and natural.

1. Civil Equality: - Civil equality implies equality of all before law. All citizens irrespective of their status and position should be treated at par and no distinction should be made on the basis of caste, creed, sex, political opinion, social status, place of birth, etc. The laws of the state should be

passed for the benefit of all and should not be used as instrument for the promotion of interest of a particular section of population. Equal rights should be available to all the persons and nobody should be denied enjoyment of any right.

2. Political Equality: - Political equality means that all the citizens have the right to participate in the affairs of the state without any discrimination on grounds of caste, color, creed, sex, etc. All the avenues of authority should be open equally to all the citizens and they should enjoy right to vote, right to contest election, right to criticize the government, right to hold public office, etc. The doctrine of political equality is based on twin principles of universal adult franchise and human dignity.

3. Social Equality: - It assumes that there should not be any discrimination among various citizens on the basis of social status, color, caste, creed, rank, etc. It is opposed to the grant of special privileges to any person on the basis of his social status or caste, religion, etc. It may be observed that social equality cannot be established through law alone. It can be achieved only through regulation of social habits and institutions. Education can also play a significant role in bringing social equality.

4. Economic Equality: - In modern times scholars have attached great importance to economic equality and consider it as vital to the existence of other types of equality. Economic equality does not imply that there should be equal distribution of wealth. On the other hand, it means that there should not be concentration of wealth in few hands only and certain minimum standards of income should be assured to all.

5. Natural Equality: - The concept of natural equality rests on the principle that nature has created every one as equal. Nature has not bestowed all human beings with the same qualities. Interpreted in this sense the idea of natural equality is a myth.

6. Legal Equality: - Here equality means that all people are alike in the eye of the law and that they are entitled for its equal protection. Thus, the principle of equality implies equal protection of life and liberty for everyone under the law, and equal penalties on everyone violating them. In a strictly technical sense, the principle of equality implies equal protection of law to all denying discrimination on any artificial ground whatsoever. Viewed in a wider perspective it also means

justice at a low cost at the earliest practicable time so that everyone irrespective of his social or economic status may get it according to the established procedure of the land.

RELATIONSHIP BETWEEN LIBERTY AND EQUALITY

The relationship between liberty and equality has been a matter of controversy that has two sides; the negative view is that liberty and equality are incompatible terms. Lord Action and F. A. Hayek argue that bringing about a condition of equality has in practice led to inequality and tyranny. The positive view takes liberty and equality as compatible terms. In fact, both are necessarily connected with the supreme worth and dignity of human personality and the spontaneous development of its capacities. Liberal versus Marxist Interpretations The liberal doctrine of equality stands on the premise of the 'equality of adequate opportunities' available to every member of the society. That is all people have liberty to compete in the midst of equal opportunities with the result that those who can make best use of their chances may go ahead of others. Inequalities in the midst of equal opportunities are thus a valid affair. But the Marxist view of equality always associates with class war. Equality cannot exist in a society ridden with class contradictions. All kinds of class distinctions can be eliminated through the dictatorship of proletariat. A classless society is necessary for the liberty and equality.

JUSTICE:

Justice is the most important and most discussed objective of the State, and Society. It is the basis of orderly human living. Justice demands the regulation of selfish actions of people for securing a fair distribution, equal treatment of equals, and proportionate and just rewards for all. It stands for harmony between individual interests and the interests of society.

JUSTICE: MEANING & DEFINITION:

Justice is a complex concept and touches almost every aspect of human life. The word Justice has been derived from the Latin word Jungere meaning 'to bind or to tie together'. The word 'Jus' also means 'Tie' or 'Bond'. In this way Justice can be defined as a system in which men are tied or

joined in a close relationship. Justice seeks to harmonies different values and to organize upon it all human relations. As such, Justice means bonding or joining or organizing people together into a right or fair order of relationships.

DEFINITIONS

- **Salmond: -** "Justice means to distribute the due share to everybody."
- **Raphael: -** "Justice protects the rights of the individual as well as the order of society."
- **Merriam: -** "Justice consists in a system of understandings and a procedure through which each is accorded what is agreed upon as fair."

ANCIENT, MEDIEVAL AND MODERN INTERPRETATION OF JUSTICE

- ✓ Ancient Interpretation - Plato and Aristotle
- ✓ Medieval Interpretation - Augustine and Aquinas
- ✓ Modern Interpretation - Hobbes, Hume, Kant, Mill, Rawls and Pogge

ANCIENT INTERPRETATION OF JUSTICE

- **Interpretation of Justice by Plato:** Justice is a virtue establishing rational order, with each part performing its appropriate role and not interfering with the proper functioning of other parts, Justice is something internal, it exists in the individual and in the state, Justice is the Bond which held society together.
- **Interpretation of Justice by Aristotle:** Justice consists in what is lawful and fair, with fairness involving equitable distributions and the correction of what is inequitable. Aristotle identifies 3 kinds of Justice first one **Complete or Universal Justice** which focuses to obedience to law, that one should be virtuous, second one is that **Particular Justice** – which is the observance of rules of proportionate equality and third one is

Distributive Justice - the state should divide or distribute goods and wealth among citizens according to the merit. This form of justice is the most powerful tool against revolution.

MEDIEVAL INTERPRETATION OF JUSTICE

- **Interpretation of Justice by Platonist St. Augustine:** Justice is the virtue of which all people are given their due. the cardinal virtue of justice requires that we try to give all people their due. He Connected justice to something new and distinctly Christian—the distinction between the temporal law, such as the law of the state, and the eternal, divine law of God. The eternal law establishes the order of God's divine providence. And, since all temporal or human law must be consistent with God's eternal law, Augustine can draw the striking conclusion that, strictly speaking, "an unjust law is no law at all".
- **Interpretation of Justice by Thomas Aquinas:** Aquinas is a great follower of Aristotle according to him Justice is that rational mean between opposite sorts of injustice, which involving proportional distributions and reciprocal transactions. He also agreed the same idea of Aristotle with Distributive Justice and Commutative Justice. He offers us an Aristotelian definition, maintaining that "justice is a habit whereby a man renders to each one his due by a constant and perpetual will."

MODERN INTERPRETATION OF JUSTICE

- **Interpretation of Justice by Thomas Hobbes:** justice is an artificial virtue, necessary for civil society, a function of the voluntary agreements of the social contract; he Compares laws of civil society to 'artificial chains.
- **Interpretation of Justice by David Hume:** Justice essentially serves public utility by protecting property, all values, including justice, is derived from passion rather than reason, Like Hobbes, Hume too is skeptical of absolute virtue.

- **Interpretation of Justice by Immanuel Kant:** Kant believes that Justice is a virtue whereby we respect others' freedom, autonomy, and dignity by not interfering with their voluntary actions, so long as those do not violate others' rights.
- **Interpretation of Justice by J.S Mill:** Justice is a collective name for the most important social utilities, which are conducive to fostering and protecting human liberty.
- **Interpretation of Justice by John Rawls:** He interprets justice as fairness, Justice is the first virtue of social institutions. Rawls classifies the justice in to two 1) Principle of Equal Liberty: Each person has an equal right to the most extensive liberties compatible with similar liberties for all. 2) Difference Principle: Social and economic inequalities should be arranged so that they are both (a) to the greatest benefit of the least advantaged persons, and (b) attached to offices and positions open to all under conditions of equality of opportunity.
- **Interpretation of Justice by Thomas Pogge:** Pogge propounded Globalist interpretation of Justice. Which was the A modification of Rawls theory. Pogge is proposing is a global egalitarian principle of distributive justice this addresses socio-economic equalities that are to the detriment of the world's worst-off persons.

TYPES OF JUSTICE:

1. Social Justice: In contemporary times a large number of scholars use prefer to describe the concept of Justice as Social Justice. Social Justice is taken to mean that all the people in a society are to be equal and there is be no discrimination on the basis of religion, caste, creed, color, sex or status. However, various scholars explain the concept of Social Justice in different ways. Some hold that social justice is to allot to each individual his or her due share in the social sphere. According to some others, distribution of social facilities and rights on the basis of law and justice constitutes social justice.

What is Social Justice?

"Social justice is another name for equal social rights." "Social Justice aims to provide equal opportunities to every individual to develop his inherent qualities."-Barker.

"By social justice we mean ending all kinds of social inequalities and then to provide equal opportunities to everyone."-C.JP.B. Gajendragadkar

Social democrats and modern liberal thinkers define social justice as the attempt to reconstruct the social order in accordance with moral principles. Attempts are to be continuously made to rectify social injustice. It also stands for a morally just and defensible system of distribution of reward and obligations in society without any discrimination or injustice against any person or class of persons. In the Indian Constitution several provisions have been provided with a view to secure social economic and political justice. Untouchability has been constitutionally abolished. Every citizen has been granted an equal right of access to any public place, place of worship and use of places of entertainment. The state cannot discriminate between citizens on the basis of birth, caste, color, creed, sex, faith or title or status or any of these. Untouchability and apartheid are against the spirit of social justice. Absence of privileged classes in society is an essential attribute of social justice.

2. Economic Justice: Economic Justice is indeed closely related to social justice because economic system is always an integral part of the social system. Economic rights and opportunities available to an individual are always a part of the entire social system. Economic justice demands that all citizens should have adequate opportunities to earn their livelihood and get fair wages as can enable they to satisfy their basic needs and help them to develop further. The state should provide them economic security during illness, old age and in the event of a disability. No person or group or class should be in a position to exploit others, nor get exploited. There should be fair and equitable distribution of wealth and resources among all the people. The gap between the rich and the poor should not be glaring. The fruits of prosperity must reach all the people. There are present several different views regarding the meaning of economic justice. The liberals consider open competition as just and they support private property. On the other hand, the socialists seek to establish complete control of society upon the entire economic system.

3. Political Justice: Political dimensions of justice imply that the people should be given a chance of fair and free participation in the political life of the country. This generally finds outlet in the grant of universal adult franchise so that all the people may be able to participate in the election of their representatives. People are granted equal rights and opportunities to influence the policies of the government. Recruitment to public services is made without discrimination. In short, people are given a fair chance to determine the policies of the government in keeping with the prevailing requirements. The political parties, the pressure groups, etc. play a vital role in giving concrete

shape to the political justice. In short, political justice is concerned with the actual implementation of the principles of legal justice.

CONCLUDING REMARKS

Justice has four major dimensions: Social Justice, Economic Justice, Political Justice and Legal Justice. All these forms are totally inter-related and interdependent. Justice is real only when it exists in all these four dimensions. Without Social and Economic Justice there can be no real Political and Legal Justice. Presence of social and economic inequalities always leads to a denial of political and equal justice. An oppressed and poor person is virtually unable to participate is the political process or to seek the protection of law and law courts. Likewise, without political rights and equal protection of law no person can really get his social and economic rights and freedoms protected. Further, Justice needs the presence of rights, liberty and equality in society and only then can it really characterize life in society.

UNIT- III

APPROACHES' TO POLITICAL OBLIGATION

SYNOPSIS

- *Individualism: Background, Statement, Merit and Limitations*
- *Utilitarianism: Background, Statement, Merit and Limitations (Contributions of Jeremy Bentham and J S Mill)*
- *Idealism: Background, Statement, Merit and Limitations (Kant, Hegel and T H Green)*

BACKGROUND, MEANING AND DEVELOPMENT OF INDIVIDUALISM

Individualism is one of the several theories of relationship between the citizen and the state and of the proper scope of state activities. Other theories of this relationship, which oppose the theory of individualism are socialism, Sarvodaya, fascism and communitarianism, which we will study later in this unit. What distinguishes individualism from these other theories is its emphasis on the individual as the primary unit in political and social theory. Some of the main advocates of individualism have been Adam Smith, David Ricardo, Herbert Spencer and more recently, F.A. Hayek and Robert Nozick. In India, Mahadeo Govind Ranade and the Swatantra Party mainly supported the individualistic view

Statement of the Theory of Individualism:

The principle of individualism is also called Laissez Faire in French language, which means, 'leave the individual alone' and there should be minimum interference, in his functions, by the government. It should be left to the will of the individual to do what he desires. The state or the government should only interfere when it feels that one individual is unnecessarily interfering in the liberty of the other. The state is, in fact, a necessary evil. The unity in the society is possible only when violence, deception and fraud are suppressed. Therefore, the function of the government should be limited to the protection of the citizens' life and property; beyond this the individual should be left completely free. John Stuart Mill, in his famous essay 'On Liberty' said, "The sole end for which mankind is warranted, individually or collectively, in interfering with the liberty of action of any of their member, is self-protection. The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own goods either physical or moral is not sufficient warrant over himself, over his own body and mind, the individual is sovereign". Thus, according to Mill, the main function of the state is protection. Therefore, the maintenance of army, police, navy and courts is justified, but the things which 'ire not directly protective, like Post Office, Telegraph, Railways, Education, Hospitals, etc., should not be run by the government.

According to those who believe in individualism, the government should perform the following functions:

(1) The protection of the state and individuals against foreign aggression.

(2) Protection of individual against individual, in matters of physical harm (injury, aggression and killing), slander, personal restraint, etc.;

(3) The protection of property (theft, dacoity and other types of protection of property).

(4) Protection of individuals against false contracts or breach of contracts.

(5) Port Statement of the Theory of Individualism:

Development of Individualistic Theory:

Though the germs of individualism can be traced in the Renaissance and Reformation movements of Europe, yet its real origin took place during the second half of the eighteenth century at the

hands of Physiocrats of France. This was given as a counterblast to mercantilism, which stood for the protection, regulation and control of industry, trade and commerce. Individualists were of the people. They preached in favour of open competition in trade and commerce in the name of natural rights. They were of the view that the open competition would benefit all. Adam Smith was the staunch supporter of this theory, but we have complete explanation of this theory in the writings of John Stuart Mill and Herbert Spencer. Other supporters of this theory are the German philosophers. Kant and William Humboldt and the British writer Henry Sidgwick.

The Individualist Theory of The Nature and Functions of The State

The individualist theory of the nature and functions of the state is based on its conception of the self as free, rational and self-determining. According to individualism, since individuals are free, rational and capable of self-determination, their interests are better promoted by letting them choose for themselves what sort of life they want to lead. Individual interests are harmed by attempts by the state to enforce a particular view of good life. In the individualist view, the conception of the self as free, rational and self-determining necessarily requires a conception of the state as neutral and minimalist. The primary value in the political order for individualism must, then, be the neutrality of the state. In-fact, a distinctive feature of liberal individualism is its emphasis on the state as a neutral and minimal political authority. A neutral state may be defined as a state, which does not favour, protect, promote or contrarily, discriminate against or penalise any particular individual conception of good. Rather, such a state provides a neutral framework within which different and potentially conflicting conceptions of good can be pursued. It is committed to tolerating different views and conceptions of good life held by its citizens. In other words, the neutral state does not enforce a particular conception of good life. Instead, it stays out of the peoples' decisions regarding the best way to lead their lives, thereby leaving each individual free (to an extent possible) to pursue his/her own conception of good or way of life.

Functions of State and Government

What, according to individualism, are the legitimate functions of state and government? In the individualistic view, people have their natural or pre-political freedom. Government arises out of the consent of the governed. State is not a natural entity; rather, it is an artificial but necessary construct. State, in fact, is defined as a necessary evil. Since it is a necessary evil, the government that rules the least is considered the best. The functions and role of state are, therefore, limited to guarantee and protection of individual rights and freedom. In other words, the role of state is

minimal and limited to the maintenance of law and order and the provision of security to its citizens, beyond which they should be left free. The state should interfere in the liberty of citizens only to prevent one individual from unnecessarily interfering in the liberty of others. The understanding of the state as neutral and minimalist corresponds to the principle of laissez-faire discussed above, which argues for leaving the individual free from excessive and unjustifiable state intervention and control.

In the individualist view, a state that defines its duties beyond that of security and the protection of individual rights restricts freedom and the self-determination of its citizens. Individualism, thus, sees an inverse relation between the expansion of state activities and the enlargement of the sphere of individual rights and freedom. The individualist conception of self, its understanding of relationship between the state and the citizen and the proper scope of state activities have been criticised by a number of theoretical perspectives, some of which are fascism, Sarvodaya, communism and feminism. However, the most profound critique of the individualist perspective is found in the theory of communitarianism. Below, we examine the communitarian critique of individualism.

MERITS OF INDIVIDUALISM

1) Freedom: Having a sense of individualism is having a concrete set of beliefs about yourself. You know what you want and what don't. Because of this, you get to do the things that you love without worrying what other may think that free us from too much emotional attachment in our surrounding.

2) You'll enjoy life more: Who will not enjoy being free? sense of freedom to a sense of being fulfilled. Wakening up each day full of happiness became you're not trap from people's expectations and judgement.

3) Learning new things and skills; individualism is also included self-improvement. The more you know about yourself the more you are willing to improved yourself. You're more likely to engage in some activities to develop skills that you are interested in.

4) Tougher you: individualism develops a solid foundation inside us. People can't easily destroy you by personality. You know your personality so well that people can't use that as weapon against you.

5) Influencer: Someone who have a strong sense of individualism can't be easily influence by others they are the influencer. They have vivid picture of what they want from colour, smell to smallest details, they show that being unique is cod that one reason people adore them.

DEMERITS OF INDIVIDUALISM

1) No support: You will be all by yourself and nobody to help you when facing hard times since you live for yourself and others will not bother to help you.

2) Messed up relationships: Individualism results in messed up relationships you can't stay completely out of the affairs of your loved ones. Even if they give you the freedom you need, it will not be sufficient.

