

# **AL-AMEEN COLLEGE OF LAW**

## **MODEL QUESTIONS WITH ANSWERS – DECEMBER 2019**

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*This material has been prepared keeping in mind specific student requirements, Nonetheless this material is not aimed to replace the standard prescribed textbooks on the given area, yet this avails itself as a quick reference to aid classroom discussions.*

## **State and Political Obligations**

### **Unit- I / Model Answers**

#### **Define Political Obligation. Explain its kinds.**

Political obligation implies that as man is a political animal, he is bound to live under some authority and as such, it becomes his obligation to obey its commands. Hence when the authorizing rule is law, and the association of the state, we call its political obligation.

According to Stanford encyclopedia of Philosophy, Political Obligation is defined as a **Moral duty to obey the laws of one's own country or others**

#### **Kinds of political obligation.**

##### **Moral Obligation**

According to the moral principles of society in which he lives, the individual shall discharge certain obligations or duties. Serving old parents, helping poor people, helping injured person, showing kindness to the animals etc. are moral obligations.

The state cannot punish any person, who violates moral obligations. Moral obligations left to the conduct of the people of their choice. Society is not competent to use any coercive power against the individual who is indifferent to his moral duties.

##### **Legal obligations**

Law regulates the social life of Men. The legal obligations take the form of a bond between the Individuals in a society for the performance of some act as desired by the enforcement of law.

Legal obligations of the individuals are prescribed by the state. State will enforce the sanctions for the legal obligations. Moral obligation found its sanctions on individual conscience.

The breach of moral rules requires voluntary and blame worthy conduct, but legal rules carries a force in it. If the legal duty is breached then the force carrying with such rules will act on the person.

##### **Positive obligation**

Positive obligations can be divided into Positive legal obligations and Positive moral obligation. Paying taxes or joining the army during national emergency is a "positive legal duty" and looking after one's sick and old parents is a "positive moral obligations".

##### **Negative obligations.**

**Negative obligations** are prescribed to call upon the individual not to behave in a particular manner in the state or society. For example, legally the criminal shall not violate any civil or criminal law. He shall not encroach on the property of other or commit theft or murder.

Morally the individual shall not insult his elders or superiors. He shall not harass the poor and weak and not to be cruel to animals.

### **Primary and secondary obligations**

Primary obligations are that which exists in *per se* independent of other obligations whereas secondary obligations arise with the actions of individual persons. Duty not to hurt other is primary obligation and secondary obligations arises when the primary is breached.

### **Universal, General and Particular Obligations**

The duties binding on all normal citizen of the whole mankind are universal obligations. The duties binding of specific classes of normal person are general obligations. The duties binding between the persons who have voluntarily undertaken them are particular obligations.

### **Relative and Absolute Obligations**

Relative obligations are those to which there is a corresponding right in some person or definite body of persons; as for example the duty or obligation to pay ones debt to the creditor. Absolute duties are those which have no corresponding right such as duty to the sovereign state, duty not to commit suicide, etc.

**Or**

### **Q. NO. 1 Political obligations under Socialism and welfare state**

#### **Socialism**

Socialism is a range of economic and social systems characterised by social ownership of the means of production and workers' self-management as well as the political theories and movements associated with them. Social ownership can be public, collective or cooperative ownership, or citizen ownership of equity. There are many varieties of socialism and there is no single definition encapsulating all of them, with social ownership being the common element shared by its various forms

#### **Political obligations under a socialist state.**

1. Rejects capitalism as an economic philosophy;
2. To end exploitation of the poor and workers;
3. To check concentration of wealth in few hands;
4. To avert hoarding and black marketing of essential commodities;
5. To remove artificial scarcity and profiteering;
6. To halt the deliberate and mischievous economic upheavels in the form of booms and depressions
7. Social and economic inequalities should be reduced
8. Establishing harmony in the society.

#### **Welfare state**

The welfare state is a form of government in which the state protects and promotes the economic and social well-being of the citizens, based upon the principles of equal opportunity, equitable distribution of wealth, and public responsibility for citizens unable to avail themselves of the minimal provisions for a good life.[1] Sociologist T. H. Marshall described the modern welfare state as a distinctive combination of democracy, welfare, and capitalism.

