TO OBEY OR NOT TO OBEY THE LAW - AN INQUISITION INTO POSITIVIST LAW

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Abstract : Laws are orders or rules implied as obligations upon us as they is need to be followed by every particular individual of the state. Can a law be invalid or every law is valid made by sovereign or their parliament and if it is not valid are we still obligated to follow such laws. Validity of a law can be understood by knowing the process of how much valid in asking just two questions according to positivist school of law and those questions are first was created by a recognized human authority (habitually identified as the sovereign) second if so, did the sovereign follow the appropriate procedures? If the answer to both the questions is yes, then the law is valid but according to them sovereign is not passed by moral consideration how do they decide which laws to pass. Is the validity is all we got to know our obedience to law not at all we must know and understand from the origin of establishment of state and get an inquisition into the works of positivist jurist to get the answers whether to obey or not to obey the law by starting from Socrates trail of death to the Ronald Dworkin theories of right we will understand how law has managed to evolve and has become an essential need of our today's world. Being obedient to law gives us obligations or coherence for betterment of society. Law is conformity which promises sovereignty to the state and promises protection to individuals through powers of state. Morals are not considered in law making nor do we need moral commands to drive us away from the justice in society. Many perspectives are being included to understand whether to obey law or (not to obey) by examining these parameters of law. Hence it is necessity for our juristic mind to get answers of such questions.

***Index Terms*:-**
Law, obligations, morals, individuals, sate, philosopher, jurist, sovereignty, obedience, positivist, command, acceptance, validity, inquisition etc.

I. INTRODUCTION

In our world of human beings where our behaviour, choices, and decision making may cause wellness to us human beings and may also cause destruction. From the second the earth got humans and animals started residing their lives in this planet we have witnessed less of coordination or cooperation and more of destruction. Gradually humans started to know that they are not always the strongest being on earth and there is always another living being stronger than them. Humans started cooperation by establishing groups of families who lived in caves they started thinking from oneself to themselves. Can't say a concrete established state but community with its associates. Fast forwarding the time we came to the era of kingdoms. Every region on earth was under some kingdom they created a state under their hegemony they ruled the whole state and made their own rules to be followed by individual. Then we got introduced by governmental system which told us about the establishment of law and how much necessary it is to build a welfare state. By summoning up all this history, we are now in the 21st century where we have nations, states, different types of government system in every part of this globe. No matter how much a state differs from an another state, they have a similar law, which is the backbone that connects and balances the whole state from converting in a chaos. Humans always had the power of reason about which every philosopher or jurist has talked about we provide us the rationality to stand totally different from other living beings. We don't call any animal particularly as tiger being or elephant being but we call our self as human being why? Because our reason provide us with the rationality to choose to take better decision to be logically civic. The simple meaning of 'being' here is 'trying to be what u want to be' we show are thorough obedience to law may be sometimes may be sometimes not but why do we obey law? What are the reasons which makes us follow it is the fear of consequences or it is a benevolent thought which derives to act as prudent being. To know this people have used their intellect to know the paradigm of law by understanding their concepts about everything which relates to our law answers can be found all inquisitions. In this we are going to deal from past to present scenario which took place and what we understood from them and how jurist and philosophers have perceived them to understand our obedience to law.

II. THE TRIAL OF SOCRATES

In the world of philosophical thinkers the biggest tragedy ever known is the death of great thinker Socrates. Socrates was found guilty of two charges impiety against pantheon of Athens and for corrupting the minds of the youth in Athens. In the trial of Socrates 500 Athenian people were gather as jury to vote in or against the motion of the death of Socrates after he was found guilty of his act. Socrates was sentenced to death by the margin of 48% to 52% in his punishment he was punished to drink the poison of hemlock.

In his defence Socrates never tried to go against the law because by proving it wrong as he was punished for his act though according to him law is the greatest virtue to humans to lead society in a better way. Though the crime done from the side of Socrates was nothing comparable to today's scenario of world but at that time Athenian establishments use to provide education to youth in three categories to rise for patriotism, nationalism and subservience and Socrates was in the favour to make youth understand the autonomy.