3) Nobody cares: You may die pr be sick but your neighbour will not know or bothers to out whey has hasn't seen you for a long time.

4) Wasted time: Isolating yourself from others can sometimes turn out to be selfish for you. "me time "is a wasted time in which you should take that opportunity to give back to the community or give a helping hand.

5) Avoid scarifies: Man is social being and cannot leave along and to maintain peaceful community. You need to sacrifice your needs or move out of you are comfort zone and help others who need your help.

CONCLUDING REMARKS: An individualistic theory has three generic characteristics: a concept of the individual and his fulfilment in some manner which sets him apart from but not in opposition to society and his fellows, freedom and the equality of the individual. Which all individualistic theories exhibit these individualistic. They may differ in the individual and his self-realization is the standard where by the concepts of equality and freedom are to be understood.

UTILITARIANISM

BACKGROUND, STATEMENT, MERITS AND LIMITATION

Introduction: Utilitarianism is the idea that the moral worth of an action is solely determined by its contribution to overall utility in maximizing happiness or pleasure as summed among all people. If an action is right if it tends to promote happiness or pleasure and if wrong it tends to produce unhappiness or pain-not just for the performer of the action but also for everyone else affected by it. Utilitarianism starts from the basis that pleasure and happiness are intrinsically valuable, that pain and suffering are intrinsically invaluable, and that anything else has value only in its causing happiness or preventing suffering.

- The Three Generally Accepted Axioms of Utilitarianism State That:
    1. Actions are considered right only if the outcome of the decision maximizes whatever is classified as being good over what would be considered bad.
    2. Happiness is the only good outcome that is possible in this structure.
    3. If an action does not maximize happiness in some way, then it may be the incorrect choice to make – even if it is considered the moral choice.

Based on these premises, Utilitarianism suggests that happiness is always good for the individual. If you have an opportunity to increase this emotion, then you should do so because it is a core human desire. That means when each member of a group or organization is happy.

Statements on Utilitarianism:

The utilitarian morality does recognize in human beings the power of sacrificing their own greatest good for the good of others. It only refuses to admit that the sacrifice is itself a good. A sacrifice which does not increase, or tend to increase, the sum total of happiness, it considers as wasted." - John Stuart Mill. "Is it possible for a man to move the earth? Yes; but he must first find out another earth to stand upon." - Jeremy Bentham

Nature and Background of Utilitarianism; Utilitarianism is an effort to provide an answer to the practical question "What ought a person to do?" The answer is that a person ought to act so as to maximize happiness or pleasure and to minimize unhappiness or pain. Antecedents of utilitarianism among the ancients, A hedonistic theory of the value of life is found in the early 5th century BCE in the ethics of Aristippus of Cyrene, founder of the Cyrenaic school, and a century later in that of Epicurus, founder of an ethic of retirement, and their followers in ancient Greece. The seeds of ethical universalism are found in the doctrines of the rival ethical school of Stoicism and in Christianity.

Growth of classical English utilitarianism ; In the history of British philosophy, some historians have identified Bishop Richard Cumberland, a 17th-century moral philosopher, as the first to have a utilitarian philosophy. A generation later, Francis Hutcheson, a British "moral sense" theorist, more clearly held a utilitarian view. He not only analyzed that action as best that "procures the greatest happiness for the greatest numbers" but proposed a form of "moral arithmetic" for calculating the best consequences. David Hume, Scotland's foremost philosopher and historian, attempted to analyses the origin of the virtues in terms of their contribution to utility.

The Classical Approach; The Classical Utilitarian, were based on the views of Bentham and Mill.

Jeremy Bentham; Bentham found pain and pleasure to be the only intrinsic values in the world, and this he derived the rule of utility: that the good is whatever brings the greatest happiness to

the greatest number of people. Bentham, who apparently believed that an individual in governing his own actions would always seek to maximize his own pleasure and minimize his own pain, found in pleasure and pain both the cause of human action and the basis for a normative criterion of action. The art of governing one's own actions, according to Bentham is called "private ethics." The happiness of the agent is the determining factor; the happiness of others governs only to the extent that the agent is motivated by sympathy, benevolence, or interest in the good will and good opinion of others. For Bentham, the greatest happiness of the greatest number would play a role primarily in the art of legislation, in which the legislator would seek to maximize the happiness of the entire community by creating an identity of interests among all people.

Jeremy Bentham was influenced both by Hobbes' account of human nature and Hume's account of social utility. He famously held that humans were ruled by two sovereign masters-pleasure and pain. Yet he promulgated the principle of utility as the standard of right action on the part of governments and individuals. Actions are approved when they are such as to promote happiness, or pleasure, and disapproved of when they have a tendency to cause unhappiness, or pain. Jeremy Bentham describes his "greatest happiness principle" in *Introduction to the Principles of Morals and Legislation*, a 1789 publication in which he writes: "Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do."

John Stuart Mill; (1806–1873) was a follower of Bentham, and, through most of his life, greatly admired Bentham's work even though he disagreed with some of Bentham's claims - particularly on the nature of 'happiness.' Bentham, recall, had held that there were no qualitative differences between pleasures, only quantitative ones. This left him open to a variety of criticisms. First, Bentham's Hedonism was too egalitarian. Simple-minded pleasures, sensual pleasures, were just as good, at least intrinsically, then more sophisticated and complex pleasures. Second, Bentham's view that there were no qualitative differences in pleasures also left him open to the complaint that on his view human pleasures were of no more value than animal pleasures and, third, committed him to the corollary that the moral status of animals, tied to their sentience, was the same as that of humans. Mill sought to use utilitarianism to inform law and social policy.

The aim of increasing happiness underlies his arguments for women's suffrage and free speech. We can be said to have certain rights, then- but those rights are underwritten by utility. If one can show that a purported right or duty is harmful, then one has shown that it is not genuine. One of

Mills most famous arguments to this effect can be found in his writing on women's suffrage when he discusses the ideal marriage of partners. Improving the social status of women was important because they were capable of these cultivated faculties, and denying them access to education and other opportunities for development is forgoing a significant source of happiness. In *Utilitarianism* Mill argues that virtue not only has instrumental value, but is constitutive of the good life. A person without virtue is morally lacking, is not as able to promote the good. With duties, on Mill's view, it is important that we get compliance, and that justifies coercion.

MERITS OF UTILITARIANISM

1. We get to focus on happiness as a society: The reason why utilitarianism is a popular theory is due to the fact that it puts happiness as the central reason for our existence. When we look at societies around the world today, it is clear that people are not experiencing this emotion. People tend to feel happier when they have access to more financial resources. Utilitarianism is the primary emphasis of each action; we could reduce unemployment rates and improve household incomes because we would be looking at the effects instead of the process for the results.

2. It teaches us that harming other people is wrong: Anyone can define a personal moral definition and then argue for it with the rest of their community. What utilitarianism teaches is that our definition of morality and ethics comes from a community-based perspective instead of an individual outlook. There may be choices that make us happy as an individual, but if it doesn't help others, then this theory says that it is an incorrect choice. It shows us that harming others for the sake of our personal benefit is not a helpful approach.

3. Utilitarianism is an easy theory to implement; There is only one process to focus upon when implementing a society that functions from the foundation of utilitarianism: happiness. All we need to do to make this theory work is to get together in a majority group, and then work to determine what the positive or negative effects of each choice would be. This decision-making process is something that we all do from our first days of childhood. Incorporating it into group theory is the natural step forward.

4. It is a secular system that focuses on humanity; One of the most significant struggles humanity faces when looking at life from a societal perspective is our vision of spirituality. According to various estimates, there are roughly 4,200 different religions being practiced in our

world right now. Trying to pin down what someone considers a spiritual belief and what another person would think to be a scientific fact can be challenging. When we place the focus of each moral decision based on happiness alone, then we eliminate the inconsistencies which occur when focusing on a supernatural deity from an individual perspective.

5. Utilitarianism seeks to create the highest good; Although in a perfect world, we would want to see everyone have equal happiness and opportunities, there is enough of a difference within our various sub-groups that can make this impossible to achieve. That's why utilitarianism focuses on the majority as a group for happiness instead of everyone. When we are pursuing the ideas that bring a maximum level of joy into our lives, then we are limiting the potential for harm to occur in our families, communities, and overall culture.

6. It focuses on the democratic process for forward movement; In the typical democracy, the passage of legislation or the election of a representative occurs when there is a 50% plus one vote majority. We use this structure because it is seen as being the fairest solution to balance the differing interests that everyone has for their lives. All modern governing structures which feature democratic principles use this philosophy.

7. We get to focus on an objective, universal solution; The reason why utilitarianism offers such a promise as a societal approach is because it incorporates universal ethics and an objective manner. We can accurately measure the positive and negative consequences of each action we decide to take as a group. It is a process which also allows us to create an independent way of determining what is right and wrong from a moral or ethical perspective. These principles apply across the board in all human societies.

LIMITATIONS OF UTILITARIANISM

1. We do not consider any other element besides happiness; Utilitarianism only focuses on majority happiness as a way to determine ethics and morality. It is essential that we remember there are other items of value to consider when looking at the overall experience of what it means to be human. Love is something which offers tremendous value, but it also can cause extraordinary heartbreak. We eat foods like kale because we know that it is a healthier choice then eating Twinkies every day even if we preferred to do the latter because it makes us feel better. There are decisions that we make every day that look at a long-term perspective rather than how we feel in the moment. Utilitarianism has some benefits, but it also ignores a lot of our life experiences.

2. It creates an unrealistic perspective for society; Imagine the scenario: there are eight people right now who would benefit from having your organs. When looking at the principles of utilitarianism, the balance of happiness over harm supports the idea of putting you to death to improve the satisfaction of everyone else. Why? Because you are not in that majority. If there are eight other people and you to make nine, the chances are that everyone else will vote to save themselves as a group at the expense of your life. That is why the ends can never justify the means. It makes it too easy for the majority of people in a society to create harm using the balancing principle. The happiness of the minority must also come into consideration.

3. Utilitarianism can be unpredictable; When was the last time you were able to predict the future accurately? There are times when we can take an educated guess as to what is going to happen, but it is very rare to receive a premonition about a future event that actually comes true. That means it is incorrect to bass ethical choices about what may or may not happen tomorrow. We must focus on what happens now, in this moment, to determine what path we can pursue to create an improved society. If we are only looking at potential, then there is the possibility that we could achieve nothing.

4. It also relies on people making consistent decisions; If there is one thing that humans are good at doing, it is changing their mind. You cannot trust anyone to ask for the greater good if the majority decides to get rid of all of the other structures which support societal health and wellness. The average person will act selfishly whenever they are faced with a difficult decision, no matter what their upbringing or spirituality happens to be. Why do people follow religions in the first place? The goal of "being saved" isn't to initially help anyone else find some level of eternal salvation. It is to create a life insurance policy for an unpredictable future because that is what offers comfort to the soul. This process would happen immediately if society shifted to utilitarianism.

5. Utilitarianism relies on multiple definitions of happiness; Every person has a different definition of happiness. Although we can find common ground on specific things, it is virtually impossible to see two people with cloned perspectives about the world today. Humans are complex beings. What makes one person happy can make another individual feel bored or out of touch with

their life. That means we are faced with two choices: we could either find common ground within our experiences to compromise on a definition of happiness or only allow the description of the majority to exist.

6. It creates the potential for the majority to rule through tyranny; People who self-identify as being an evangelical in the United States do not support the idea of same-gender marriage at a level of 67%. Although younger evangelicals support the idea as a majority at 53%, the significant population of older adults skews the overall percentages. Now imagine that laws were being created based on the concept of utilitarianism in this population group. If you identified as an LGBTQIA+ individual in this society, you would be unable to get married. There would be nothing you could do about it either until enough people were swayed to come over to your position. If you identified as an LGBTQIA+ individual in this society, you would be unable to get married. There would be nothing you could do about it either until enough people were swayed to come over to your position.

CONCLUDING REMARKS; As an abstract ethical doctrine, utilitarianism has established itself as one of the small numbers of live options that must be taken into account and either refuted or accepted by any philosopher taking a position in normative ethics. Utilitarianism now appears in various modified and complicated formulations. The 20th century saw the development of various modifications and complications of the utilitarian theory. G.E. Moore argued for a set of ideals extending beyond hedonism by proposing that one imaginatively compare universes in which there are equal quantities of pleasure but different amounts of knowledge, friendship, beauty, and other such combinations. He felt that he could not be indifferent toward such differences. Stephen Toulmin, Patrick Nowell-Smith J.O. Rumson John Rawls were some of the famous Utilitarian Philosophers.

THE IDEALIST THEORY OF THE STATE

Background, Statement, Merit and Limitations

Introduction and Background

The idealistic theory of the state is also known by various names-absolutist theory, philosophical theory as well as metaphysical theory. The first theory vests absolute power in the State, which regards the State as an ethical institution. The second gave stress and explains the state's nature in philosophical terms. Its earliest trace is found in the writings of Plato and Aristotle. Both of them regard the state as a natural and necessary element. They propagated the notion that the state is a self-sufficient entity which is identical to the whole of society. In modern times Idealism was started from Germany by Immanuel Kant. But his concept was glorified by Hegel. Hence idealistic tradition has a long history having its major exponents both in traditional and modern times who glorified the idealistic concept of a state. The state has got its independent will and personality who is responsible for the development and welfare of an individual within the state. The state is supreme and all individuals have to obey the state.

The major exponents of idealistic theory of state are-

- Immanuel Kant
- Hegel
- T.H.Green
- Bosanquet
- Fichte

FEATURES OF IDEALISM

1. **State is an ethical institution**- Though there are many ethical institutions in a society like Church, family, etc State is most important among them. The state is associated with many multifarious functions. So, it contributes directly to the development of human personality. Hence it can be said with the help of state the development of an individual is possible, without the state as directing institution over individual's development of an individual is at a limited scale.
2. **State is man's best friend**- All the welfare of an individual is done by the activities of the state, it provides all basic necessity to individual growth and development within the state. State activities are always focused on individual's welfare.
3. **State has got its independent will and personality**-The state is not the sum total of the individuals. But it has its own independent personality and will. The basis of the state is will and not the force. It represents their real will and acts according to the real will of all. It has past, present and future.
4. **State is creator and protector of the rights of the individuals**-State is considered as guardian and protector of the rights of an individual. The state is considered as the source of all freedom and rights provided to any individual. Any other sources cannot provide individual his freedom and other rights. Hence it is the only state that protects the right of individuals.
5. **The basis of the state is will not force**-State is associated to have a will and not applicable due to any force. It is an embodiment of will having a conductivity of purpose and have aimed for development. State uses force but that is not its primary or most significant quality rather it is the complete embodiment of will.
6. **States should remove an obstacle to good life**-state is entitled to remove the obstacle in order to provide a good life. It should maintain all those conditions necessary for an

individual's development and welfare which is indispensable for regulating a good life. The state enforces a system of universal and impartial right.

7. **An individual should obey the state-** His all actions are in accordance with state. When a state invades the sphere of personality, he has the right of rebellion but even in his rebellion action individual should remember that he is still a citizen loyal to the best for which state stands. Hence the individual is both sovereign and subject.
8. **State possesses an organic unity**-State possess the same organic unity as is posed by the human body. Just as an organ is part of the body so as an individual is the organ of the state. Just as the organ cannot be more important than the whole body so the individual cannot be more important than a state. They regarded the state as a divine, spiritual, powerful, infallible and absolute institution.
9. **Man is a social animal**-Idealism begins with Aristotle's view that man is a social animal. This social animal development is enriched under the proper guidance of the state. The state is indispensable to effective organization and realization of moral ends.

MAJOR EXPONENTS AND THEIR IDEAS OF IDEALISM

Idealistic theory of state flourished under the contribution of some of the major exponents. The various major exponents of the idealistic theory of the state are as follows-

IMMANUEL KANT

Immanuel Kant (1724-1804) is regarded as the father of idealistic theory. He gives expression to this doctrine in his famous book "metaphysical first principles of theory and law" in 1796. Kant major focus of analysing is put off a different aspect of state and its relation with other element existing within the state. The various subjects dealt by Kant are as follows-

- **State -** Kant provided the absolute power to sate, in his view state is above all and no one can deny it. The state was omnipotent, infallible and divine in its features. Its authority came from God. And hence every individual has to obey him as obedience to its authority is sacred, it cannot be overruled on any ground even it seems to be illegitimate.
- **State and Society -** State is moral or ethical institution having the cultural and educational function whereas society is empirical or external in nature.

- **Property_-** Kant promoted the theory of private property. He rejected the extreme individualistic doctrine of property as untenable. According to him, the property is necessary for the expression of man's will. It is a derived right and does not belong to man by nature.
- **Rights and Duties -** Kant lays much stress on the rights and duties of an individual. Rights are complementary to moral freedom. Duty is self-imposed regulated due to internal consciousness. The emphasis more on the duty of an individual towards the state.
- **Sphere of State Action** - Kant is not a blind worshiper of the state. He does not assign a wide sphere of state action. State action is only justified in repelling the opposition of force against freedom. The state is for the welfare of an individuals and led expansion of final goods which are spiritual, moral as well as rational.
- **Forms of Government** - Kant advocated for the monarchical form of government. It can be considered as their superstition reverence for monarchy as they were advocated the general will and the supremacy of the people.
- **World Peace -** Kant was considered as a staunch supporter of world peace. He conceived humanity as a whole and advocated a federal league of Nations as a basis to promote peace. One of his important work is on perpetual peace.