### **Political obligations of a welfare state.**

1. A welfare state aims to promote the interest of the society apart from its normal functions like collecting taxes and maintaining peace and order.
2. The state undertakes the responsibility of bringing about the material welfare of the people within the framework of democratic political institutions
3. The state takes initiative of protecting the health and economic security of the citizens
4. The state takes steps to abolish illiteracy, poverty and unemployment. It establishes school, hospitals and other institutions to meet the needs of the people
5. The state is expected to provide reasonable working conditions, minimum hours of work with leisure, subsidized food facilities, housing, medical relief.
6. It upholds rights of all without showing any discrimination against any individual or group of people
7. State has to undertake certain social service measures such as running child homes, old age homes, orphanages, rehabilitation of physically handicapped, mentally retarded, welfare of women and children.
8. The state regulates the economic and other activities of the people in the larger interests of the society.

These are the political obligations of the state under socialism and welfare state.

## **Unit 2**

### **Give a note on Delegated Legislation.**

Delegated legislation is a technique to relieve pressure on legislative time so that it can concentrate on principles and formulation of policies. In the Indian context under Article 77 resident has power to make rules for more convenient trans of business of government. India, rules and regulation, orders, notifications by laws form part of delegated legislation.

Factors responsible for growth of delegated legislation

- i. Lack of time for legislature to shape Legislative details which are technical in nature were administration expertise is required. e.g.- Environmental standard, Intellectual property laws and legislative measures to ego term -and eradicate various diseases.
- ii. The subject matter of legislation being technical, complex and, unsuitable for debate in legislature.

iii. Democratizing of rule making process by providing for “Consultation with dected interest”

iv. Advantages of flexibility scope for experiments then the delegated legislation technique is employed.

v. Further, socio-economic teams being experimental in Initial stages and practical difficulties at stage of implementation cannot be foreseen.

vi. International Community: Delegated legislation is an effective instrument to bring about changes in domestic rules and regulations in accordance with changes that are taking place at global level. For ex., if a country signs a bilateral or a multilateral trees, the provisions of treaty should be incorporated in domestic laws. They do not require legislative approval because legislature already passed those treaties at policy level.

vii. New Economic Issues: Executive has to take into consideration the changing global - economic environment and has to exploit the process of globalization to benefit the interests of country. For this it has to make necessary and continuous changes to rules and regulations so that they became simplified in nature and can help in enhance efficiency of bureaucracy.

viii. Volatile Environment: Stable political economic and cultural environment do not require radical changes in rules and regulations. On the contrary, unstable conditions demand immediate and rapid changes! is can done only through the process of delegated.

Volume of work with the legislature: Because of increasing complexity in nature of activities performed by government, legislation is overburdened with policy making. In order to reduce the burden it has been suggested that legislature can use the technique of delegate legislation to reduce burden on its shoulders.

i.

***Advantages of Delegated legislation:***

i. It saves time for legislature.

ii. It can be easily done in consultation with parties affected.

iii. It allows for flexibility

iv. Expert legislation

v. Parliament is not always in session

vi. Delegated legislation is resorted to encase of emergencies.

vii. It can be used on an experimental basis.

viii. Criticism of Delegated Legislation

ix. i. It has long term bearing on legislative control. In a parliamentary form of democracy, legislature is the supreme organ of state because it consists of peoples’

- elected representatives. The three organs of state, legislature, executive and judiciary should work harmoniously on basis of separation of power for effective functioning of democracy. In spite of many advantages, delegated legislation weakens legislative control executive. Infact, it has been proved beyond doubt that effectiveness of legislative control has come down drastically after the advent of delegated legislation.
- x. ii. Executive has become more powerful with delegated legislation; executive has encroached upon the domain of legislature by making rules and regulations.
  - xi. iii. Since executive is also responsible for implementation the division between law making and gets blurred leading to exploitation by executives, In the process executive becomes too powerful.
  - xii. iv. Possible misuse for political gains, executive can always misuse or abuse the power for short term political gains. It can make legislations in such a way to benefit the ruling party.
  - xiii. v. Delegated legislation lacks rigorous discussion before law making.
  - xiv. vi. It is against theory of separations of power.
  - xv. vii. Delegated legislation changes with political changes resulting in political and administration instability.
  - xvi. viii. It is not in confirmation with rule of law.
  - xvii. They cannot be tried in an ordinary court of law an equality before-law violated because of
  - xviii. The special privileges enjoyed by these officials.
  - xix. Immunity for their actions
  - xx. Special codes to administration tribunals to evaluate and adjudicate their actions.

**Question. Define Relations between Rights, Liberty and Equality.**

This question carries most of the combined answers for individual question on Liberty, Equality and Rights.