Well Socrates was falsely accused of the charges on which the jurors acted wrongly but conviction must be respected and sentence too as the law of the land is just these were the views of the Socrates at the trail of his death which proves that Socrates was a positivist. As Socrates final words were "I must obey the law and make my defence"(1), proves that he had total subservience to the law and in his another saying "The hour of departure has arrived, and we go our ways—I to die, and you to live"(2). Socrates also accepted what he was punished as in eyes of law by the state. Though he respected law but respected his morals what he taught to the youth of Athens. By here we get to know the criticism of positivist thinking as it does not include morals in it at all and the question of Socrates was should the corruption of morality merit the death penalty? So when sovereign is not passed by moral consideration how does it manage to pass any laws? Simple answer for this question is that positivist school just distinguish between valid and invalid law it does not touch or includes the parameters of good and bad laws. Well another criticism of positivist school on the death of Socrates is that the accepted process for a criminal charge: trial by jury in which Socrates was tried by jury and was found guilty according to positivist thinking the verdict of sentence was valid and possess force of law but Socrates failed to ask one vital question: why is the process valid? This leads us to the answers of the positivist thinkers about the validity of law.

III. VALIDITY IN PROCESS OF LAW

Upon the question of why the process is valid? Couple of positivist have proposed two possible solutions. One of them is H.L.A Hart who was a British legal philosopher according to him the rule that governs law making is socially accepted it is not a legal reality but a political one it means that it makes sense politically even if not legally(3) but what happens if the rule that governs the creation of law is socially rejected take for instance protests, civil disobedience or even revolutions. Hart's suggests both the procedures and the laws are invalidated.

On another side we have Hans Kelsen who was an Austrian legal philosopher. In his work keelson identifies a pure theory of the law the rules that authorized the sovereign to make law or what kelsen calls grundnorm. Grundnorm is the fundamental norm upon which all other norms rest and the grundnorm can either be accepted or not if we accept the grundnorm the laws the laws that follow are valid if we do not accept it the system fails(4). In other words positivism depends upon our willingness to accept the procedures and the institutions that a society uses to create law look at the care of parliament's and courts.

IV. NECESSITY OF STATE

- Thomas Hobbes:- 17th century English philosopher possessed rather unfavourable opinion about human nature according to Hobbes human wish in the state of nature destined to lead lives that are solitary poor nasty brutish and short for many humans are power hungry and greedy motivated but largely by self-interest and selfishness both which require dominion over others to be satisfied in fact even compassion and selfish individuals will be forced to adopt the ambitions of their less than savoury counter parts for they will ultimately choose between being dominated or taking power in short all of us are destined to become moral monsters.

Whether by preference or by necessity Hobbes opinion of the unpleasant nature of human society propelled him to introduce to the idea of social contract theory since the state is such a brutish place denoted largely by absence of cooperation, absence of peace and an absence of security. Individuals can avoid living in perpetual fear by first creating a state with absolute power and second establishing a social contact between the individuals and state. The social contract effectively consist of the agreement between the individuals with each other and between individuals in the state(5).

According to Hobbes social contract is a trade off the state guarantees peace and security in exchange for which individuals agrees to submits themselves to the laws of the state like Socrates then Hobbes maintained individuals should obey the law unlike Socrates however obedience is not tied to self-imposed moral duty towards the sovereign but to utilitarian self-interest to receive protection from the Savagery from the nature humans subordinate to the laws of the of the state.

- John Locke: - protection from the state of nature allows individuals to stop building fences and to start sowing farms. However according to Locke state of nature is not as hideous as Hobbes suggests for instance instead of abduction robbery and murder he was more concerned with the challenge of locating in nature of neutral judges for resolving disputes in a balanced way. Locke argued that individuals maker a rational choice rather than an emotional one to form political societies thus allowing them to avoid the vulnerability inherent in the state of nature these groupings of individuals do so by empowering the state to enact laws that all are expected to obey or ultimately will be compelled to obey is at this point some of locks more familiar qualification to Hobbes social contract that societies are formed to promote the common good to Locke however the common good is understood as the preservation of property nowhere is law more explicit when declaring that the preservation of property being the end of the government and that for which men enter into society while other laws are permissible like taxation laws these must be aligned the primary aim of the society in short law and infringe upon proprietary rights are presumptively suspect next Locke also qualifies Hobbes trade off as trade off arguing that a

sovereign state with absolute power is far more dangerous than individuals in the state of nature state which possesses command over resources institutions and individuals can wreak far greater damage then quarrelling neighbours.

Locke suggests that state must be forbidden from holding any arbitrary power there authority must be circumscribed by law as he declares the ruling power ought to govern by declared and received laws and not by extemporary dictates for then mankind will be in a far worse condition than in the state of nature(6).

Locke subordinates the sovereign the both the common good and to individuals freedom implying that the laws which arbitrarily contravene either of are for all intents and purposes not laws at all. Locke position conflicts with Socrates ultimately law making authority.