HEGEL

Hegel was a German idealist. He had great influence in his own country. His philosophy had made state to rise to mystical heights and held that German people have a divine mission to fulfil in their relation to the rest of the world. His ideal state was identical with the German state of his days. In his attitude towards the state, he was an absolutist. The various contribution of Hegel as an idealist is as follows-

- **Theory of State -** According to Hegel state are the system in which the family and the civil society finds their completion and security. True freedom for an individual residing in a state consisted of obeying the laws of the state. All rights of an individual derived from the state. State said to represents best in the individual will, hence state has will and personality of its own.
- **Civil Society and System of Institution -** Civil society stands for the economic and industrial world in which men appears as bread earner for successful achievement of their economic interest. They demand police function and administration of justice. A society of this kind

does not differ from the state. Hegel insisted on this distinction and divide it into three stages and gave the highest place to sate.

- **Constitution -** The state manifests itself as a constitution or internal or external public law or as world history. These important power in Hegel rational state are legislator and administrator promoting monarchy as best form of government.
- **Sovereignty -** It resides with the organized as whole so it is assigned to the monarch. The legislature including the prince, administration, and people representing the unity element of the State.
- **Theory of Property-**Hegel is a strong supporter of private property as it leads to the development of all basic necessity of man's personality.
- **Theory of Punishment**-Whenever any right is violated by any individual, its duty of the state to reassert it by a means of compulsion and punishment if the case required.

T.H. GREEN

Green developed his philosophy after 1870. He was regarded as a sober idealist. Green various view on the theory of the state are as follows-

- The war is the attribute of an imperfect state and it can never be absolutely right.
- The state is the product of reason which tells a man of moral freedom as his essential quality.
- The state is meant to create those opportunities which are necessary to the full moral development of individual.
- State is a natural organization and will not the force is the basis of state
- Rights according to Green are the outer conditions necessary for man's inner development.
- Green did not believe in the natural theory of right; he says right can be only enjoyed by an individual within a state.
- In regards to the right to property given is both individualistic and socialist.
- State is limited from within and without. The function of the state is negative in nature because it has nothing to do with the individual's motives and morality. The function of the state becomes positive when it removes the obstacle which prevents men from becoming moral.
- Green provides power to the state in a matter of punishment. State can punish anyone who disobeys the laws of state.

- State creates condition which makes moral life possible.

LIMITATIONS OF IDEALISM

- **Danger to in Individual's rights –** The argument of its supporters that the state is everything and individual is nothing is false and presents a great danger to the individual's rights and freedom. There are many other relations among human beings, which are as important as the relationship between the individuals and the state. Besides, state is not self-sufficient. It has to depend on other states. So, today the state cannot be absolute.
- **State Absolutism –** Most powerful point of indictment is that the idealism offers a highly abstract justification of conservatism and a very cogent defence of state. It wrongly identifies the society with the state and sacrifices individual at the altar of a God-State.
- **An Abstract Theory –** The idealists do not deal with things as they are, rather as these are ought to be in their ideal forms. They try to go as deep as possible into the nature of thing and, more than that, they try to set ideals towards which individuals and their institutions should move. The result is that what they offer becomes all hypothetical or utopians; they study of state moves far away from the world of reality.
- **Based on Wrong Conception –** The idealist also considers the state to be sovereign that is there is no check and limitations on the author of the state. The idealists are also wrong in the assumption that the state embodies real will of the people. In today's world the will of the state is the will of the ruling class and not of the people.

CRITICISM OF IDEALISTIC THEORY OF STATE

The following are the various criticisms of Idealistic theory of the State-

- Conservative creed-Instead of becoming a source of reform, idealism became a conservative creed.
- Theory of idealism is unsound- Theory of idealism is untrue to fact and liable to extend a dangerous sanction to the more unscrupulous actions of existing states in the sphere of foreign policy.
- Idealistic theory does not have any difference between State and society; they are the same in all respect. But in reality, this assumption is false, there is a difference between State and society.

- This theory is purely abstract in nature and do not throw light on the existing social conditions.
- It propagates negative function of State and does not recognize it as a socialist institution.
- Represents the State as omnipotent and does not confine its authority by any international law or morality.
- It scarifies the freedom of the individual. This theory regards the State as an end and the individual as a means and thus it sacrifices the liberty of the individual.
- Resulted in the evolution of Nazism and Fascism whose results and impact still considered as abuse.

CONCLUDING REMARKS

"State is a necessary evil" is a well-established fact now. No man can live without the state. Various philosophers and political science theorists came up with certain theories of state and have established their school of thought. One such was laid down by the extraordinary Plato and later by Aristotle and it was called Idealism. Idealism gives the state an overtly lofty place and declares state to be God-like with the individual being subordinate to it. This theory was later developed a little by Rousseau and completely revamped by Hegel and Immanuel Kant. Some derivation of the theory has been witnessed in England by philosophers like T.H. Green and Bosanquet. despite all these criticisms, Idealism has some positive points. It insists on the organic unity of society and maintains a close connection between ethics and politics. Idealism paves way for the welfare state and places goals towards which political progress may be directed. Hence the State is all powerful which always aims for the common welfare. According to all idealists, the State is powerful and above individuals. Individuals are part of the state and the responsibility of an individual's development of moral and ethical values is on the shoulders of the State.

Unit-IV

POWER, AUTHORITY, RESPONSIBILITY

Synopsis

- Power: Meaning and Aspects,
- Sources and Kinds

POWER

INTRODUCTION

Power is the crux of politics, local, national, and international. Since the beginning of human power has been occupying the central position in human relations. To comprehend international politics and relations, studying the concept of power in political science is a must. Power, influence, authority, and capability are related terms and often used interchangeably and loosely. Such a user creates conceptual confusion. An attempt has been made to remove this confusion by defining each term separately in the following Paragraph. In ancient India, the master of statecraft, Kautilya, wrote about power in the fourth century B.C. as the possession of strength (an attribute) derived from three elements: knowledge, military, and valor.

Twenty-three centuries later, Hans Morgenthau, following Kautilya's Power, influence, authority, and capability are related terms and often used interchangeably and loosely. Such a user creates conceptual confusion. An attempt has been made to remove this confusion by defining each term separately in the following Paragraph. In ancient India, the master of statecraft, Kautilya, wrote about power in the fourth century B.C. as the possession of strength (an attribute) derived from three elements: knowledge, military, and valor. Twenty-three centuries later, Hans Morgenthau, following Kautilya's realistic line, preferred to define power as a relationship between two political actors in which actor A has the ability to control the mind and actions of the actor.

Meaning:

The focal point of the study of political institutions is power and its uses. Although we think of the concept of power as being associated particularly with politics or so as to say political science, but it is, in fact, exists in all types of social relationships. For Foucault (1969), 'power relationships are present in all aspects of society. They go right down into the depths of society. They are not localized in the relations between the state, and its citizens, or on the frontiers between classes'. All social actions involve power relationships whether it may be between employer and employee or between husband and wife. Thus, it is of fundamental importance for the sociology to study in its manifold ramifications. In the very simple language, power is the ability to get one's way-even if it is based on bluff. It is the ability to exercise one's will over others or, in other words, power is the ability of individuals or groups to make their own interests or concerns count, even when others resist.

DEFINITIONS

- **Max Weber - "**Power is the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests".
- **Weber –** "Power is the chance of a man or a number of men to realize their own will in a communal action even against the resistance of others who are participating in the action".
- **Alvin Genldner** – "Power is, among other things, the ability to enforce one's moral claims".
- **Anthony Giddens –** "power as the ability to make a difference, to change things from what they would otherwise have been, as he puts it "transformative" capacity".
- **Steven Luke** "Power has three dimensions or faces: (1) decision-making, (2) non-decision-making, and (3) shaping desires".

TYPES OF POWER:

Max Weber (1958) believed that there are three (not one) independent and equally important orders of power as under.

Economic power: For Marx, economic power is the basis of all power, including political power. It is based upon an objective relationship to the modes of production, a group's condition in the labour market, and its chances. Economic power refers to the measurement of the ability to control events by virtue of material advantage.

Social power: It is based upon informal community opinion, family position, honor, prestige and patterns of consumption and lifestyles. Weber placed special emphasis on the importance of social power, which often takes priority over economic interests. Contemporary sociologists have also given importance to social status so much so that they sometimes seem to have underestimated the importance of political power.

Political power: It is based upon the relationships to the legal structure, party affiliation and extensive bureaucracy. Political power is institutionalized in the form of large-scale government bureaucracies. One of the persistent ideas has been that they are controlled by elites, that is, small, select, privileged groups. Political power concerns the activities of the states which is not confined to national boundaries. The networks of political power can stretch across countries and across the globe. Political power involves the power to tax and power to distribute resources to the citizens.

Besides, Weber's types of power, there are a few other types also which are as under:

Knowledge power: *To Foucault (1969), power is intimately linked with knowledge. Power and knowledge produce one another. He saw knowledge as a means of 'keeping tabs' on people and controlling them.*

Military power: *It involves the use of physical coercion. Warfare has always played a major role in politics. Modem mass military systems developed into bureaucratic organizations and significantly changed the nature of organizing and fighting wars. According to Weber, few groups in society base their power purely on force or military might.*

Coercive power: *The ability to punish if expectations are not met. Coercive power is the capacity to dispense punishments to those who do not comply with requests or demands. People exercise coercive power through reliance upon physical strength, verbal faculty, or the ability to grant or withhold emotional support or tangible resources from others. Coercive power*

provides a leader with the means to physically harm, bully, humiliate, or deny love, affection or resources to others. Examples of coercive power in the workplace include the ability (implied or real) to fire, demote or transfer to undesirable positions. Coercive power can be useful for deterring behavior detrimental and at times when compliance is absolutely necessary, such as in a crisis situation.

Legitimate power: *The authority granted to someone stemming from a position in a group or organization. Legitimate power stems from an authority's legitimate right to require and demand compliance. Legitimate power stems from a leader's formal authority over activities. This type of power is dependent upon the official position held by the person exercising it. Legitimate power may be derived from prevailing cultural values that assign legitimate power to some individuals (i.e., respect for one's elders), accepted social structure that grant legitimate power to some people (i.e., British royalty), or through one's position in a hierarchy. While referent and expert power are tied to the individual, legitimate power is tied to position. In this context, the amount of legitimate power a leader might have is likely related to one's scope of authority. For example, managers typically have more authority than staff, and a staff member typically has more authority in relation to relation to community members. Yet it is not uncommon for a leader to make requests of someone who may technically fall outside their scope of authority, and for that person to willingly comply.*

Referent Power: *The desire for a feeling of oneness and acceptance in a valued relationship. Referent power is based upon identification with, attraction to, or respect for the leader. Group members gain a sense of intrinsic personal satisfaction from identification with a referent leader. This kind of power relationship is dependent upon the inclination to work harder for someone who is liked or admired. To gain and maintain a leader's approval and acceptance, a follower is likely to do what the leader asks, develop a similar attitude, and even imitate the leader's behavior. Leaders who are charming and trustworthy tend to possess and use referent power more often than those less personable. By showing genuine concern and demonstrating a general level of respect for others, referent power tends to increase early in the relationship between leader and follower. However, if the charisma of a leader is never connected to genuine integrity and strength of character, referent power is easily lost.*

Expert power: *The extent of specialized skills or knowledge followers attribute to a leader. Expert power derives from group members' assumptions that the leader possesses superior skills, knowledge, and abilities. This expertise enables leaders to perform tasks and provides them with a better understanding of the world around them. However, expertise is only a source of power if others are dependent upon the leader for the skill, knowledge or ability the leader possesses. The more important a problem is to the follower, and the more the leader is perceived to be an expert in that area, the greater power the expert leader will have. Like referent power, expert power may come more easily in the short term yet prove troublesome in the long term. Initial perceived expertise is typically strong, but a leader must balance expertise with wisdom and not to exaggerate the extent of his or her expertise. As time progresses, followers learn more, and a leader's expertise is questioned and challenged - the power of expertise can diminish.*

Ideological power: *It involves power over ideas and beliefs, for example, are communism, fascism and some varieties of nationalism. These types of ideologies are frequently oppositional to dominant institutions and play an important role in the organization of devotees into sects and parties. According to Michael Mann (1986), there are two types of power, viz., distributional and collective.* ***Distributional power****: It is a power over others. It is the ability of individuals to get others to help them pursue their own goals. It is held by individuals.* ***Collective power****: It is exercised by social groups. It may be exercised by one social group over another.*

SOURCES OF POWER:

There are three basic sources of power: force, influence and authority.

Force: As defined earlier, force is the actual (physical force) or threatened (latent force) use of coercion to impose one's will on others. When leaders imprison or even execute political dissidents, they thus apply force. Often, however, sheer force accomplishes little. Although people can be physically restrained, they cannot be made to perform complicated tasks by force alone.

Influence: It refers to the exercise of power through the process of persuasion. It is the ability to affect the decisions and actions of others. A citizen may change his or her position after listening

a stirring speech at a rally by a political leader. This is an example of influence that how the efforts to persuade people can help in changing one's opinion.

Authority: It refers to power that has been institutionalized and is recognized by the people over whom it is exercised (Schaefer and Lamm, 1992). It is established to make decisions and order the actions of others. It is a form of legitimate power. Legitimacy means that those subject to a government's authority consent to it (Giddens, 1997). The people give to the ruler the authority to rule, and they obey willingly without the threat of force. We tend to obey the orders of police officer because we accept their right to have power over us in certain situations. Legitimate power is accepted as being rightfully exercised (for example, power of the king). Thus, sociologists distinguish power from authority.

METHODS OF EXERCISING POWER:

The question arises how can Nation A influence Nation B? How can it exercise power? There are four means and methods by which one nation can influence or control others as per its own desire. These are:

- **Persuasion:** It is the most common and widely used way of exercising power. In this method, what Nation A does is to influence Nation B through arguments or superior logic or redefine the whole situation so that Nation B changes its mind about what it ought to do. Most of the delegates of international organizations employ this method and persuade. Small nations largely rely on this less expensive method because they lack the power and means to coerce.

- **Rewards:** Nation A can regulate Nation B for doing what Nation A wants by offering its various rewards. Rewards for compliance may include psychological manipulation, material support, economic aid, military assistance, and political support. A diplomat may alter his stand to win the appreciation of his fellow diplomats from other nations. The rewards can be material in the shape of territory, military aid, weapons, troops, and training facilities. The rewards may be economical in the form of aid, loans, grants, capital supply, technical assistance, etc. Political rewards consist of support for another nation's viewpoint in international conferences and forums.

- **Punishment:** Reward and punishment have a close relationship. The most effective punishment is to with old reward. Punishment may also include hostile activities like unfriendly propaganda, diplomatic opposition, and aid to the enemy of the state concerned. It, however, should be threatened in advance and not actually carried out. The most effective punishment is rarely meted out because the very threat succeeds in preventing the action which the punishes disapproves of. As a last resort, if it is to be carried out, it should be given in such a way that it can be withdrawn at once when the offending party changes and subscribes to the way shown by the punishing Party.

- **Force:** Punishment is Usually threatened as a preventive measure, but it becomes the use of force when it is actually carried out. Thus, punishment and force are not strictly separated from each other through some distinction from the viewpoint of prevention and actuality. The intensity of hostility between these two is made for analysis. The most extreme form of the use of force is war. Force is always used as the last resort when the above three methods prove futile.

It can be repeated for the sake of clarification that the first two methods, persuasion and reward constitute influence during the last two, punishment and force, form power. The analysis of these four means reveals that what distinguishes power from influence is Coercion or force.

CONCLUDING REMARKS

Power and politics in organizations are common. In most cases, each concept is necessary and executed with skill and precision. Unfortunately, power can lead to conformity from those around us, and this occurring conformity can breed corruption. The amount of power you have has strong ties to how much others depend on you. If you are deemed a valuable resource within an organization, then you are able to wield that dependability to make demands and get others to do what you want. Besides having an innate or acquired control over particular resources, there are several social aspects of power to draw on. Methods for obtaining more power in an organization can often led to political behaviors. As one person seeks to influence another to support an idea, politics begins to play out. Though necessary in some instances, many people that follow the rules see the politics of an organization as resulting in an unfair distribution of resources. Still others, despite understanding the politics of a given organization, see it as an unnecessary time consumer. Politics, influence, and power can often reside within your social network.

AUTHORITY

Synopsis

- *Meaning of Authority*
- *Kinds of Authority*
- *Max Weber's Kinds of domination*
- *Legitimization of Power*
- *Power Vs Authority*
- *Limitations and Conditions*

AUTHORITY

INTRODUCTION

The word Authority is derived from the old Roma notion, 'Auctor' and 'Auctoritos'. The Senate, the upper house in Rome gave its counsel to the popular assembly and this counsel was called 'Auctor' or 'Auctoritos'. Authority is supreme than power. Authority is the fundamental source of power. Authority refers to power that has been institutionalized and is recognized by the people over whom it is exercised. It is established to make decisions and order the actions of others. It is a form of legitimate power. Legitimacy means that those subject to a government's authority consent to it.

The people give to the ruler the authority to rule, and they obey willingly without the threat of force. We tend to obey the orders of police officer because we accept their right to have power over us in certain situations. Legitimate power is accepted as being rightfully exercised (for example, power of the king). Thus, sociologists distinguish power from authority. Authority is an agreed-upon legitimate relationship of domination and subjugation. For example, when a decision is made through legitimate, recognized channels of government, the carrying out of that decision falls within the realm of authority. In brief, power is decision-making and authority is the right to make decisions, that is, legitimate power.