**Introduction:**

The three concepts—rights, liberty and equality—are as old. as political theory. Even the people of Greek city-states were conscious of these three basic concepts of political theory and their consciousness is evident from their eagerness to participate, in a direct manner, in the affairs of the state—in fact, the Greek city- states were blessed with direct democracy.

Even today while we mention about any form of direct democracy (such as referendum, initiative, participation in open assembly etc.) we refer to the Greek system that prevailed in the functioning of city- states. The vital aspects of direct democracy are three basic principles of democracy that is rights, liberty and equality.

The democratic messages of Greek city-states were almost buried in oblivion during the Roman period and middle ages. But the messages found a new lease of life in the hands of Rousseau (1712-1778). In recent years the scholars have interpreted Rousseau's thought in different ways and at least on one message there is a broad-based agreement and it is liberty (freedom) is the most valuable and coveted thing.

We feel that Rousseau is still remembered by the students of political science (other students of social sciences also read him seriously). But his theory of freedom is well-linked with two other concepts—rights and equality. It is especially evident in his open assembly concept wherever one participates.

### **Origin of the Concepts:**

There is a famous comment of Prof. Ernest Barker. Once he said—Human consciousness postulates liberty, liberty involves rights and rights demand the state. Though this comment does not include equality we can unhesitatingly add equality to it. It is a common sense idea that without equality liberty cannot exist at all. Rights, liberty and equality are closely linked and work together. Though the historicity of the social contract theory is very often questioned by political scientists.

The fundamental truth that comes out of the doctrine is that for greater amount of rights, liberty, equality and their protection the people of the state of nature decided to lay the foundation of civil body with a government whose chief function would be to provide protective net for the democratic principles. All the three exponents (Hobbes, Locke and Rousseau) of the Social Contract did not conceal their view or motive.

People of the state of nature spontaneously decided to set up civil society which implies that they had freedom and while making agreement or contract all of them were on the same footing. It means that all of them enjoyed equality and liberty.

The concept of rights also comes out of the contract theory. How? When they took the decision there was no sign of resistance and by exercising their right to do anything for greater benefit. Hence it is quite manifest that Social Contract theory embodies these three principles of political theory.

Purpose of the Three:

A close scrutiny of the three principles (many political scientists—as for example Barker—call rights, liberty and equality as principles of democracy) reveals that their purposes are same. The chief aims are the overall development of the inherent qualities of individuals and establish justice in the society. Laski's definitions of rights and liberty are not very much different

Defining rights he observes that rights are the condition of social life which is essential for the development of best self of a man. He calls liberty an atmosphere in which men will have the opportunity for the attainment of best selves. In the background of this we can reasonably say that rights and liberty are just two ways to reach the coveted goal for development of best selves

How rights and liberties are protected? Laski has said that a state does not create rights, it simply recognizes them. Before the emergence or creation of state there existed rights. It is, so to say, the duty of the state is to protect the rights by enacting new laws or amending the old ones.

It is to be noted here that not all rights come under the purview of the state because all the rights may not be conducive to the development of individuals' personalities. The state is obliged (both legally and morally) to recognise those rights which are clearly helpful for the realisation of the best qualities of men. Naturally state shall proceed to their protection. Here we find that the state has a very crucial role in regard to the protection.

Rights and liberties are not separate concepts. Since, liberty means the maintenance of an atmosphere in which men will have the scope to fulfill their good aim Viewed from this angle liberty can reasonably be regarded as the product of rights. He continues “without rights there cannot be liberty, because without rights, men are the subjects of law unrelated to the needs of personality”. Let us explain the relationship between rights and liberties in the following simple way.

An individual has the right to pursue his own objective in his own way, to develop his noble qualities without doing any harm to others, to lead a good and peaceful life and many others. The point is, the individual concerned has rights to do all these. But rights alone are not sufficient. To have right and the scope for their implementation are two separate issues and need careful treatment.

Laski and almost all political scientists are of opinion that rights require for them an atmosphere and this is liberty. So we can say that both rights and liberty are closely linked. To put it figuratively, they are the two sides of the same coin. The existence of rights practically will not carry any weight if they are not made to accompany liberty. Man can claim rights but, at the same time, he must have liberty to exercise right.

A man may have political rights but without economic liberty he will not have the scope to exercise the rights to which he is legally entitled. It is particularly evident in countries where emphasis is always given to political rights and economic liberty is neglected. It is alleged that it particularly happens in the USA and other liberal democracies.