- Jean-Jacques Rousseau:- social contract is effectively the basis of his philosophy he argued that in the state of nature people are inherently free building on Hobbes and Locke he also conceptualized as a social contract declaring that "since no man has a natural authority over his fellow, and force creates no right, we must conclude that conventions form the basis of all legitimate authority among men" he describe the state of nature as a primitive condition and that for our very survival humans must change this condition through political societies this is no easy to thing to do it is the abandonment of our freedom this is the very quality that makes us human now so proposes a solution rather similar to that of Hobbes and Locke through the act of an association a group of individuals can create collective bond united in a common identity is common will Rousseau describes the act of association as mutual undertaking between the public and the individuals those who are associated in it take collectively the name of people are called citizen a sharing in the sovereign powers and subjects under the laws of the states to Rousseau every individual effectively makes a contract with himself to be bound in two ways as a member of the sovereign, an individual is bound to other individuals and as a member of state he is bound to the sovereign. By a roundabout way Rousseau makes individual as ultimate sovereign as they enjoy free will in deciding whether they wish to be bound.

Social acceptance is the basis of social contract, if there is acceptance of the association then individual is bound to by the law if there is rejection then no such duty exists of course this begs the question what happens to the individual who rejects the association? According to Rousseau if any individual refuses to obey the general will of the association they may be compelled to do so by the association in other words an individual able to withhold their consent in theory however in practice they may be compelled to comply "he [the individual] will be forced to be free from this is the condition which secures him against all personal dependents."(7) Ultimately Rousseau intended for a collective morality which is to be achieved through the social contract and public deliberation to replace individual instinct personal interest which he believes were common to the state of nature. He believed that the social contract may not destroy natural inequality but it does succeed in doing is to substitute physical inequality which is arbitrarily decided by nature with political equality which agreed upon convention the latter condition is clearly at least to Rousseau and many others far fairer then the former.

V. CONCEPT OF LAW

- John Austin: - Before examining why we obey the law? The 19th century philosopher tackled an even more foundational question what is law? Austin sought to draw a distinction between law and non-law and normally conceptualizing a command theory of law at the core of law as the command of sovereign this command is backed by threat of sanctions in the event of noncompliance like Socrates. Austin was disinterested in the substance of the law to him the source was critical in determining its validity a termination that can be made based on facts and not values for instance whether the offender of any terrorist attack is legally to be detained for 10hrs and subjected to questioning is valid or not depends not on the aim of the statute allegedly to stop terrorist or the efficacy of the power this measure has or has not helped to minimised risk or even the morality of the act in instance an infringement on an individual freedom of movement to Austin these are value judgments rather irrelevant to the analysis what matters is whether law on terrorism is enacted by sovereign according to the correct procedures and state is backing compliance with the threat of sanction is the most important and represents the standard by which Austin distinguish between law and non-law pronouncement by a sovereign that noncompliance with a given law will elicit some form of action according to Austin givers law validity.

According to Austin obedience to the law just like disobedience the law can be prudential or moral in the first instance our choice is tied to personal interest while in the second our choice is linked to a form of intrinsic obligation a moral duty both are valid reasons for obeying the law just as both are valid reason for disobeying the law. As according to Austin law is the command of an uncommanded commander or a legally unlimited sovereign who imposes duties and obligations on individuals what Austin meant by this coercion power is in the hearty of law what he meant is that the threat of sanctions is what in fact distinguishes law from non-law.

- H.L.A Hart: - Hart was British philosopher and professor of jurisprudence. Heart was particular concerned with a prescriptive theory of law this is how law can or should work but descriptive theory of law this how law does work. He challenges Austin representation of law specifically as tool of coercion on two grounds first the division Austin implies between the commander and the commanded is not as straight forward as Austin suggest for an instance while parliament makes laws they make these laws and these laws will apply to members of the public to the citizenry but these laws equally apply to parliament itself through the law makes parliamentarians for instance pay taxes us like everyone else the process is not half hazard or as arbitrary as Austin suggests. Second rather than solely impose duties or obligations laws frequently confer power and privilege what this simply means is that not all laws will coerce us into doing something take for example

the right to freedom of speech the right doesn't require us to speak nor does it prohibit us from speaking it provides with the freedom to do so if we so choose. Hart says ultimately implying brute force alone does not make for law.