DEFINITION OF AUTHORITY

- **Herbert A Simon**, "Authority is the power to make decisions which guides the action of another."
- **Mac Iver,** "Authority is often defined as being power, the power to command obedience."
- **Mac Webber,** "Authority is the replica of what the command followed by group of men of state."
- **Talcott Parsons**, "Authority is essentially the institutional code within which the use of power as a medium is organized and legitimized".
- **Jouvene**, "Authority is the ability of man to net his proposals accepted."
- **Hobbes,** "Authority is not therefore the victory that gives the right of domination over the vanquished, but his own covenant. Nor is he obliged because he is conquered but, because he cometh in and submitted to the victory."

TYPES OF AUTHORITY:

Max Weber, a German sociologist and a political economist has explained typology of authority in his book '**the theory of social and economic organization**, 1971'

Weber divided legitimate authority into 3 types which are also called as dominations –

1) **TRADITIONAL AUTHORITY**

According to Max Weber, political authority derived from an established belief in the sanctity of immemorial traditions and legitimacy of the states of those exercising authority over them. Traditional authority is derived from long established customs, habits and social structures. According to de Maistre, tradition is supreme over reason. Burke defends traditionalism on grounds of expediency. For Hegel, the idea of morality evolves concretely in the customs and institutions of nation states. The best examples are right of hereditary monarchs, head of tribe, family, village etc.

2) **CHARISMATIC AUHORITY**

'Charisma' means 'gift of grace'. According to Max Weber, political authority rests on the devotion to the specific and exceptional sanctity, heroism or exemplary character f an individual or order revealed by him. When the right to rule is accrued from the great qualities and charisma of a political leader, it is called Charismatic Authority.

For e.g., Nazism of Hitler or Dr. A. P. J Abdul Kalam.

3) **LEGAL – RATIONAL AUTHORITY**

It is the form of authority which depends for its legitimacy on formal ruler and established laws of state, which are usually written and often are complex. The power of rational legal authority is mentioned in the constitution. Modern societies depend on legal-rational authority and government officials are the best example of this form of authority. Weber has noted that legal domination is the most advanced, and that societies evolve from having mostly traditional and charismatic authorities to mostly rational and legal ones, because the instability of charismatic authority automatically forces it to 'routinize' into a more structured form of authority.

Similarly, he notes that in a pure type of traditional rule, sufficient resistance to a master can led to a 'traditional revolution'. Thus, he indicates towards a rational-legal structure of authority, utilizing a bureaucratic structure. This ties to his broader concept of rationalization by suggesting the inevitability of a move in this direction.

LEGITIMIZATION OF POWER

Many regimes have "rules of power" written in a Constitution – to limit the power of government. Like USA has a written Constitution and checks and balances on the power of each branch of government. Therefore, legitimacy in modern liberal democrat societies is founded upon the willing and rational obedience of the governed. The government remains rightful only so long as it responds to popular pressure. Constitutions only bring legitimacy when their principles reflect the values and beliefs which are widely held in society.

CLASSICAL APPROACH

Thomas Hobbes (1588-1679)

Thomas Hobbes claims that humans are naturally equal, competition, distrust and desire for glory throw humankind into a state of war, which is natural condition of human life his social contract asks individuals to give their natural right for the attainment of peace sovereign power is created when each individual surrenders his private strength to a single entity. leviathan, the sovereign power, could be composed of one, several or many persons i.e., monarchy, aristocracy or democracy.

MODERN APPROACH

Karl Marx (1818 -1883)

There is a limited amount of power in society, which can be held by a person or a group at a time. These "groups" are the working and ruling classes.

Max Weber (1864 – 1922)

Power is something vague that cannot be easily categorized. Power and domination constitute Political Legitimacy. Obedience to the commands could be due to fear or moral obligation. Weber says, Democratic system is only democratic in appearance due to its electoral process.

POWER Vs AUTHORITY

Key Differences Between Power and Authority

The difference between power and authority can be drawn clearly on the following grounds:

1. Power is defined as the ability or potential of an individual to influence others and control their actions. Authority is the legal and formal right to give orders and commands, and take decisions.
2. Power is a personal trait, i.e., an acquired ability, whereas authority is a formal right, that vest in the hands of high officials or management personnel.
3. The major source of power is knowledge and expertise. On the other hand, position and office determine the authority of a person.
4. Power flows in any direction, i.e., it can be upward, downward, crosswise or diagonal, lateral. As opposed to authority, that flows only in one direction, i.e., downward (from superior to subordinate).
5. The power lies in person, in essence, a person acquires it, but authority lies in the designation, i.e., whoever get the designation, get the authority attached to it.
6. Authority is legitimate whereas the power is not.
7. Authority is institutionalized power, while power is latent force.

8. Authority is the embodiment of reason and depends on the capacity of reasoned elaboration, whereas power is a psychological factor.
9. Authority is the ability of a man to get his proposals accepted but, power is the capacity of man to change the behaviour of other.
10. Dominance is the important characteristic element of authority, while power may or may not possess dominance.
11. Authority is responsible but, power is not accountable.
12. The loss of authority is due to hastiness, emotionalism and favouritism in the exercise of authority, while the loss of power is due to loss of wealth, force, stamina etc.
13. Authority is rooted in the rules and regulations of government. Power is polarization of desire interest of the people.

Examples

- Germany, prior to II World War- dictators also tried to seek legitimacy through encouraging expression of popular consent, considerable effort is put into mobilizing mass support rallies for regimes.
- China – the most common way of demonstrating power is through elections. Even one-party states hold elections in China.
- North Korea – Elections are held here but voters have no choice than the same leader every year.
- Arab – this shows if the system is not legitimate, then it will not have authority and so will have to rely on sheer force to survive, and eventually force will not be enough.
- The same goes with countries like Libya, Egypt, Syria which has to frequently deals with wars with no outcome.

LIMITATIONS AND CONDITIONS OF AUTHORITY

on the basis of three conditions the following limitations of authority can be identified

Conditions

- An individual ruler or master or a group of ruler or masers.
- An individual or group that is ruled.

- The will of the ruler to influence the conduct of the ruled which may be expressed through commands.

Limitations

- Authority can be seen as a threat to reason and critical understanding.
- Authority demands unconditional, unquestioning obedience and can therefore lead to a climate of deference and avoidance of responsibility which comes from an uncertain trust in the judgment of others.
- Fascism depends on authority.
- The right of resisting a tyrant has always been a controversial topic. A tyrannical deposition lacks *ab initio* the basis of consent on which the governments of all organic states are founded.
- Anarchism, syndicalism and anti-authoritarian socialism have always refused to acknowledge the sovereign and supreme authority of the state.
- This was shown in Milgram experiments people with a strong inclination to obey authority can be more easily led to behave in barbaric fashion.

CONCLUDING REMARKS

Authority is the genesis of governmental or organizational framework. It is an essential component of management. It is one of the founding stones of formal and informal organization. A government or organization will not be able to function efficiently without proper authority. No organization can survive without authority. If used appropriately, authority is a valuable tool for any organization. If there is no authority or excessive use, it leads to destruction.

RESPONSIBILITY

Synopsis

- *Meaning*
- *Relationship with Authority*
- *Kinds-Institutional and Professional*
- *Accountability (as an Adjunct of Responsibility)*
- *Meaning, Importance and Kinds*

RESPONSIBILITY

INTRODUCTION

The Concept of Responsibility is a word that, through time, has acquired a variety of meanings. It is commonly used in political discourse Here, we follow Mark Boven's in conceiving of responsibility as a manifestation of virtue. By this definition, we think of responsible actors as those who take their tasks and duties seriously, act only after due deliberation, and consider themselves answerable to others for the consequences of their actions.

Meaning – Responsibility is the task entrusted by managers to subordinates. It means a moral commitment to do the work assigned. A person who performs some work has the responsibility to [1]do it. It is the obligation to carry out the assigned task. It is the duty or task that a person is assigned to accomplish. "Responsibility is the obligation of an individual to carry out assigned activities to the best of his or her ability". the responsibility ends when the person has accomplished the assigned task. Responsibility must be fixed. So that it develops the skill competence, initiative, and ability of a person to his fullest.

The following points help to understand the concept of responsibility:

- *A person should perform the assigned task.*
- *It cannot be delegated. Even where a superior delegates authority to perform certain tasks, he remains responsible to his superiors for those tasks.*

- *It must be commensurate with authority. Lack of parity between authority and responsibility will not achieve the desired results.*
- *It flows from bottom to top. Every subordinate is responsible for his superior for the*
- completion of assigned tasks.
- *It can be qualitative or quantitative. Preferably, responsibility should be fixed in quantitative terms as it helps to frame standards of performance against which performance can be measured*

DEFINITIONS

❖ ***Allen*** *– "Responsibility is the obligation to carry out assigned activities to the best of his abilities."*

❖ ***G R Terry*** *- "Responsibility is the obligation of a person to achieve the results mutually determined through participation by the superiors and himself"*

❖ ***Fayol*** *– Authority and responsibility are inter-related and commensurate. In his words, Authority is not to be conceived of apart from responsibility, that is, apart from sanction-reward or penalty which goes with the exercise of power. Responsibility is a corollary of authority, it is its natural consequence and an essential counterpart, and wheresoever authority is exercised responsibility arises."*

❖ ***Urwick*** *- To hold a group or individual accountable for activities of any kind without assigning to him or them the necessary authority to discharge. that responsibility is manifestly both unsatisfactory and inequitable. It is of great importance to smooth working that all levels of authority and responsibility should be coterminous and coequal." This is what he called the 'principle of correspondence.'*

KINDS OF RESPONSIBILITY

INSTITUTIONAL RESPONSIBILITY

Institutional responsibility: Institutional responsibility denotes the responsibility of the administrative agency towards public welfare that is, being responsive to the public interest. Example: CBI

Here, institutional responsibility is implemented in every professional field to ensure the honor of the profession per se. this is to impose rules and laws that prevent illegal and unethical behavior that harms individuals as well as institutions. The institutional responsibilities are implemented in every professional field to ensure the honor of the profession per se. This is to impose rules and laws that prevent illegal and unethical behavior that harms individuals as well as institutions. Committees and authorities review these laws and policies and investigate for any unlawful behaviour. Every organizational units have to follow code of ethics and social responsibilities. The purpose of having this code of ethics and regulations is to ensure people are not discriminated on the grounds of disabilities and standards are maintained. All kinds of institutions are meant to adhere to these codes of ethics and policies. This protects the individuals from violation of their rights. This ensures best of professional competence and makes sure that only those who are qualified are given the professional status.

PROFESSIONAL RESPONSIBILITY

Professional responsibility: Professional responsibility denotes the responsibility of the civil services to the professional standards, ethics, and codes of conduct. It is also known as an ethical responsibility. Professional responsibility is the area of legal practice that encompasses the duties of attorneys to act in a professional manner, obey the law, avoid conflicts of interest, and put the interests of clients ahead of their own interests. Professional responsibility generally refers to a duty an employee owes to his employer and his clients. An employer expects an employee to provide professional quality service and communication at all times, through oral and written communication. An employee has professional responsibilities to manage a case load, complete assignments in a timely manner and to make contributions as a productive team member. Professional responsibility specifically refers to a code of ethics or oath of office required in certain professions. Politicians take an oath of office and promise to serve their constituencies as public figures. Doctors take the Hippocratic Oath to provide the best medical care to their patients and to protect human life. Attorneys take a professional responsibility examination and vow to uphold client confidences and be truthful to the court. The public expects financial investors and bank managers to advise clients honestly and invest their money wisely.

OTHER KINDS OF RESPONSIBILITY

❖ ***Political Responsibility:*** Political responsibility denotes the responsibility of the executive to the legislature which is, in turn, responsible to the people. Under this political responsibility just like rights, there are different kinds of responsibilities:

Jury duty: Jury service is an important civic responsibility. where you are directly involved in making the justice system work. Your effort helps preserve the right to a fair trial by a jury comprised of fellow citizens. the most important function of a juror is to listen to all evidence presented at trial and to decide the facts of the case. The judge is there to determine the legal aspects of the case and to keep the trial moving forward. The performance of jury service is the fulfillment of a civic obligation.

Paying tax: here, it is our duty as well as a responsibility to pay the taxes on time. even though we have the authority or system to notify about that, we should take the initiation and pay the taxes.

Obey laws: It becomes our duty and legal duty to obey the laws for the development and protection of the individual as well as society. Laws are made for the welfare of society.

Register for selective service: As an individual, we should register under selective services for example: in giving judgments, we should not show partiality among people. We should have an identity.

Get an education: Education is the biggest tool; Education is primarily a state and local responsibility in the country. It is state and communities, as well as a public responsibility. The main purpose of education is to educate individuals within society, to prepare and qualify them for work in the economy as well as to integrate people into society and teach them values and morals of society. The role of education is a means of socializing individuals and to keep society smoothing and remain stable.

❖ **Social Responsibility:**

Stay informed: Here, stay informed means to create awareness among the people, who are ignorant or illiterate who are unaware of political issues and legal duties and the provisions which are made for the benefit of people.

Tolerate others: we should allow people to live with us without any discrimination, as

Mahatma Gandhi said "Live and let live". Where we should not criticize other's practices instead, we have to respect and give importance to their religion, language, and their food habits etc.

Register to vote: we have to register our votes and cast our votes for the best leader. we should vote free from coercion or intimidation by elections officers or any other person.

CONCLUDING REMARKS

As we have seen there are many kinds of responsibility. Responsibility is the obligation of an individual to carry out the assigned activities to the best of our ability. And the responsibility ends when the person has accomplished the assigned task and he will be committed to perform it effectively. therefore, responsibility must be fixed, which develops the skill, initiative, and ability of a person to his fullest, and being a citizen or member in a state, we should have social, political, moral, and legal responsibility

ACCOUNTABILITY

Meaning, Importance and Kinds

INTRODUCTION

In ethics and governance, **accountability** is answerability, blameworthiness liability, and the expectation of account- giving. As in an aspect of governance, it has been central to discussions related to problems in the public sector, nonprofit and private (corporate) and individual contexts. In leadership roles, accountability is the acknowledgment and assumption of responsibility for actions, products, decisions, and policies including the administration, governance, and implementation within the scope of the role or employment position and encompassing the obligation to report, explain and be answerable for resulting.

Meaning: Accountability is an assurance that an individual or an organization will be evaluated on their performance or behavior related to something for which they are responsible. Meaning of accountability refers to the process as well as norms that make decision makers answerable to one's for whom decisions are taken i.e., the decision maker and the beneficiary**.** The term is related to responsibility but seen more from the perspective of oversight. An employee may be responsible, for example, for ensuring that a response to an RFP (request for proposals) meets all the stipulated requirements. In the event that the task is not performed satisfactorily, there may or may not be consequences. Accountability, on the other hand, means that the employee is held responsible for successfully completing the task and will have to at least explain why they failed to do so.

Definition:

- **McFarland,** "Accountability is the obligation of an individual to report formally to his superior about the work he has done to discharge the responsibility."

IMPORTANCE OF ACCOUNTABILITY:

- **Accountability builds trust:** The most important result of accountability is trust, which is essential in any relationship. Being accountable to something means that you're willing to

make commitments be responsible for your own actions. This promotes trust between you and the people around you. When you allow yourself to be accountable to this trust, you're effectively telling people that you're going to admit it and make amends when trust is broken.

- **Accountability improves performance**: Accountability eliminates the time and effort you spend on distracting activities and other unproductive behavior. Research shows that some people have tendency to engage in ineffective behavior. Without accountability, you may only catch these behaviors when mistakes and errors have already been made and your organization has already suffered a loss.

- **Accountability promotes ownership**: When you make people accountable for their actions, you're effectively teaching them to value their work. Through positive feedback and corrective actions, they learn that their behavior and actions have an impact on the team. When people know that they're valued and important, they're more drive to work hard. They learn to have a sense of ownership in what they do.

- **Accountability inspires confidence**: When done right, Accountability can increase your teammates skills and confidence. Don't mistake accountability for controlling behavior. The key is to provide the right support- give constructive feedback, improve on your members suggestions, give them freedom to decide and challenge them to think of better solutions as a team. When people know their performance, they're more likely to step up and do their best

KINDS OF ACCOUNTABILITY

❖ **Political Accountability:** Political accountability is the accountability of the government, civil servants and politicians to the public and to legislative bodies such as Congress or Parliament. In a few cases, recall elections can be used to revoke the office of an elected official. Generally, however voters do not have any direct way of holding elected representatives to account during the term for which they have been elected. Additionally, some officials and legislators may be appointed rather than elected Constitution, or statute,

can empower a legislative body to hold their own members, the government, and government bodies to account. This can be through holding an internal or independent inquiry. Inquiries a usually held in response to an allegation of misconduct or corruption. The powers, procedures and sanctions vary from country to country. The legislature may have the power to impeach the individual, remove them, or suspend them from office for a period of time.