Rights have been called a special type of guarantees; at least Prof. Harold Laski thinks so. The guarantees must emanate from the government. It must assure the citizens that they have the full freedom to enjoy all the liberties without creating any disadvantage or harm to fellow citizens. Guarantees generally come from the authority in the form of law or policy or decision. It is also to be noted here that guarantees are made for all and do not allow special privileges.

Rules are the best and most powerful guarantors of rights and, simultaneously of liberty. When there is a rule of law it will be obvious that the liberty of one will never be dependent on the pleasure or whims of some other persons. Thus, both rights and liberty rule out the presence of special privileges.

The term guarantee, law and absence of special privileges induce us to think about equality. In our analysis of equality we have endeavoured to show that equality does not recognise the presence of special privileges, rather it abhors it because special privileges violate the equality. When the freedom of one depends upon the pleasure of another, Laski remarks, it cannot be freedom in real sense.

One will not have the scope to dictate the life and activities of others. Equality denotes that all the privileges shall be allotted to all. This is the basic principle of equality and in this principle is also implicit both rights and liberty. How? Everyone has this right to have privileges and he can claim it. To have rights is not all, for its implementation a congenial atmosphere is needed and this is liberty. We, thus, find that rights, liberties and equality are closely connected.

Both for rights and liberty the control of state or the intervention by government is essential. Here two points must be duly considered. One is, state intervention does not mean the state will intervene "at every turn and twist of individual life". If the authority decides to control the behaviour of individual or every trifling matter that will make life unbearable and entail loss of liberty.

It will also lead to non-implementation of rights. However, it cannot be said definitely how much intervention by state will be helpful for rights and liberty. It depends on manifold factors. Our second point is. "The incidence of state action is unbiased". The activities of the state must be impartial. Partiality will undoubtedly violate the basic norms of equality. Partiality means the abnegation of rule of law. Our practical experience teaches us different lesson. No state authority is hundred percent impartial. Assuming this situation, it has been suggested that the state should try to be impartial as far as practicable.

### **Unit 3**

#### **BENTHAM'S UTILITARIANISM**

##### **QUESTION FORMAT**

1. Explain and criticize Bentham's Utilitarianism. [2007]
2. "Greatest happiness of the greatest number." [2006,2004]
3. Explain the contribution of Jeremy Bentham and J.S. Mill towards utilitarianism. [2008]

##### **SYNOPSIS**

Bentham's political obligation of utilitarianism

Meaning of utility

Pleasure-pain theory

Sources of pleasure or pain

Factors governing pleasure and pain

Characteristics of the doctrine of utility

Criticisms of the doctrine of utility

Significance of Bentham's political obligation of utilitarianism

#### **BENTHAM'S POLITICAL OBLIGATION OF UTILITARIANISM**

Jeremy Bentham was the father of utilitarian school of thought. He based his principle of utility on the basis of the following assumptions;

1. All pleasures are similar and they differ only in quantity and not in quality. Push pin and poetry are capable of giving equal pleasures to a man.
2. The pleasure of one man is as important as of another. This requires the acceptance of the principle of equality.
3. There is no conflict between the interests of the individual and of the community as a whole, as the interest of the community is nothing or less than the sum total of the interests of the members who compose it.

##### **MEANING OF UTILITY**

Bentham used the word 'utility' as a synonym for the word 'good' or 'value'. Everything that brings happiness is good and anything that does not bring happiness is not good. The desire of every individual is to be happy and pleasant. He likes happiness and dislikes pain. By nature man is repulsive to sorrows and miseries. Everyone wants to be happy. Bentham says, "Utility is property in any object, whereby it tends to produce benefit, advantage, pleasure, good or happiness of the greatest number". He says, "an adherent to the principle of utility holds the virtue to be a good thing by reason only those of pleasures which result from the practice of it, he esteems vice to be a bad thing by reason only of the pains which follow in its train." The doctrine of utility is therefore a hedonistic theory. When Bentham spoke of the good and bad consequences of an action, he only meant the happy or painful consequences of that action.

### PLEASURE-PAIN THEORY

According to Bentham, human beings are creatures of feeling and sensibility. Reason is only a hand made of feeling or passion. All experiences are either pleasurable or painful. That action is good which increases pleasure, and decreases pain. That action is bad which decreases pleasure and increases pain. The yard stick to judging the goodness or badness of every individual's actions is the pleasure-pain theory. Bentham borrowed the pleasure and pain principles from Helvetius. According to Bentham, "Nature has placed mankind under the governance of the 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. On the one hand, the standard of right and wrong, and on the other hand, the chain of causes and effects are fastened to their throne. The principle of utility recognizes this subjection and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and law system which attempts to question it, it leads in sounds instead of senses, in caprice instead of reason, in darkness instead of light".