Hart's understanding of relationship between law coercion and morality thus appears more nuanced to Hart it's not simply a choice between coercive order or moral commands this false binary imposes an equally false appearance of uniformity between laws and social function laws will ultimately serve a variety of purposes some laws for instances are commands requirement to wear seatbelts some laws are moral the prohibitions of a romantic sexual relationship between an adult and a child, some laws are administrative birth certificates, some laws are opportunistic pay hikes for employees during a recession; Law punish, law reward, law organize contract, laws establish courts, laws clarify how laws are to be enacted amended abrogated laws can be coercive laws can be suggestive laws can simply be or amount to happy or unhappy accidents since laws serves so many roles hart believes Austin is mistaken in suggesting that obedience is the foundation of a legal system to Hart it's more a matter of acceptance so while laws possess a variety of characteristics.

Hart largely distinguishes between two types of law there are primary rules of obligation and the secondary rules of obligation primary rules of obligation are the rules that regulate behaviour directly(8). citizens are bound by the rules not because the state will punish them if they do not comply as Austin claims but because citizens will consent to being bound by the law do u feel obligated to follows the rules of the road if so why? The answer to most people is yes, they do feel obligated and while the reason may vary slightly most people refrain from speeding they stop at red lights they give pedestrians the right of way not because afraid of being punished but because they accept that is set in sensible way of regulating driving we believe that following the rules of the road is ultimately the right this for us and for others we therefore accept our duty to obey the law. The flipside to the publics consent that to the primary rules of obligation are the secondary rules of obligations these are the law making rules that public officials accept is this way law is valid there is a procedure that can be used to identify how the law is enacted and whether it followed the correct procedure of we can identify that they need law will be valid(9). Harts break down between primary and secondary rules of obligation simply means public officials are bound by two levels of law the substantive laws they pass and the law making procedure that give their laws validity. According to Hart to enjoy a fully formed legal system both primary and secondary rules if obligation must be in effect when it comes to morality Hart also disputes the central precepts of natural laws moral and legal rules may overlap just as legal rights may exist without any moral basis to Hart legality is never determined by morality but by social practice the way he sees it if a judge must resort to morality to issue a ruling the content of law becomes arbitrary as we require more than social facts to figure it out think of it this way if morality is the basis of law whose is morality is the judge to fully resolving a conflict their own that of the parties the lawyers or perhaps the government the appointed them unlike law which is contained in a statute or a judgement. Morality is difficult to pin point a citizen must be capable of distinguishing between the demands of their conscience and the demands of the state.

- Ronald Dworkin: - when the citizen must be capable of distinguishing between the demands of their conscience and the demands of the state at this point Dworkin joins the conversation. Dworkin held what many regarded as opposing views to those of Harts largely because of his sustained criticism of legal positivism the following statement perhaps best captures Dworkin theory of law the nature of legal arguments lies in the best moral interpretation of existing legal practices as we can see morality not only preceded law but it is lens through which law is understood the basis of Dworkin morality is that of equal rights which he believes all humans are owed but the mere virtue of their humanity in line with the liberal basis of Dworkin theory is the state role as protector of personal autonomy essential to Dworkin's theory of law is the distinction between description between interpretation and between normativity descriptions is rather straight forward we can describe chairs or tables or cars we can describe weather or a person or an animal(10). Description is primarily observation a description a little more than what we observe. Normativity however has a different purpose normativity tells us what is right and tell us what is wrong tells us what we should have done and what we ought to do it, when to praise and ultimately who to condemn for example we should all go vegetarian or we should all vote green or we should all practice x religion are all normative statements in terms of law normatively is expressed as conclusion in terms of law. Normativity is expressed as a conclusion or a judgement about acts and those of others. Interpretation is distinct from description and normativity through it requires both of them went to work and argues is that some concepts can only be understood in a an interpretative way a simple description will tell us little and needs to be invested with some meaning if we are to act the same goes for normativity which reference a non-existing state of affairs what we should have done or this is what we ought to do and that cannot invest a thing with meaning either an interpretation is required. Let's understand this distinction with the example of chess, chess indeed describes as pushing pieces of wood across a board since it is not an accurate description since it would technically also include checkers or possibly back in a more precise description would mention that the pushing of pieces is in accordance with a set of rules bishop for instance can go diagonally , the rook vertically and horizontally but even with this precise description we still know little about this game this where interpretation is required to invest the game with meaning in other words what is the point? One can interpret the point of playing chess is winning the game and there are many who would agree with that one can also interpret that point of chess is to teach our self a variety of intellectual strategies there are many others who will agree with our statements. Dworkin then exemplifies an important difference between describing something and ascribing something with a point or in fact interpreting it on one hand we have description the piece moves they move across the board according to set of rules now on another hand we have interpretation we move these pieces across the board in accord in a series of rules in so as to win in so ourselves to help ourselves a series of intellectual strategies in other words the interpretation is largely about ascribing some type of value to the act . Dworkin for interpretation connect the distinction between and interpretation is primarily with the degree of acceptance the act of interpreting necessary involves viewing it in what we regard as a sensible or perhaps a normal manner few are those who would admit that they can be interpreting something silly or abnormal way enter normativity. Dworkin believes that our pursuits of the most sensible or normal interpretation is itself

the pursuit of a moral interpretation, Hence why any interpretation in which description is ascribed a point will also invariably also ascribed a morality .