- **Professional Accountability:** When you're accountable not just for your actions but for others', you're taking professional accountability. This is commonly observed in professional fields like medicine and law where a doctor or a lawyer would be accountable for their practice, patients/clients' well-being and the outcomes of their actions.
- **Personal Accountability:** Personal accountability is whenever you make a conscious choice to take accountability for your actions. In the workplace, this can mean being accountable for your decisions and how it affects your coworkers. When you do something wrong, you could apologize instead of deflecting blame. Being productive at work and reflecting on your actions fall within the scope of personal accountability.
- **Ethical Accountability:** Ethical accountability is the practice of improving overall personal and organizational performance by developing and promoting responsible tools and professional expertise, and by advocating an effective enabling environment for people and organizations to embrace a culture of sustainable development. Ethical accountability may include the individual, as well as small and large businesses, not-for-profit organizations, research institutions and academics, and government. One scholarly paper has posited that it is unethical to plan an action for social change without excavating the knowledge and wisdom of the people who are responsible for implementing the plans of action and the people whose lives will be affected.
- **Financial Accountability:** In an organization, financial accountability is concerned with creating a sound budget and ensuring minimal waste. Allocating resources efficiently would ensure that there's no excess expenditure. This is critical when you're in the planning stages of a new project where there are higher chances of exceeding your budget. Organizations have to consider economic policies, external stakeholders and their employees when establishing financial accountability.
- **Constituency Accountability:** Within this perspective, a particular agency or the government is accountable if voices from agencies, groups or institutions, which is outside

the public sector and representing citizens' interests in a particular constituency or field, are heard. Moreover, the government is obliged to empower members of agencies with political rights to run for elections and be elected or appoint them into the public sector as a way to hold the government representative and ensure voices from all constituencies are included in policy-making process.

- **Public Accountability:** With the increase over the last several decades in public service provision by private entities, especially in Britain and the United States, some have called for increased political accountability mechanisms to be applied to otherwise non-political entities. Legal scholar Anne Davies, for instance, argues that the line between public institutions and private entities like corporations is becoming blurred in certain areas of public service provision in the United Kingdom and that this can compromise political accountability in those areas. She and others argue that some administrative law reforms are necessary to address this accountability gap.

- **Administrative Accountability:** Internal rules and norms as well as some independent commission are mechanisms to hold civil servant within the administration of government accountable. Within department or ministry, firstly, behavior is bounded by rules and regulations, secondly, civil servants are subordinates in a hierarchy and accountable to superiors. Nonetheless, there are independent "watchdog" units to scrutinize and hold departments accountable, legitimacy of these commissions is built upon their independence, as it avoids any conflicts of interest. Apart from internal checks, some "watchdog" units accept complaints from citizens, bridging government and society to hold civil servants accountable to citizens, but not merely governmental departments.

ACCOUNTABILITY AS AN ADJUNCT OF RESPONSIBILITY

- The current focus on citizen led accountability initiatives might to inducing accountability increasingly in a negative sense. Mechanisms like social audits are an extension of catching officials in the act, and this gotcha mentality and the threat of punishment is expected to restrain the providers and bureaucrats from using public office for private gains. Punishment is a critical emend in the enforceability aspect of accountability.

- And if ensuring rule following was over main aim of accountability this would be less problematic. If, however improving government responsiveness was the producer aim, which is true of most conceptions of accountability, a narrow focus on punishment can be counterproductive.
- Performance and responsiveness in public service delivery is also a function of capabilities of public officials to deliver the service. These are few studies addressing how capacities of public officials are being built to deal with the increasing citizen engagement in service delivery. What change has this increased requirement of citizen engagement had on the work culture of street level bureaucrats and how they are being prepared to handle it? Is enough training and learning being done before score keeping and monitoring.
- The accountability initiative is an independent effort to strengthen state accountability in India by underacting policy research, creating network of stakeholders, exploring how new areas and way to collect and discriminate information on the quality of public services in India. The initiative work is collaborative. It seeks to strengthen current accountability efforts by government., civil society, research institutes and media.

ACCOUNTABILITY Vs RESPONSIBILITY

The term responsibility and accountability are often used interchangeably by the people, due to some similarities like the flow of both of these two is from bottom to top. Although, they are different in the sense that in the case of responsibility, a person does what he/she is asked to do. On the other hand, in accountability a person agrees to do, what he/she is supposed to do. The term accountability means a sense of being answerable for the final consequences when an authority is delegated, the employee is empowered to perform the task for his superior but the superior would still take the ownership of the final result. The flow of accountability is bottom up, as the subordinate would be liable to the superior for the task. When a person is accountable for something, he supposed to explain the outcomes of his actions, decisions and omissions. It denotes that an individual or a group who are ready to make good or take the blame if the work is not completed properly.

DIFFERENCE BETWEEN ACCOUNTABILITY AND RESPONSIBILITY:

- The state of having the duty, to do whatever it takes to complete the task in known as responsibility. The condition where in a person is expected to take ownership of one's action or decisions is called responsibility.

- Responsibility refers to obligation to perform the delegated task. On the other hand, answerability for the consequence of the delegated task:
- Responsibility is assigned whereas accountability is accepted
- The origin of responsibility is the assigned authority, on the contrary, accountability raised from responsibility.
- Responsibility is delegated but not completely but there are no such things like delegation of accountability.

CONCLUDING REMARKS

After reviewing the points, it is clear that accountability makes a person accountable for the consequence of the actions or decisions made by him/her. As against this, consequence is not necessarily attached to the responsibility. Further, accountability requires a person to be liable and answerable for the things, he/she does conversely, responsibility expects a person to be reliable and dependable to complete the tasks assigned to him/her.

Unit-V

Synopsis

- **Obedience to Law**
  - Obedience to law: A Legal Duty
  - Need and importance
  - Why People Obey Law- Reasons
- **Problem of Punishment**
  - Can State use Force against its Citizens?
  - Arguments, Limitations and Conditions.
  - Theories of Punishments
  - Kinds of Punishments
- **Disobedience to Law**
  - Meaning, Features, Limitations
  - Civil Disobedience movement; with reference to Gandhiji's Sathya, Ahimsa and Sathyagraha
  - Influence of David Thoreau.
  - Neo-Gandhian Movements: Martin Luther King (Sr) and Nelson Mandela.

OBEDIENCE TO LAW

INTRODUCTION

Though scholarly skepticism has been expressed a lot in the last two decades, lawyers and others have often supposed that people have a moral obligation or duty to obey the law. An obligation is a course of action that someone is required to take. The concept of political obligation is that the citizen must obey the laws of the State. Though there is a big debate regarding origin and purpose of the State and why people should obey the laws of the State it is so clear that at present nations are providing political obligations to their subjects through laws. But if that laws are not acceptable by the people because of its unjust nature then showing obedience to unjust law leads to

revolutions. So, first one should know what law is, what is purpose of law, when law became unjust law and what are the consequences for obedience to unjust laws. More what are the safeguards against unjust law.

Obedience to law: -

It is an act which binds a person to some performance. It is the binding power of duty, promise or contract. The very subject of an obligation to obey or show obedience to law may seem to have an academic cast, this obedience is followed from the ages as it is beneficiary to the people only. An individual has to follow rules of behaviour in society for his own good and for the good of others. Killing an innocent is wrong both lawfully and morally, this obedience is a necessary too.

Unjust Laws: -

Unjust means 'unfair'. These are those laws which is against to the bases of the law. One can find the question of just or unjust question regarding positive law only. Because only in case of positive law only one can find maker, implementer, protector of the law. Any law that uplifts human personality is just. Unjust means 'not just', 'unfair', 'bad' etc. An unjust law is a code that is out of harmony with the moral law. Sometimes, governments pass unjust laws with their brute majority in the legislature under pressure of some interested groups. Though people have to obey the laws whether they are good or bad. People revolt against bad laws by their nature. Under the unbearable circumstances created by injustice and bad laws, people disobey such laws.

Obedience to unjust laws: -

Over this issue even the philosophers and jurists only have the differences between their views, while the Hobbes says one is expected to obey the law, natural theory of Locke and Rousseau sanctions disobedience to bad laws.

The problem of obedience to unjust law

Disobedience means refusal to obey the commands of law. Even if a law is bad on moral grounds, one is expected to obey law (Hobbes). However, natural law theory sanctions disobedience to bad laws (Locke and Rousseau). Thus, positivists hold that disobedience to law is not legally valid. But the decision to disobey the unjust laws rests with the individual consciousness. The problem of obedience to unjust laws is based on the relationship between morality and law. While morality

belongs to ethics, law relates to jurisprudence. The moral basis of obligation is a matter of personal choice. According to moralists, a law is no law at all if it comes into conflict with morality. But moralist argument is rejected by positivists like Jeremy Bentham, Austin etc.

NEED FOR THE OBEDIENCE OF LAW

- This concept or the question is overlooked in our everyday lives and ironically, there is no one right answer. Every individual has his own need or obligation for this. For example, it can be through fear, respect, force, divinity or his own conscience. The basic need to obey or show obedience is to live a peaceful life in the society and to assure the same to everyone else too.
- Anthony D'Amato in his examination on the obligation to obey the law in a case study of the death of Socrates comes up with three reasons, first, a citizen may have assented to that law either expressly or impliedly and thus agreed to obey it. With regards to this, it has been said to be extremely difficult if not impossible to find express consent and as such, consent has been implied from actions such as voting or accepting the benefits of living within a state.
- Secondly, the compulsion to obey the law is put in consequentialist terms. The idea behind this justification is to try and picture how a society in which people disobeyed the law would look like. According to Freeman,5such a society would easily slide back to the Hobbesian state of nature which was a state of perpetual war of every man against his neighbour.
- The third reason is that the citizen may have been the recipient of benefits conferred by other citizens and therefore it is arguable that he should have an obligation to obey the laws enacted by those citizens. Freeman refers to this as the ‘free rider’ and the argument is that it is wrong for those who may have benefited from the state no to respond with obedience to the law.
- An analysis of the views of naturalists and positivists on obedience to law discloses merger of opinions at one point or the other as expressed by various theorists. Positivists for example advocate for absolute obedience of the law as posited by the sovereign but we still see some positivists like Hart who have stated that injustice must be resisted.
- According to Hart the right of resistance would be based upon the assumption that unjust provisions do not constitute positive law of if one agreed, that such unjust provisions were

indeed law, then they were too reprehensive to be applied or to command anyone's obedience.

- On the other hand, Even the theorist most faithful to natural law has at one point made an argument on obedience that has some positivist element. Aquinas for example did say that if law contradicted the law of God one should obey God's law rather than human law, however where a law is rendered unjust merely because it offends the public good, then it might be better to simply obey.

IMPORTANCE

- Man is a societal being and even tough law is made and enforced by the state, it is always accepted by the society. Law is simply a future prediction device which keeps the state and its subject in order to avoid the Anarchy.
- Law governs much of what everyone does, day in and day out. It tells us what our rights and duties are. It allows us to assert rights that we have. It lets us know the consequences of not doing what we are supposed to do. Without law, we do not have civilization; we have chaos. Law is meant to protect people and property from harm
- It is designed to either remove people from society who have harmed people and property or to make them monetarily responsible for the harm. If we had no law, people could steal from us, hurt us, damage our property, or do any number of other acts that society has agreed it does not find acceptable. Conversely, we could steal from others or harm them without laws to discourage us from doing so.
- There is no reason to think that, without law, people would all behave nicely and reasonably. With law, we clearly know what we are responsible for doing and what will happen to us if we violate a law. Without law, people could and would do whatever they wished.
- Law plays an important indirect role in regard to social change by shaping a direct impact on society. For example: A law setting up a compulsory educational system.
- On the other hand, law interacts in many cases indirectly with basic social institutions in a manner constituting a direct relationship between law and social change. For example, a law designed to prohibit polygamy Law plays an agent of modernization and social change.

- It is also an indicator of the nature of societal complexity and its attendant problems of integration. Further, the reinforcement of our belief in the age-old panchayat system, the abolition of the abhor able practices of untouchability, child marriage, sati, dowry etc are typical illustrations of social change being brought about in the country trough laws.
- Law is an effective medium or agency, instrumental in bringing about social change in the country or in any region in particular. Therefore, we rejuvenate our belief that law has been pivotal in introducing changes in the societal structure and relationships and Continues to be so.
- Law certainly has acted as a catalyst in the process of social transformation of people wherein the dilution of caste inequalities, protective measures for the weak and Vulnerable sections, providing for the dignified existence of those living under unwholesome conditions etc. are the illustrious examples in this regard.
- Social change involves an alteration of society; its economic structure, values and beliefs, and its economic, political and social dimensions also undergo modification. However, social change does not affect all aspects of society in the same manner. While much of social change is brought about by material changes such as technology, new patterns of production, etc., other conditions are also necessary. For example, as we have discussed it before, legal prohibition of untouchability in free India has not succeeded because of inadequate social support. Nonetheless, when law cannot bring about change without social support, it still can create certain preconditions for social change. Moreover, after independence, the Constitution of India provided far-reaching guidelines for change.
- Its directive principle suggested a blueprint for a new nation. The de-recognition of the caste system, equality before the law and equal opportunities for all in economic, political and social spheres were some of the high points of the Indian Constitution.

WHY DO PEOPLE OBEY THE LAW?

Economists credit deterrence, saying that legal sanctions influence behavior, and sociologists point to legitimacy, the idea that people obey the law because they see it as a legitimate authority.

People obeys the laws because of following Reasons

1. Law has an impact on our daily life

2. To avoid legal consequences
3. Because people respect authority
4. Because people feel it is morally right to obey the law
5. Fear of punishment

CAN STATE USE FORCE AGAINST ITS CITIZENS?

To Machiavelli, the state is only a power system. Yet he admits that the power of the state is not for its own sake but for the sake of the prestige, honour and well-being of the people. Use of force by state against the citizens is necessary to save others from unwanted or unwarranted interference. Means any action against social good. Liberty implies the freedom of action for the social good and not for unwarranted interference.

CONCLUDING REMARKS

Obedience to the law is the basic concept which assures a secure and safe life to the subjects, having the disobedience to the unjust laws in a peaceful way is also mandatory. Obedience is essential in individual life as well as in social life. Man is a social animal and to live in the society man has to obey certain rules, tradition, customs and conventions. If necessary, he should be ready to curtail his personal liberty to secure social life and mend his social behaviour. If everyone is obedient to key precepts society keeps on running smoothly. It helps in stopping crimes. Obedience to the law stops people from committing crimes. Obedience is a necessary element of life. However, blind obedience to unquestioned authority is bad. Sometimes some autocrats and despots do not give justice to the people. They oppress them like anything and force them to obey blindly the rules imposed by them. In such cases, people with should fight for right law and justice. But otherwise, normal obedience to elders and superiors is very necessary for success in life.

PROBLEM OF PUNISHMENT

INTRODUCTION

Punishment, the infliction of some kind of pain or loss upon a person for a misdeed i.e., the transgression of a law or command. Punishment may take forms ranging from capital punishment, flogging, forced labour, and mutilation of the body to imprisonment and fines. Deferred punishments consist of penalties that are imposed only if an offense is repeated within a specified time. The immediate consequence that follows a criminal act is known as punishment. Thus, punishment is defined as suffering, loss, pain, or any other penalty that is inflicted on a person for the crime by the concerned authority. There are different theories of punishment in law.

The central claim is then made that punishment would be justified in a system of civil rights if (1) it prevents or at least substantially deters violations of rights while at the same time being necessary to this particular task. We realize that punitive sanctions often infringe rights of the violator; accordingly, we must also require that

(2) the right protected is not outweighed by the right infringed by sanction and that it cannot be substantially be better protected by a sanction that infringes a right of roughly the same. Thus, the important grounds for punitive sanctions in a system of rights are: overall necessity, compatibility with rights, and relative deterrent effectiveness.

On these same grounds, a policy of not punishing the innocent, of punishing only adjudged violators, would be incorporated in the background institutions, in particular, the trial system, that served to admit people, upon determination of their guilt, into the practice of being punished.

PURPOSE OF PUNISHMENT

Punishment has recognized five purposes:

1. **Incapacitation**: prevents future crime by removing the defendant from society. Examples of incapacitation are incarceration, house arrest, or execution pursuant to the death penalty.
2. **Retribution**: prevents future crime by removing the desire for personal avengement in the form of assault, battery, and criminal homicide, against the defendant. When victims or society discover that the defendant has been adequately punished for a crime, they achieve a certain satisfaction that our criminal procedure is working effectively, which enhances faith in law enforcement and our government.

3. **Restitution:** prevents future crime by punishing the defendant financially. Restitution is when the court orders the criminal defendant to pay the victim for any harm and resembles a civil litigation damages award. Restitution can be for physical injuries, loss of property or money, and rarely, emotional distress. It can also be a fine that covers some of the costs of the criminal prosecution and punishment.

4. **Rehabilitation:** prevents future crime by altering a defendant's behaviour. Examples of rehabilitation include educational and vocational programs, treatment centre placement, and counselling. The court can combine rehabilitation with incarceration or with probation or parole. In some states, for example, nonviolent drug offenders must participate in rehabilitation in combination with probation, rather than submitting to incarceration. This lightens the load of jails and prisons while lowering recidivism, which means reoffending.

5. **Deterrence:** Deterrence prevents future crime by frightening the defendant or the public. The two types of deterrence are specific and general deterrence. Specific deterrence applies to an individual defendant. When the government punishes an individual defendant, he or she is theoretically less likely to commit another crime because of fear of another similar or worse punishment. General deterrence applies to the public at large. When the public learns of an individual defendant's punishment, the public is theoretically less likely to commit a crime because of fear of the punishment the defendant experienced. When the public learns, for example, that an individual defendant was severely punished by a sentence of life in prison or the death penalty, this knowledge can inspire a deep fear of criminal prosecution.