According to Bentham, everything was to be valued, adjusted and measured only in terms of pleasure and happiness. He says, "The principle of utility consists in taking as our starting point, in every process of reasoning the calculus of comparative estimates of pains and pleasures and in not allowing any other idea to intervene. An adherent to the principle of utility holds virtue to be a good thing by reason only of the pleasures which result from the practice of it; he esteems vice to be a bad thing by reason only of the pains which follows in train." For Bentham a man should not only aim at his own happiness but at collective happiness of the greatest number of people.

### SOURCES OF PLEASURE OR PAIN

Bentham lists out the following four sources of pleasure or pain:

1. Pleasure and pain which occur due to physical or natural sanction: We experience or expect them in the ordinary course of nature, not purposely modified by any human interposition.

2. Pleasure and pain that occur due to moral sanctions : These are pleasure and pain which we experience or expect at the hands of our fellows prompted by the feeling of hatred or goodwill.
3. Pleasure and pain that occur due to political sanctions: Such pleasures or pain are received from the magistrate or the legislator.
4. Pleasure and pain which occurs due to religious sanction.

Bentham himself explained these four types of sources thus: “Suppose a man’s house is destroyed by fire, if it is due to his own imprudence, it is the punishment of the nature. If it is at direction of some power, it is a punishment of political sanction. If it is done by his neighbor, due to ill-will, it is a punishment of moral or popular sanction. If it is an act for offending divinity, it is a punishment of religious sanction”.

#### FACTORS GOVERNING PLEASURE AND PAIN (OR HEDONISTIC CALCULUS OF UTILITY)

Bentham also provided a theory known as ‘Hedonistic Calculus’. He claims that by using it one can measure the pleasure of utility. Man does only that thing which gives him the maximum utility and thought it the maximum pleasure. If we want to know which thing gives the maximum happiness, we must be able to measure utility.

According to Bentham, what applies to individual morals, applies with equal force to state craft. That action of the state is good which increases pleasure or decreases the pain of the largest number of the individuals comprising it. All actions must be judged on this criterion. If the state promotes the greatest good of the greatest number it is good, otherwise it is bad. The principle of utility is held to be the rational guide both to private morals and to public policy. Hence, utilitarianism implies both individualism and democracy.

It is necessary to know whether the proposed legislation gives pleasure or pain to the people, how much and to how many. The end of legislation should be the happiness of the people. In the matters of legislation general utility should be the guiding principle. The science of legislation consists therefore in determining what makes for the good of the particular community whose interests are at stake. According to Bentham, the legislator has had to keep in view the four ends namely, security, subsistence, abundance and quality.

Bentham attaches three conditions to his principle of utility;

- i) it must be clear and precise
- ii) it must be single and sufficient amount of motivation
- iii) it must be applicable by means of a moral calculus

Thus, Bentham’s doctrine of utility is a hedonistic doctrine which recognizes no higher or lower pleasures. It is theory concerned with results and not motives. The following deductions can be made from the doctrine of utility:

1. The pleasure is the only good thing and desirable thing for a man. All other things – wealth, position, health and even virtue are secondary, and serve as a means to the ultimate accomplishment of happiness.
2. That, pleasure and pain can be arithmetically calculated with at least so much

accuracy and precision and to enable us to formulate rules encouraging one sort of behaviour and discouraging the others.

3. That we should not only think of our own pleasures and pains but also to see to the likely effects of our actions on the happiness of others.

### CHARACTERISTICS OF THE DOCTRINE OF UTILITY

Bentham's utilitarian doctrine has the following characteristics:

1. It is a hedonistic (pleasure) and pragmatic. It is not egoistic and altruistic.
2. It is based on quantity to happiness but not on the quality of happiness.
3. It is concerned with the result but not the motive.
4. It tells us whose pleasure or happiness is to be sought.
5. It tells us how to regulate our conduct.
6. It is universal.
7. It is objective, verifiable, unequivocal and clear.

### CRITICISMS OF THE DOCTRINE OF UTILITY

Bentham's theory of utility has been criticized on the following grounds :

1. It is a materialistic theory. There is no place for quality or conscience in this theory. It does not attach any importance to the moral actions of a person.
2. He forgot about the society. He thought about the individual happiness only.
3. It is an impracticable theory. It is impossible to measure happiness.
4. His principle is confusing and ambiguous. We find so many alternatives for the same issue. So straight line answers are not acceptable in politics.
5. The concept of pleasure differs from person to person and place to place. It has no universality and to give it a universal outlook is impracticable.
6. It makes people selfish and self-centered. His theory takes it for granted that everyone is selfish which might be true with some people but cannot be universally so.
7. Bentham's theory of utility is considered as impracticable because it is impossible to achieve greatest happiness of the greatest number.
8. Bentham has ignored that there could be a conflict between the self-interest of an individual and good of the community.