Dworkin breaks down this exercise in three stages he has what we refer to as the pre interpretive phase then we have interpretation and then we have the post interpretative phase we will explore these three phases through an example now this remains common in many parts of the world for a man to open a door for a woman rarely do people think about or even ascribe value to it. They simply do it as a there is implicit rule of courtesy that required it as most people regularly engage in the practice we have effectively accepted this practice as a social norm(11). To Dworkin this is merely the pre interpretative stage as the practice has not been ascribed upon to move to the interpretative phase when we ask question of point of the practice there is an attitude of questioning why do men open the door for women. and of giving meaning men open the door for women because x this is first interpretative phase we ascribe point where we ascribe meaning however a second interpretative phase is where this point will be extended beyond the immediate practice for instance using the rule of courtesy about the opening the doors to infer that women are somehow weaker than men this what Dworkin identifies as artistic interpretation. Artistic interpretation is creative is manner because an individual a social practice they are proposing value for they practice by describing some scheme of interests to achieve some of goals or even certain principles that the practice can be taken to serve or express or exemplify now this distinct from artistic interpretation is distinct from scientific interpretation which does not involves any interest goals or principles since however interest goals and principles will compel some reference to some form of morality . Dworkin infers that legal argumentation or legal reasoning ultimately amounts to moral argumentation and moral reasoning. If we reach a consensus on law then according to Dworkin we are implicitly reaching a consensus on their use of force against the individuals who disagree with this particular interpretation or morality a social consensus has been achieved and other people are hereby required to abide by it. When consensus is reached we enter the post interpretative phase to ensure that justice emerges within the seemingly arbitrary masses we must ensure that interpretation are coherent this is the key concept to Dworkin coherence by which he means they must express single and comprehensive view of justice this view of justice can be liberal or communitarian it can be anything but it must be coherent.

VI. CONCLUSION

By understanding the various thoughts of jurists and philosophers now we have reach the point that why do we obey the law? Because of the threat of sanction, acceptance to law as we want peace around us or we obey the law because we have moral consensus around us. Austin has showed the command theory at the time when people were not too rational towards the society or the state there was less understanding in masses of people to know what is law and why do we need it? Surely Austin told it about us referring to the threat of sanctions so that we can understand the basis of it as a protector to us from the bad side of the society from changing it into the scenario of chaos. As the time moved forward the paradigm of law got `increased and then Hart introduced the new concept of the acceptance over the brute force to make individuals follow it. Hart meant that law is not just one thing to be accepted there is a distinction as coercive orders and moral commands in it. If the public denies to follow, it means individuals are not morally inclined towards it does hold reason to get connected to the logic of the individuals of state. Hart also disputes that the central precepts of natural laws, moral and legal rules may overlap just as legal rights may exist without any moral basis. According to Hart legality is never determined by morality but by social practice the way he sees it if a judge must resort to morality to issue a ruling. The content of law becomes arbitrary as we require more than social facts to figure it out. Think of it this way if morality is the basis of law is then morality is the judge to fully resolve a conflict of their own parties, the lawyers or perhaps be government the appointed them unlike law which is contained in a statute or a judgement. Morality is difficult to pin point a citizen must be capable of distinguishing between the demands of their conscience and the demands of the state at this Dworkin joins the conversation. Dworkin theory of law the nature of legal arguments lies in the best moral interpretation of existing legal practices as we can see morality not only preceded law but it is lens through which law is understood the basis of Dworkin morality is that of equal rights which he believes all humans are owed but the mere virtue of their humanity in line with the liberal basis of Dworkin theory is the state role as protector of personal autonomy essential to Dworkin's theory of law is the distinction between description between interpretation and between normativity. By understanding these views and representations of law by description, interpretation and normativity we can get to know many things, Like what do we need and what can help us to bring law in coherent form which leads to the acceptance of minds of the public, Which gives the answer that why we obey the law? By concluding all these view we reach to the point of equilibrium that whether threat of sanction ort acceptance or due to moral consensus around us. We obey the law because we aspire for desire, social stability by which gives us moral consensus around us which also makes us obedient to law.

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