PROBLEMS OF PUNISHMENT.

Legal punishment involves treating those who break the law in ways that it would be wrong to treat those who do not. Even if we assume that those who break the law are responsible for their actions and that the laws they break are just and reasonable, this practice raises a moral problem. The problem of punishment has generated a large and increasingly sophisticated literature with a wide variety of attempted solutions. The claim that it is morally impermissible for the state to punish people for breaking the law is likely to strike most people as implausible, if not absurd. While debates persist about precisely which forms of behaviour a government may justly and

reasonably prohibit, there is widespread agreement that if it is appropriate for a state to prohibit a particular form of behaviour, then it is permissible for the state to punish those who engage in it.

- Punishment often fails to stop and can even increase the occurrence of the undesired response.
- Punishment arouses strong emotional response that may generalize.
- Using punishment models aggression.
- Internal control of behaviour is not learned.
- Punishment can easily become abuse.
- Pain is strongly associated with aggression.

Even though punishment weakens responses, it can have unintended side effects-

- General suppression of behaviour.
- Strong emotional responses.
- Aggressive behaviour.

A RETRIBUTIVE ARGUMENT AGAINST PUNISHMENT.

The argument sets out to show that punishment cannot be justified. The argument does not target any particular attempts to justify punishment, retributive or otherwise. Clearly, however, if it succeeds, all such attempts fail. Punishment cannot be justified, the paper argues, because it cannot be demonstrated that any punishment, no matter how minimal, is not a disproportionate retributive response to criminal wrongdoing. If we are to hold onto proportionality i.e., proportionality as setting a limit to morally permissible punishment-then punishment is morally impermissible. The contrast is with determinative proportionality, according to which it is likewise morally impermissible to impose a punishment on an offender that is less severe than is proportionate to the seriousness of the offender's crime. Considering such statements also provides a more rounded view of the anchoring problem. One such alternative holds that the punishment scale must be anchored not just in the most severe punishment, but in the least severe punishment as well. Other alternatives hold that it is necessary and sufficient to anchor the punishment scale in any two punishments, neither of which needs to be the most or least severe punishment. A further suggestion is that one anchoring point anywhere along the punishment scale is sufficient, because it is possible to 'project' from such a point, so as to determine the correlative punishments for all

other crimes, and so derive a complete punishment scale. Finally, the suggestion is considered that one can approach the issue of a punishment scale 'holistically', denying any distinction between anchoring and derived or projected' punishments.

LIMITATIONS OF PUNISHMENT

Structures of punishment are infused with anxiety about national belonging. Since the mid-1990s, governments in the United States, Australia, and much of Western Europe have embraced the practice of immigration detention, building quasi-prisons for non-citizens at a breakneck pace. Criminal justice systems have also warped under the pressure of border control. In the past five years alone, both the United States and the United Kingdom have established special prisons to hold foreign nationals serving criminal sentences. In Britain, non-citizens convicted of criminal offenses are transferred to prisons 'embedded' with border agents. In the US, more than half of last year's roughly 400,000 deportations started when a border agent entered a prison or a jail. These practices unfold at the edges of punishment. In the formal language of the law, many carceral activities are classified as regulation rather than punishment. Holding a detainee in a freezing jail cell, transferring a long-term resident to a prison 3,000 miles from home, denying non-citizens access to rehabilitative programs: none of these practices is punishment in technical, legal terms. Every day, on both sides of the Atlantic, some of the most pernicious and punitive aspects of late modern incarceration take place beyond punishment, in the Gray zone of the civil sanction. Punishment of any kind is very limited in modifying behaviour and should never be used as the sole means of modifying behaviour. By relying solely on punishment, behaviour becomes controlled by external stimulus; never internalized. While there may be an appropriate place for logical consequences for negative behaviour, punishment should not be used as the sole means of modifying behaviour.

CONDITIONS FOR PUNISHMENT

1. The punishment has to be relative intense.
2. It has to be giving promptly. This is one of the problems with the current law system. There is too much time between the crime and the punishment.
3. It should be given consistent.
4. The punishment should not be associated with any kind of positive enforcement. If a punishment is associated with a positive enforcement, the behaviour will increase instead of decrease.

5. It should not lead to escaping or avoidance behaviour.

KINDS OF PUNISHMENT

The main purpose and object of criminal justice is to punish the wrongdoer (offender) and to maintain law and order in society. It is the State which punishes the Criminal. Punishment necessarily implies some kinds of pain inflicted upon the offender or loss caused to him for his criminal act which may either be intended to deter him from repeating the crime or maybe an expression of society disapprobation for his Anti - Social conduct or it may also be directed to reform and regenerate him and at the time ported the society from criminals. Punishment is the process by which the State inflicts some pain to a person or property of a person who is found guilty of a crime. Punishment is one of the oldest methods of controlling crime and criminality. The history of the early penal system in different parts of the world reveals that the punishments were cruel and barbaric in nature.

Types of Punishment are as follows -

1) Capital Punishment / Death Penalty - In the history of punishment, capital punishment/death penalty has always occupied and very important place. In ancient times and even in the middle age, sentencing of offenders to death was very common kind of punishment. Even for what might be considered as minor offenses in Modern Times, death penalty was imposed. Death sentence has always been used as an effective punishment for murderers and dangerous offenders. It has both deterrent and preventive effect. The justification advanced in support of capital punishment is that it is lawful to forfeit the life of a person who takes away another's life. The killer deserves execution under this mode of punishment, legal vengeance solidifies and social solidarity against lawbreakers and therefore it is legally justified. The Mughal rulers in India also made use of death penalty to eliminate unwanted criminals. They used crudest methods for execution of death sentence. However, with the British rule in India, this inhuman and barbaric method of execution where abolished and death by hanging remained the only mode of inflicting death sentence. It is the most serious nature of punishment. Some countries abolished it. Capital punishment/death penalty awarded in India is certain exceptional cases. The offenses which are punishable with the death sentence under the Indian Penal Code.

2) Deportation - Another way of punishment is the deportation of corrigible or dangerous offenders. Deportation of criminals is also called banishment. Corrigible and hardened criminals where generally clamored to far off places with a view to eliminating them from the community.

In England, war criminals there usually transported to distant Astro-African British colonies. In India, this method also known as transportation, popularly known as Kalapani. The practice was abolished in 1995. It still persists in Mini-form popularly called as externment. The object of externment offender is to dissociate him from his surroundings so as to reduce his capacity to commit crime. This form of punishment has been incorporated in the penal law of India.

3)Corporal punishment **- Corporal** punishment was very common until late 18th century. Corporal punishment includes modulation, flogging (or whipping) and torture etc.

(a) Flogging: *Dictionary meaning of word flogging means, "to whip or to beat with strap/stick as punishment. In middle ages, Whipping was the commonest form of punishment. The instruments and methods of flogging differ from country to country. In Russia instrument used for blogging was constructed of a number of dried and hardened thongs was construed of rawhide, interspersed with wires having hooks in their ends, which could enter and tear the flesh of the Criminal. It has now been discontinued being barbarous and cruel in form. The main object of this kind of punishment is the deterrence. However, critics. point out that this kind of punishment is not only inhuman but also ineffective. It did not serve any useful purpose in case of hardened criminals and recidivists. However, it proved d effective in case of minor offenses like its eye-teaing, drunkenness, vagrancy etc. In India, whipping was recognized as a mode of punishment under the Whipping Act, 1864 which was repeated and replaced by a similar act in1909 and the same was abolished in the year 1955.*

(b) Mutilation *- Mutilation is another kind of corporal punishment. It is prevalent during eminent Hindu Period. In case of theft, one or both the hands the offender were chopped off and in case of sex offenses, his private part was cut off. The justification advanced in support of mutilation was that it served as an effective measure of deterrence and prevention. This mode of punishment as well has been completely discarded being barbaric in nature This system was in practice in England, Denmark and many other European countries as well.*

(c) Branding *- In this type of punishment, criminals were branded with the appropriate mark on the forehead so that they would be identified and subjected to public Ridicule. For example, if a person found guilty of theft, the word 'theft' or 'T' it is branded on his forehead and the public would call him theft. In England, branding was practiced till 1829. finally, it was abolished by an Act of Parliament. In India branding was prevalent during the Mughal rule in its crudest form and was abolished later.*

(d) Chaining*- Chaining the offenders together was also commonly used as a mode of punishment. Their liberty and mobility were thus completely restricted. The hands and legs of criminals were tied with iron rods and Chained together. This method is now being sparingly used in the present prison system.*

(e) Pillory *- Pillory was yet another form of cruel and barbaric corporal punishment. It was in practice till 19th century. Hardened criminals and dangerous offenders were nailed in walls and shot or stoned to death. There is no doubt that this type of punishment was crueller and more brutal in form and therefore it has no place in the modern penal system. The system of pillory existed slightly in the different form during the Mughal rule in India. It is still used as a mode of punishment for sex offenders in Islamic countries which take offense against women very seriously.*

4)Fine and confiscation of property **-** This type of punishment was imposed for offenses which were not serious in nature and were punished with the fine. This type of punishment was especially used for offenses involving the breach of traffic and revenue laws. It is considered as an appropriate punishment for minor offenses and crimes related to the property. Financial penalty may either be in form of fine or compensation or costs.

5) ***Imprisonment*** **-** Another form of punishment is imprisonment. Imprisonment represents a most simple and common punishment which is used all around the world. If properly administered, imprisonment can serve all the three objects of punishment. It may be **deterrent** because it makes an example of the offender to others. It may be **preventative** because imprisonment disables the offender, at least for some time, for repeating the offense. If properly used, it might give opportunities for **reformatting** the character of the accused.

Conditions of imprisonment in civilized countries have undergone radical changes in recent decades. Alternative devices such as open jail and prison hostel are being extensively used as the modified form of prisons for incarceration of offenders.

6) Solitary Confinement - Another kind of punishment is solitary confinement. This punishment may be considered as an aggravated form of imprisonment. In this type of punishment, convicts are confined in solitary prison-cells without any contact with their follow prisons. Solitary confinement which was introduced in the United States Pennsylvanian prison in 1770 had to be replaced by the Auburn system in 1819 in which prisoners were taken out to work together in Silence. Experience had shown that many of the prisons undergoing the sentence of solitary

confinement died in prisons and many more returned insane and those who survived turned more hostile and dangerous in society. Section 73 and 74 of the Indian Penal Code lay down the limits beyond which solitary confinement cannot be imposed in India. The total period of solitary confinement cannot exceed 3 months in any case. It cannot exceed 14 days at a time with intervals of 14 days in between or 7 days at a time in with 7 days interval in between.

7) Indeterminate Punishment **-** Another kind of imprisonment is indeterminate sentence. In this case, the accusative is not sentenced to imprisonment for any fixed period. The period is left determinant at the time of the award. When the accused show's improvement, the sentence may be terminated.

8) Stoning **-** The punishment of stoning is barbaric in nature. It was in practice during the medieval period. In Islamic countries like Pakistan, Saudi Arabia offenders found guilty of sex were punished by stoning to Death. Though this type of punishment is barbaric in nature due to its editor and effect, sex crimes against women are well under control of these countries.

THEORIES OF PUNISHMENT

Deterrent Theory; The retributive theory assumes that the punishment is given only for the sake of it. Thus, it suggests that evil should be returned for evil without taking into consideration any consequences. There are two theories in which this theory can be divided further. They are specific deterrence and general deterrence. In specific deterrence, punishment is designed such that it can educate the criminals. Thus, this can reform the criminals that are subjected to this theory. Also, it is maintained that the punishment reforms the criminals. This is done by creating a fear that the punishment will be repeated. While a general deterrence is designed to avoid future crime. So, this is done by making an example of each defendant. Thus, it frightens the citizens to not do what the defendant did.

Retributive Theory; Retribution is the most ancient justification for punishment. This theory insists that a person deserves punishment as he has done a wrongful deed. Also, this theory signifies that no person shall be arrested unless that person has broken the law. Here are the conditions where a person is considered as an offender are:

- The penalty given will be equivalent to the grievance caused by the person.
- Performed a crime of certain culpability.

- That similar persons have been imposed for similar offenses.
- That the action performed was by him and he was only responsible for it. Also, he had full knowledge of the penalty system and possible consequences.

Preventive Theory; This theory has used a restraint that an offender if repeats the criminal act is culpable for death, exile or imprisonment. The theory gets its importance from the notion that society must be protected from criminals. Thus, the punishment here is for solidarity and Défense. The modern criminologists saw the preventive theory from a different view. They first realized that the social and economic forces should be removed from society. Also, one must pay attention to individuals who show anti-social behavior. This is because of psychological and biological handicaps.

Reformative Theory: Deterrence and retributive are examples of classical and non-classical philosophies. The reformative theory was born out of the positive theory that the focal point of crime is positive thinking. Thus, according to this theory, the objective of punishment needs to be reformation by the offender. So, this is not a punishment virtually but rather a rehabilitative process. Thus, this process helps in making a criminal a good citizen as much as possible. Furthermore, it makes the citizen a meaningful citizen and an upright straight man.

PUNISHMENT UNDER INDIAN PENAL CODE ,1860

Section 53 to 75 of the Indian Penal Code 1860 deals with the scheme of Punishment. Section 53 of the Indian Penal Code prescribes five kinds of punishments.

a) Death.

b) Imprisonment for life

c) Imprisonment, which is of two descriptions, namely –

(1) Rigorous, that is with hard labour

(2) Simple

d) Forfeiture of property

e) Fine.

a) Death: Death Penalty or capital Punishment is the most serious nature of punishment. Some countries abolished it. A death sentence may be awarded under the Indian Penal Code in the following cases.

i) Waging, or attempting to wage war, or abetting waging of war, against the Government of India. (Section. 121)

ii) Abetment of mutiny, if mutiny is committed. (Section 132)

iii) Giving or fabricating false evidence upon which an innocent person suffers death (Section. 194)

iv) Murder (Section 302)

v) Abetment of suicide of a minor, or insane or intoxicated person (305)

vi) Attempt to Murder by a person under sentence of imprisonment for life, if hurt is caused (Section 307).

vii)Kidnapping for ransom etc. (Section 364A)

viii) Dacoity with murder (Section 369).

b) Imprisonment for life - Life Imprisonment means a sentence of imprisonment running throughout the remaining period of a convict's natural life (till death). But in practice it is not so. According to Section 55 of Indian Penal Code, in every case in which sentence of imprisonment for life shall have been passed, the appropriate Government may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years. Section 57 states that in calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years.

K.M. Nanavati v. State of Maharashtra, (AIR 1962 SC 605): In this case supreme court held that imprisonment for life means rigorous imprisonment for life and not simple Imprisonment.

c) Imprisonment - Rigorous and Simple:

i) Rigorous Imprisonment – Imprisonment may be rigorous with hard labour. such as digging earth, cutting wood etc**.** According to Section 60 of I.P.C in every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple or that any part of such imprisonment shall be rigorous and the rest simple.

The Indian Penal Code prescribes imprisonment as punishment for –

(1) Giving or fabricating false evidence with intent to procure conviction of capital offence (Section 194)

(2) House-trespass in order to commit offence punishable with death (Section 449)

ii) Simple Imprisonment: Simple imprisonment is imposed for small offences like wrongful restraint, defamation etc. In case of simple imprisonment, the convict will not be forced to do any hard manual labour. There are some offences which are punishable with simple imprisonment are as follows:

1) Refusing to take oath (Section 178)

2) Defamation (Section 500)

3) Wrongful restraint.

4) Misconduct by a drunken person, etc. (Section 510)

Solitary Confinement. Solitary Confinement means keeping a prisoner thoroughly isolated from any kind of contact with the outside A harsh and hardened convict may be confined in a separate cell to correct his conduct. Court can award this punishment only when the offence is punishable with rigorous imprisonment.

Solitary confinement may be imposed subject to the following restrictions

(a) Solitary confinement should not exceed three months of the Substantive term of imprisonment.

(b) It cannot be awarded where imprisonment is not part of the substantive sentence.

(c) It cannot be awarded for the whole of term of imprisonment.

(d) It cannot also be awarded where imprisonment is in lieu of fine.

According to Section 74 of I.P.C in no case the sentence of solitary confinement be awarded more than fourteen days at a time. and it must be imposed at intervals.

d) Forfeiture of property - Forfeiture of property means taking away the property of the criminal by the State. Forfeiture of property is now abolished except in the case of following offences: 1) Committing depredation on territories of Power at peace with the Government of India (Section 126).

2) Receiving property taken by war or depredation mentioned in sections 125 and 126 (Section 127).

e) Fine -The Courts may impose fine as sole imprisonment or alternative or it may be imposed in addition to the imprisonment. The Indian Penal Code, 1860 prescribes fine along with imprisonment in respect of certain offences. In default of fine, imprisonment may be imposed.

CONCLUDING REMARKS

Legal punishment provides beneficial effects (utility) for the future that are supposed to outweigh the suffering inflicted on offenders. This utility may be achieved, through punishment, by individual and general deterrence, incapacitation, rehabilitation and resocialization, and the affirmation of norms. Restorative justice emphasizes the importance of conflict-resolution through the restitution of wrongs and losses by the offender. The victim of a crime and the harm suffered play a central role in restorative justice. The main objective is to repair or compensate the harm caused by the offence. The gamut of perspectives concerning the justification and goals of punishment was narrowed down to three main categories: Retributivism, Utilitarianism and Restorative Justice. Retributivist theories are retrospective in orientation. The general justification for retributive punishment is found in a disturbed moral balance in society; a balance that was upset by a past criminal act. Infliction of suffering proportional to the harm done and the culpability of the offender (desert) is supposed to have an inherent moral value and to restore that balance.

DISOBEDIENCE TO LAW

INTRODUCTION AND MEANING

Disobedience to Law - Disobedience is the active, professed refusal of a citizen to obey certain laws, demands, orders or commands of a government. By some definitions, civil disobedience has to be nonviolent to be called "civil". Hence, civil disobedience is sometimes equated with peaceful protests or nonviolent resistance. disobedience is a symbolic or ritualistic violation of the law rather than a rejection of the system as a whole. The disobedient, finding legitimate avenues of change blocked or nonexistent, feels obligated by a higher, extralegal principle to break some specific law.

Civil Disobedience Movement; **Henry David Thoreau** popularized the term in the US with his essay *Civil Disobedience*, although the concept itself has been practiced longer before. It has inspired leaders such as Susan B. Anthony of the U.S. women's suffrage movement in the late 1800s, Saad Zaghloul in the 1910s culminating in Egyptian Revolution of 1919 against British Occupation, and Mahatma Gandhi in 1920s India in their protests for Indian independence against the British Raj. Martin Luther King Jr.'s and James Bevel's peaceful protests during the civil rights movement in the 1960s United States contained important aspects of civil disobedience. Although civil disobedience is considered to be an expression of contempt for law, King regarded civil disobedience to be a display and practice of reverence for law: "Any man who breaks a law that conscience tells him is unjust and willingly accepts the penalty by staying in jail to arouse the conscience of the community on the injustice of the law is at that moment expressing the very highest respect for the law.

FEATURES OF CIVIL DISOBEDIENCE

Conscientiousness: This feature, highlighted in almost all accounts of civil disobedience, points to the seriousness, sincerity and moral conviction with which civil disobedients breach the law. For many disobedients, their breach of law is demanded of them not only by self-respect and moral consistency but also by their perception of the interests of their society. Through their disobedience, they draw attention to laws or policies that they believe require reassessment or rejection. On Rawls's account of civil disobedience, in a nearly just society, civil disobedients

address themselves to the majority to show that, in their considered opinion, the principles of justice governing cooperation amongst free and equal persons have not been respected by policymakers. The activism of Martin Luther King Jr. is a case in point. King was motivated by his religious convictions and his commitments to democracy, equality, and justice to undertake protests such as the Montgomery bus boycott (civil rights protest).

Communication: In civilly disobeying the law, a person typically has both forward-looking and backward-looking aims. She seeks not only to convey her disavowal and condemnation of a certain law or policy, but also to draw public attention to this particular issue and thereby to instigate a change in law or policy. A parallel may be drawn between the communicative aspect of civil disobedience and the communicative aspect of lawful punishment by the state. Like civil disobedience, lawful punishment is associated with a backward-looking aim to demonstrate condemnation of certain conduct as well as a forward-looking aim to bring about a lasting change in that conduct. The forward and backward-looking aims of punishment apply not only to the particular offence in question, but also to the kind of conduct of which this offence is an example.

Publicity: The feature of communication may be contrasted with that of publicity. The latter is endorsed by Rawls who argues that civil disobedience is never covert or secretive; it is only ever committed in public, openly, and with fair notice to legal authorities. Hugo A. Bedau adds to this that usually it is essential to the dissenter's purpose that both the government and the public know what she intends to do (Bedau 1961, 655). However, although sometimes advance warning may be essential to a dissenter's strategy, this is not always the case. As noted at the outset, publicity sometimes detracts from or undermines the attempt to communicate through civil disobedience.

Non-violence: A controversial issue in debates on civil disobedience is non-violence. Like publicity, non-violence is said to diminish the negative effects of breaching the law. Some theorists go further and say that civil disobedience is, by definition, non-violent. According to Rawls, violent acts likely to injure are incompatible with civil disobedience as a mode of address. Even though paradigmatic disobedients like Gandhi and Martin Luther King Jr embody Rawls's image of non-violent direct action.

Ordinary Offences; In democratic societies, civil disobedience as such is not a crime. If a disobedient is punished by the law, it is not for civil disobedience, but for the recognised offences she commits, such as blocking a road or disturbing the peace, or trespassing, or damaging property,

etc. Therefore, if judges are persuaded, as they sometimes are, either not to punish a disobedient or to punish her differently from other people who breach the same laws, it must be on the basis of some feature or features of her action which distinguish it from the acts of ordinary offenders

METHODS OF DISOBEDIENCE

There are two methods to show disobedience they are through:

- Violent methods
- Non – Violent methods

Prof. Harrop Freeman argues that disobedience is not illegal if it is not violent. Non-violent disobedience is perfectly legal. It opposes only a particular law but respects the legal system. Non-violent disobedience is opposed to the letter of the law but not to the spirit of the law. Therefore, the non-violent form of disobedience to law does not disrespect law; but respects legal order. It is not ordained so much against the law as such, as it is against the letter of the law.

Gandhian philosophy of non-violent civil disobedience as a political weapon is based on the relation between individual morality and institutional legality. Civil disobedience is not opposed to the spirit of law. It is a public non-violent act of illegality performed for a moral purpose with willingness to accept the legal justice. It is neither fully legal, nor fully illegal. It may be illegal. But its illegality is marked by an anxiety to protect the legal order. Thus, law and morality are reconciled with each other.

HENRY DAVID THOREAU's APPROACH TO POLITICAL OBLIGATION.

Henry David Thoreau was born in 1817 in Concord. He was an American essayist, poet, environmentalist, naturalist, individualist, tax resister, the slavery abolitionist and philosopher and so on. He was educated in Harvard University and became a close associate of Rupert Emersion. The influence of Rousseau, Jefferson and Tolstoy on Thoreau was impressive and substantial. Thoreau was a philosophical rebel and asserted the right of the individual to resist the institutional conventions to enslave him. His approach to political obligation was based on the dignity and integrity of the individual.

Famous works

Henry David Thoreau is best known for his book Walden, a reflection upon simple living in natural surroundings, and his essay "Civil Disobedience" (originally published as "Resistance to Civil Government"), an argument for disobedience to an unjust state. Thoreau's books, articles, essays, journals, and poetry amount to more than 20 volumes.

CIVIL DISOBEDIENCE

Thoreau's famous and most popular book on 'Civil disobedience' (1864 clearly explained the right of the individual to obey the dictates of his conscience rather than the dictates of the State. He preferred to go to jail rather than pay taxes to a government which condoned human slaver. His Civil Disobedience was a favourite book of Tolstoy and Gandhiji.

❖ **Thoreau Strongly support and Respect for individual**

Thoreau asserted, like many individualists, that the authority of the government is an impure one. But it must have the sanction and consent of the governed in order to be strictly just. The progress from an absolute to a limited progress is a true respect for the individual. Even the Chinese philosopher Confucius, regarded the individual as the basis of the empire. Thoreau declared, like Gandhijui and Jefferson that there would never be a really free and enlightened State until the State came to recognize the individual as a higher and independent power, from which all its power and authority were derived.

❖ **Thoreau's views on Disobedience to Unjust laws**

Thoreau had no faith in the existing laws. He called them unjust laws which strangle man's freedom. He questioned their propriety and asked the people to break unjust law. Thoreau himself refused to pay poll (tax) for nearly six years. Consequently, he was put into a jail and physically tortured. But he did not acquiesce/agree in the policy of government and remained undoubted in his challenge against it. He bravely smiled at the weakness of the government.

❖ **Thoreau recognized the Right of Revolution**

With a view to redeeming the individual from the evil influences of the government, Thoreau recognized the necessity of the right of revolution. According to him, all men recognize the right

of revolution, i.e., the right to disobey the government, when its tyranny and inefficiency are great and un-endurable. Thoreau advised the individual to obey the dictates of his conscience and determine the value of every question rather than to submit to the desires of the State.

❖ **Thoreau raised his voice for Abolition of Slavery**

Thoreau rightly regarded the slavery as a bolt on the humanity. He considered John Brown, the slavery abolitionist, as a great hero. Thoreau advised the abolitionists to immediately withdraw their support from the Massachusetts government without waiting till they constituted a majority. He explained that respect for rights was more desirable than respect for law. Therefore, Thoreau boldly condemned the Government of Massachusetts (USA) on the question of slavery.

❖ **Thoreau is not the anarchist - he is the supporter of Good Government**

Though Thoreau showed all his anger against the evil governments he was not a moral enemy of the State and its organizations. As such he did not believe in a theory of a violent revolution. He is not the anarchist. He asked for a better government which educates masses, promotes free trade (but not capitalism) and keeps the country free. But the State should never coerce the individual. According to Thoreau, a good government is always based on the consent of the individuals and allows them to live honestly and comfortably. Finally, Thoreau, following the footsteps of Rousseau and Tolstoy, stood for a simple life. He firmly believed in the dignity of human behaviour, he tried to give a moral tinge to all human efforts and aspirations. He looked with utmost interest for all round development of individual personality. He was a rebel against the authoritarian rule of any government.

GANDHI'S APPROACH TO POLITICAL OBLIGATION.

M.K.C. GANDHI (1869-1948) IDEA OF CIVIL DISOBEDIENCE

- **Gandhism-Sarvodaya;** Mohandas Karamchand Gandhi (2 October 1869 – 30 January 1948) was an Indian lawyer, anti-colonial nationalist, political ethicist, political, social and social reformer and a moral revolutionary. who employed nonviolent resistance to lead the successful campaign for India's independence from British Rule, and in turn inspire movements for civil rights and freedom across the world? He described his role as a citizen of the work. He lived and died for the Country. He was a holy man in politics. He insisted

on the purity of both ends and means. In fact, he was not a systematic academic thinker in the field of political philosophy. He expressed his opinions on various occasions. His expressions and thoughts later came to famous as Gandhian Principles - Gandhism.

- **Establishment of Rama Rajya;** on the basis of Karma yoga. He said that the concept of Utilitarianism (greatest happiness to greatest number) is not correct the society should adopt Sarvodaya (the good of all). He said that the existing society is to be gradually transformed into a Sarvodaya society by modifying and purifying the existing institutions still the people are worth to be free of the State and government. According to Gandhi the present State can be modified gradually through non-violence, decentralization (Swaraj and Janshakti), cottage industries, common heritage of wealth, secularism and Lokniti (party less democracy) in the place of Raj Niti.
- **State as an organization of violence and force**; Gandhiji considered the State as an organization of violence and force. The coercive character of the State shall be repelled. Gandhiji explained his philosophy on civil disobedience in his famous book Indian Home Rule. His approach on political obligation was based on Satyagraha (Civil disobedience and non-cooperation), Non-violence, Truth and Sarvodaya.

SATYAGRAHA AS A TOOL OF CIVIL DISOBEDIENCE

Store of human knowledge; Satyagraha is Gandhi's unique and distinct contribution not only to the technique of revolution, but also to the store of human knowledge. Satyagraha means the righteous indignation against the unjust laws of the civil government. Gandhiji invented the new name 'Satyagraha', and inducted it in South - African politics first and later in Indian politics. Gandhiji evolved a way of resisting evil through Satyagraha. It is a new philosophy of action. He said that Satyagraha is a weapon of the strong and the bravest. It is a powerful technique of evolutionary revolution. He explained the birth and meaning of Satyagraha in his book the Story of my experiments with truth.

Satyagraha is a vindication of truth; According to him, Satyagraha is a vindication of truth by bearing witness to it through self-suffering, in other words, love. Satyagrahi is a person who adopts satyagraha as method against unjust law. Satyagrahi proceeds through the process of identification and involvement. He or she establishes his/ her spiritual identity with the opponent and awakens in him a feeling that he cannot hut him without hurting his own personality. Satyagrahi kindles

'the divine spark in the opponent's soul'. Therefore, Satyagraha is rightly regarded as the 'soul force' or the 'love of force.

Satyagraha must be qualitative not quantitative; Gandhiji recommended the practice of Satyagraha by a select few in the first instance. Quality should be the prime consideration and the selection of the laws to be broken should be made not by each Satyagrahi himself, but by the leader or some centrally constituted body of expert satyagrahis.

TECHNIQUES OF SATYAGRAHA.

Civil disobedience and **non-cooperation** are the main techniques of Satyagraha.

1. **Civil disobedience**

   Gandhiji defined civil disobedience as the breach of unmoral statutory enactments (unjust laws). It is a complete effective and bloodless substitute of armed revolt. It signifies the resister's out Lawry and a civil, i.e., non-violent manner. He said that civil disobedience was a just and moral duty of citizens against an unjust, autocratic and imperialistic political order. Gandhiji put greater emphasis on the word 'civil' than on obedience so that the movement might not become uncivil and violent. Civil disobedience is the last stage and the most drastic from of non - cooperation.

2. **Non-Cooperation**

   Gandhiji successfully employed the techniques of non-violent non-cooperation as an effective means of Civil Disobedience to unjust laws of an evil government. Oppression and exploitation are made possible by willing or forced cooperation of the oppressed in their own exploitation or exploitation or oppression through cupidity, ignorance or fear. If all the people ceased completely to cooperate with an unjust or tyrannous system, it must completely collapse. Even the most despotic government cannot stand except for the consent of the governed, which consent is often forcibly procured by the despot. Immediately the subject ceases to fear the despotic force, his power is gone.

CIVIL DISOBEDIENCE MOVEMENT IN INDIA

The observance of the Independence Day in 1930 was followed by the launching of the Civil Disobedience Movement under the leadership of Gandhi. It began with the famous Dandi March of Gandhi. On 12 March 1930, Gandhi left the Sabarmati Ashram at Ahmadabad on foot with 78 other members of the Ashram for Dandi, a village on the western sea-coast of India, at a distance

of about 385 km from Ahmadabad. They reached Dandi on 6 April 1930. There, Gandhi broke the salt law. It was illegal for anyone to make salt as it was a government monopoly. Gandhi defied the government by picking up a handful of salt which had been formed by the evaporation of sea.

The defiance of the salt law was followed by the spread of Civil Disobedience Movement all over the country. Making of salt spread throughout the country in the first phase of the civil disobedience movement, it became a symbol of the people's defiance of the government. In Tamil Nadu, C. Rajgopalchari led a march-similar to the Dandi march-from Trichinopoly to Vedaranyam. In Dharsana, in Gujarat, Sarojini Naidu, the famous poetess who was a prominent leader of the congress and had been president of the congress, led non-violent satyagrahis in a march to the salt depots owned by the government. Over 300 satyagrahis were severely injured and two killed in the brutal lathi charge by the police.

There were demonstrations, hartals, boycott of foreign goods, and later refusal to pay taxes. Lakhs of people participated in the movement, including a large number of women. In November 1930, the British government convened the first-round table conference in London to consider the reforms proposed by the Simon commission. The congress, which was fighting for the independence of the country, boycotted it. But it was attended by the representatives of Indian princes, Muslim league, Hindu Mahasabha and some others. But nothing came out of it. The British government knew that without the participation of the congress, no decision on constitutional changes In India would be acceptable to the Indian people. Early in 1931, efforts were made by Viceroy Irwin to persuade the congress to join the second-round table conference. An agreement was reached between Gandhi and Irwin, according to which the government agreed to release all political prisoners against whom there were no charges of violence.

The congress was to suspend the civil disobedience movement. Many nationalist leaders were unhappy with this agreement. However, at its Karachi session which was held in March 1931 and was presided over by Vallabhbhai Patel, the congress decided to approve the agreement and participate in the second-round table conference. Gandhi was chosen to represent the congress at the conference which met in September 1931. At the Karachi session, of the congress, an important resolution of fundamental rights and economic policy was passed. It laid down the policy of the nationalist movement on social and economic problems facing the country.

It mentioned the fundamental rights which would be guaranteed to the people irrespective of caste and religion, and its favoured nationalisation of certain industries, promotion of Indian industries, and schemes for the welfare of workers and peasants. This resolution showed the growing influence of the ideals of socialism on the nationalist movement. Besides Gandhi, who was the sole representative of the congress, there were other Indians who participated in this conference. They included Indian princes, Hindu, Muslim and Sikh communal leaders. These leaders played into the hands of the British. The princes were mainly interested in preserving their position as rulers. The communal leaders had been selected by the British government to attend the conference. They claimed to the representatives of their respective communities and not the country, though their influences within their communities were also limited. Gandhi alone as the representative of the congress represented the whole country.

Neither the princes nor the communal leaders were interested in India's independence. Therefore, no agreement could be reached and the second-round table conference ended in a failure. Gandhi returned to India and the Civil Disobedience Movement was revived. The government repression had been continuing even while the conference was going on and now it was intensified. Gandhi and other leaders were arrested. The government's efforts to suppress the movement may be seen from the fact that in about a year 120000 persons were sent to jail. The movement was withdrawn in 1934. The congress passed an important resolution in 1934. It demanded that a constituent assembly, elected by the people on the basis of adult franchise, be convened. It declared that only such an assembly could frame a constitution for India. It thus asserted that only the people had the right to decide the form of government under which they would live. Though the congress had failed to achieve its objective, it had succeeded in mobilizing vast sections of the people in the second great mass struggle in the country. It had also adopted radical objectives for the transformation of Indian society.

LIMITATIONS OF INDIAN CIVIL DISOBEDIENCE MOVEMENT

- **Limited participation of Dalits:** Dalits participation in the civil Disobedience movement was very limited, particularly in Maharashtra and Nagpur region where their organization was quite strong.

- **No Participation of Muslims:** Some of the Muslim political organizations in India were also Lukewarm in their response to the Civil Disobedience Movement. After Non-Cooperation-Khilafat movement Muslims felt alienated from the congress.
- **Dominant role of Sanatanis and Hindu Mahasabha:** The role of Sanatanis and Hindu Mahasabha was very dominant. Due to the fear of Sanatanis the conservative high-class Hindus, congress ignored the Dalits. Congress was very close to Hindu Mahasbha. Hindus Mahasabha strongly opposed the efforts of compromise between Congress and Muslim League.
- **Clash between BR Ambedkar and Mahatma Gandhi:** In 1930 Dr B R Ambedkar clashed with Mahatma Gandhi at the second-round table conference by demanding separate electorate for Dalits.
- **Participants have different aspirations:** Participation had their own aspirations. There was a contrast between the demands of industrialist and working class. Contrast was also there in the demand of Rich peasants and poor peasants. United struggle was not there.

CONCLUDING REMARKS; It is true that the State originated to fulfil basic necessaries to individual and has been continuing till today with an aim to provide welfare to its subjects. Thus, the main object and aim of the State is to provide welfare to the people. But now a day's governments acting handily with several selfish motives by neglecting basic moral values so, in this scenario it is the moral and ethical duty of every citizen to raise their voice against unjust laws and work for just, fair and reasonable laws as rightly said by Gandhiji.

NEO-GANDHIAN CIVIL DISOBEDIENCE MOVEMENTS

Martin Luther King (Sr) and Nelson Mandela

MARTIN LUTHER KING (SR) NOTION OF CIVIL DISOBEDIENCE

Martin Luther King Sr. (Birth name **Michael King**; December 19, 1899 – November 11, 1984) was an African American Baptist pastor, missionary, and an early figure in the Civil Rights Movement. He was the father and namesake of civil rights leader Martin Luther King Jr. King was a member of the Baptist Church and decided to become a preacher after being inspired by ministers who were prepared to stand up for racial equality. He was boarding with Reverend A.D. Williams, then pastor of the Ebenezer Baptist Church. He attended Dillard University for a two-year degree. After King started courting Williams' daughter, Alberta, her family encouraged him to finish his education and to become a preacher. King completed his high school education at Bryant Preparatory School, and began to preach in several black churches in Atlanta.

❖ **Doctrine of Two Regiments or Kingdoms:**

Martin Luther's doctrine of two Regiments or Kingdoms is highly significant not simply because it is central to his theology, but because it is related to his thought about politics and society. In a word, the doctrine of two Regiments is central to his entire philosophy. At the centre of the doctrine there is the idea that Cod has created two kingdoms or regiments in the world and through these two kingdoms. He governs the world. One is the spiritual world and the other is the temporal world or regiment. The spiritual kingdom is governed through word and without any sword and in this kingdom, men become righteous and godly only through the word. In the spiritual world there is no need of sword or law and only word is enough. So, we can say that the state according to Luther is a mechanism devised by God to punish the evil-minded people. From theological point of view the state has a necessity. It is the primary duty of the temporal government, with help of sword, to force his people to lead a spiritual life. Otherwise, it will have no utility at all. It was the firm belief of Luther that the king or temporal power performs all duties or actions in according to the directives sent through the church.

❖ Radical reform of system

Martin Luther has permanently substituted the authority of the state for that of the church. This is no doubt a great contribution of Reformation. Luther's state is not only an instrument to punish the people for their sinful activities, but also a way which will save them from inevitable destruction. Martin Luther has said that princes, magistrates and other officials of the state apparently act according to their own initiative. But this is not so. God directs them and they simply carry out the order of God. They are merely the instruments of God. For high-handed usurpation of temporal power and perversion of Christian belief, faith and principles Luther held the church responsible. He demanded a radical reform of the whole system of the church and for this he proposed the institution of a general council.

❖ Secular power for the reform of the church

Luther formulated twenty-seven points of reforms and he said that these reforms would be affected by the secular power or general council. One of these points was all the revenues and all the jurisdiction of the Pope in the regions outside the estate of the Roman Church would be abolished. All the matters of money or material interests would be left to the secular authority. It would be absolutely unbecoming on the part of the church if it involves itself in the acquisition of earthly wealth and possessions. It should try to satisfy itself with religious or spiritual considerations. Pope, priests and bishops are merely officers for the regulation and promotion of Christian principles. Under no circumstances they are to be related to secular affairs. Commenting on the reform initiated by Luther Dunning says "the practical outcome of the distinctively Lutherean reform was the appropriation by the secular authorities of much of that paramount influence in ecclesiastical affairs which was taken away from the papacy."

❖ Absolutism in politics

The purpose of his agitation was to dislodge the universal church from its coveted position and to suppress the monastic institutions. The ultimate result was that the checks upon the secular authority were removed and the church started to function as an institution under the secular authority. This is not an ordinary gain. Through his movement he succeeded in establishing. absoluteness of political power. We can say Luther was an originator of absolutism in politics. Martin Luther apprehended that his writings might be misinterpreted by the secular rulers. They would be inclined to encroach upon the spiritual affairs. To remove this possibility, he clearly stated that the princes and magistrates had nothing to interfere in spiritual matters. They were

concerned with life and goods and also everything external on earth. God cannot and will not allow anyone to rule the soul except himself alone.

❖ **Obedience to Secular Authority:**

In his analysis of obedience to the secular authority, Luther has again taken the help of scripture. He says that the Christians among themselves need no law or sword, because it is neither necessary nor admissible for them. But this does not imply that they will disobey the secular authority or violate the man-made laws. According to Luther a true Christian life not for himself alone, but for his neighbours. It is the primary duty of a true Christian is to obey the laws of the secular authority and act in accordance with the law made by such authority. The obligation to the authority as well as its law is the duty of a Christian. This idea later on has given the birth of an important political theory-political obligation. He has also said people must pay tax and perform other duties. A true Christian should serve the state as well as society spontaneously and with undiluted love. That is, his obedience to secular authority must come out of love. While obeying the state he should not bring the question of material gain under his consideration. A true Christian cannot prevent a man from obeying the law of state and if he does, it would be his unchristian act.

❖ **Rebellion against authority**

The divinity of the secular government unfolds his conception of non-resistance and horror of rebellion. Rebellion against authority, even against a tyrant, could not get the support of Luther. Because, in his opinion, the tyrant came to power to fulfil the wishes of God. Luther once said in a famous passage "I will always hold by that party which suffers rebellion, however unjust its cause, and be opposed to that party which makes rebellion, however just its cause may be, for there can never be rebellion without the spilling of innocent blood and other atrocities." Martin Luther propagated that rebellion was the worst type of sin and on that ground, he did not approve it. He thought that rebellion threatened the very foundations of civil society. The net consequence of rebellion is anarchy.

Martin Luther King Sr was African American and one of the early prominent figure in America who fought for the Civil Rights of the Nigro's in America, he also used M.K.Gandhi's Civil disobedience and Non Cooperation as the main weapons to fight his battles against the Discriminations, after him his Son Martin Luther king jr Continued his battle against the discrimination and violation of people's civil rights.

NELSON MANDELA: NOTION OF CIVIL DISOBEDIENCE

Nelson Rolihlahla Mandela (18 July 1918 – 5 December 2013) was a South African anti-apartheid revolutionary, political leader and philanthropist who served as President of South Africa from 1994 to 1999. He was the country's first black head of state and the first elected in a fully representative democratic election. His government focused on dismantling the legacy of apartheid by tackling institutionalised racism and fostering racial reconciliation. Ideologically an African nationalist and socialist, he served as the president of the African National Congress (ANC) party from 1991 to 1997.

Early Background

Nelson Mandela's childhood and family background helped shape his personality and the views that would be so evident in his later life. Mandela's own memories and feelings about his childhood, as related in his autobiography, show how influential at one level were these years. Mandela's birthplace was the small South African rural village of **Mvezo** in the district of **Qunu**. Rolihlahla Madiba Dalibhunga Mandela, later known the world over as Nelson Mandela, was born on July 18, 1918. Mandela learned from his family and clan about his people's culture and traditions. Later, he would attend English language, European-style schools, but as a child, he fully imbibed Xhosa culture, its language, initiation customs, and ideas of leadership and humanness or ubuntu (a feeling of fellowship and compassion in African society). His given name, Rolihlahla, translates literally as "one who pulls branches from a tree," or simply "troublemaker." His clan name Madiba ("reconciler") would remain a "praise name" and term of affection used by friends and compatriots in years to come.

He studied law at the University of Fort Hare and the University of Witwatersrand before working as a lawyer in Johannesburg. There he became involved in anti-colonial and African nationalist politics, joining the ANC in 1943 and co-founding its Youth League in 1944. After the National Party's white-only government established apartheid, a system of racial segregation that privileged whites, he and the ANC committed themselves to its overthrow. Mandela was appointed president of the ANC's Transvaal branch, rising to prominence for his involvement in the 1952 Defiance Campaign and the 1955 Congress of the People. He was repeatedly arrested for seditious activities and was unsuccessfully prosecuted in the 1956 Treason Trial. Influenced by Marxism, he secretly joined the banned South African Communist Party (SACP).

Although initially committed to non-violent protest, in association with the SACP he co-founded the militant Umkhonto we Sizwe in 1961 and led a sabotage campaign against the government. He was arrested and imprisoned in 1962, and subsequently sentenced to life imprisonment for conspiring to overthrow the state following the Rivonia Trial. Mandela served 27 years in prison, split between Robben Island, Pollsmoor Prison and Victor Verster Prison. Amid growing domestic and international pressure, and with fears of a racial civil war, President F. W. de Klerk released him in 1990. Mandela and de Klerk led efforts to negotiate an end to apartheid, which resulted in the 1994 multiracial general election in which Mandela led the ANC to victory and became president. Leading a broad coalition government which promulgated a new constitution, Mandela emphasised reconciliation between the country's racial groups and created the Truth and Reconciliation Commission to investigate past human rights abuses.

Economically, Mandela's administration retained its predecessor's liberal framework despite his own socialist beliefs, also introducing measures to encourage land reform, combat poverty and expand healthcare services. Internationally, he acted as mediator in the Pan Am Flight 103 bombing trial and served as secretary-general of the Non-Aligned Movement from 1998 to 1999. He declined a second presidential term and was succeeded by his deputy, Thabo Mbeki. Mandela became an elder statesman and focused on combating poverty and HIV/AIDS through the charitable Nelson Mandela Foundation.

MANDELA TO POLITICAL OBLIGATION

❖ Doctrine of Non-Violence

Nelson Mandela led the struggle against an inhuman political system in South Africa, and he skillfully piloted the transition from apartheid to democracy despite dire predictions that the country would descend into civil war. There is however much more to Mandela; a man of extraordinary courage, tremendous generosity, and remarkable vision. Mahatma Gandhi's doctrine of non-violence influenced Mandela's political strategy to some extent. In an essay on his political guru in The Time magazine of December 31, 1999, Mandela wrote of Gandhi who advocated non-violence when the violence of Nagasaki and Hiroshima had exploded upon us. Both Gandhi and I, wrote Mandela, suffered colonial oppression, and both of us mobilized our respective people against governments that violated our freedom. I followed, accepted Mandela, Gandhian strategy as long as I could, "but then there came a point in our struggle when the brute

force of the oppressor could no longer be countered through passive resistance alone. We founded Umkhonto we Sizwe and added a military dimension to our struggle."

❖ **Joining of ANC and Bus Boycott Movement**

Mandela marched in support of a successful bus boycott to reverse fare rises. Joining the ANC, he was increasingly influenced by Sisulu, spending time with other activists including his old friend Oliver Tambo. In 1943, Mandela met Anton Lembede, an ANC member affiliated with the "Africanist" branch of African nationalism, which was virulently opposed to a racially united front against colonialism and imperialism or to an alliance with the communists. Despite his friendships with non-blacks and communists, Mandela embraced Lambada's views, believing that black Africans should be entirely independent in their struggle for political self-determination. Deciding on the need for a youth wing to mass-mobilise Africans in opposition to their subjugation, Mandela was among a delegation that approached ANC President. The African National Congress Youth League (ANCYL) was founded on Easter Sunday 1944 in the Bantu Men's Social Centre, with Lembede as president and Mandela as a member of its executive committee.

❖ **Movement Against racial segregation**

In the South African general election in 1948, in which only whites were permitted to vote, the Afrikaner-dominated National Party under Daniel François Malan took power, soon uniting with the Afrikaner Party to form the National Party. Openly racialist, the party codified and expanded racial segregation with new apartheid legislation. Gaining increasing influence in the ANC, Mandela and his party cadre allies began advocating direct action against apartheid, such as boycotts and strikes, influenced by the tactics already employed by South Africa's Indian community. Xuma did not support these measures and was removed from the presidency in a vote of no confidence, replaced by James Moroka and a more militant executive committee containing Sisulu, Mda, Tambo, and Godfrey Pitje. Mandela later related that he and his colleagues had "guided the ANC to a more radical and revolutionary path." Having devoted his time to politics.

❖ **Defiance Campaign and Transvaal ANC Presidency: 1950–1954**

The Defiance Campaign against Unjust Laws was presented by the African National Congress (ANC) at a conference held in Bloemfontein, South Africa in December 1951. The Campaign had

roots in events leading up the conference. The demonstrations, taking place in 1952 were the first "large-scale, multi-racial political mobilization against apartheid laws under a common leadership." The Defiance Campaign was launched on 26 June 1952, the date that became the yearly National Day of Protest and Mourning the South African police were alerted about the action and were armed and prepared. In major South African cities, people and organizations performed acts of defiance and civil disobedience. The protests were largely non-violent on the parts of the participants, many of whom wore tri-color armbands signifying the ANC. Black volunteers burned their pass books. Other black volunteers would go into places that were considered "whites-only," which was now against the law. These volunteers were arrested, with the most arrests (over 2,000 people) being made in October 1952. When protesters were arrested, they would not defend themselves in court, "leading to large-scale imprisonment." Others who were offered fines as an alternative chose to go to prison. The mass imprisonment, it was hoped, would overwhelm the government.

❖ **Movements against apartheid**

The orders to shoot demonstrators "on sight" were issued by the South African Minister of Justice, Charles Swart. Arrests of peaceful protestors "disgusted a section of white public opinion." In July 1952, there were raids of ANC and SAIC offices. As a result of the protests, the NP started "imposing stiff penalties for protesting discriminatory laws" and then they created the Public Safety Act. The goals of the Defiance Campaign were not met, but the protests "demonstrated large-scale and growing opposition to apartheid and later it converted as big movement. "The United Nations took note and called the apartheid policy a "threat to peace. In the middle of April 1953, Chief Albert Luthuli, the President of the ANC, proclaimed that the Defiance Campaign would be called off so that the resistance groups could reorganize taking into consideration the new political climate in South Africa.

❖ **Civil Rights Activists**

The Defiance Campaigns, including bus boycotts in South Africa, served as an inspiration to Civil Rights Activists in the United States. Albert Luthuli was tried for treason, was assaulted and deposed of his chieftaincy of his Zulu clan. Mandela took over the ANC after Luthuli. Apartheid was finally ended in the early 1990s, as marked by the 1994 South African general election, the first South African election held using universal adult suffrage.

❖ **Against petty apartheid**

1953 Reservation of Separate Amenities Act tightened "petty apartheid" to avoid as far as possible contact between the races; for example, in buses, on beaches, and in post offices. In the economic sphere, there was no escape for blacks: The Bantu Building Workers Act made it a criminal offense for Africans to perform undesignated skilled work; the Native Labour (Settlement of Disputes) Act of 1953 prohibited strikes by black workers; and the Industrial Conciliation Act repressed black labor unions. Politically, the government whipped up paranoia in the white community claiming a total onslaught from both a "red menace" and a "black peril." One after another, these draconian laws rolled off the statute book, with no effective white opposition and with blacks now completely excluded from voting or representation. Nelson mobilized the mass against all these unjust laws and succeeded.

Fight against Discriminatory Educational policies

Education of black youth suffered greatly as apartheid's architect, Verwoerd, introduced the 1953 Bantu Education Act, which created an inferior education system based upon a menial syllabus that saw Africans merely as "ewers of wood and carriers of water." Later in the decade, the Extension of University Education Act would prevent black students attending "white" universities and created separate race-defined educational institutions. Many books were banned and censorship was intense and ham-fisted, leading to absurd situations such as the banning of the children's book Black Beauty and the tardy introduction of television (permitted only in the 1970s), which was anathema to the conservative Afrikaner fear of "Western" corruption of their ultra-Calvinist morals. In architecture, vast triumphalist monuments such as the Voortrekker Museum symbolically trumpeted the victory of white supremacy.

Concluding Remarks

Nelson Mandela was the first South African President to be elected in a fully representative democratic election. In a country like South Africa, it was almost impossible for a man of his birth and colour to fulfil both of those obligations. In South Africa, a man of colour who attempted to live as a human being was punished and isolated. In South Africa, a man who tried to fulfil his duty to his people was inevitably ripped from his family and his home and was forced to live a life apart, a twilight existence of secrecy and rebellion. He said "A man who takes away another man's freedom is a prisoner of hatred; he is locked behind the bars of prejudice and narrowmindedness. I am not truly free if I am taking away someone else's freedom, just as surely as I am not free

when my freedom is taken from me. The oppressed and the oppressor alike are robbed of their humanity."

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