### SIGNIFICANCE OF BENTHAM'S POLITICAL OBLIGATION OF UTILITARIANISM

Bentham's straight forward statements challenging the then existing social and political institutions have universal appeal. His philosophy gave a severe blow to the social contract theory, when he said that the state was not the outcome of any contract but only because the people saw in it their advancement. His philosophy preached democracy and democratic institutions which was a bold step in those days. His utilitarianism shook many of the age-old institutions from their very foundations. His utilitarian principles which are a common sense formula of the 'greatest happiness

of the greatest member' had been of immense value which helped to face the problems of his day and hold good even today. It has given the legislators somewhat a measuring rod by which they could judge the utility of a particular legislation. Though the utility cannot be measured cardinally, it can be measured ordinally. Bentham treated all problems from the utilitarian point of view and all his other theories, legal, political and social are but an extension of his ethical theory. He offered practical solutions to reform the English society. He applied the principle of utility to the question of property. He contended that property was an institution which brought happiness to its owner. To achieve the end of 'greatest happiness of the greatest number' required that the property be equally distributed among the people. But he did not want to take away the property right from its owners but he wanted to remove the disparity by imposing limitations on inheritance. In the words of Fredric Pollock, "The utilitarian principle was made a book to put in the nostrils of Leviathan than he may be tamed and harnessed to the chariot of utility". Bentham, unlike the idealists and the collectivists, emphasized the view that the state exists for a man and not man for the state. This the correct view of the relations between the individual and the state. The interests of the individual are primary, for whose protection the state ushers into existence.

#### FURTHER READING

1. Utilitarianism: From Encyclopedia Britannica
2. Utilitarianism – John Stuart Mill
3. Political Obligations – Dr. S.R. Myneni

#### **Question.**

**Discuss T.H. Green's views on idealism and explains the merits and demerits of idealism in general**

#### **THOMAS HILL GREEN – PROMINENT BRITISH IDEALIST.**

T.H. Green was not only interested in giving the principles of his philosophy, but also in participating in practical English Politics. Green came to be acknowledged as one of the leading philosopher of the 19<sup>th</sup> Century.

Green's idealism, unlike that of Hegel, is of the moderate type. He gave a liberal interpretation to the idealism of different thinkers including Hegel and made it acceptable.

#### **Main principles of Green's Thought.**

1. Green believes that the state is natural and necessary institution for survival of mankind. State is only a means to an end. Green states that State should perform the function of removing hindrances from the path

- of development of individual's personality. The state must not do anything which created obstacles in the path of one's development.
2. State is the resource of Freedom: Green agrees with Hegel that the aim of state is to provide freedom. The individual realizes his freedom in the state.
  3. As a member of society, individuals have rights in which common good is recognized. In absence of state there will be no such rights and human beings cannot survive as a human being.
  4. He believed that the state is sustained not by blind coercion. Rather in the interest of the community coercion is required to be used by the state.
  5. Green emphasis that the chief function of the state is to uphold individual's rights to make availability of such conditions which will enable the individual to develop his personality. Green restricts state from interfering in one's self-determination and providing freedom to the individual to develop as per his own ideals.
  6. Green being an individualists he restricts Government's arbitrarily actions or misuse of its coercive power. Green's idealism entitles the individual to resist such arbitrary action of the state or her unjust and oppressive laws.
  7. Green comes at middle range as far as private property issue is concerned. On one hand he is against few individuals concerning wealth for exploitation; but on the other hand, he is not socialistic. He emphasis that private property enables the individual to give expression to his personality and hence it is required that everyone must be allowed to have private property.
  8. Green says that it is the responsibility of the state to punish criminals who are anti-social and go against the freedom of others so as to remove the obstacles on the path of rights and prevent the future violation of rights.

### **Merits of idealism:-**

1. Idealists established a close connection between politics and ethics. They consider the state as an ethical institution.
2. Idealists looked for high goals. It is always good for a society to set big goals. Though they could not be achieved easily, it is good to have ideals or directions where the individual and society should move.
3. Idealist give a high place to mind and will. They believe morals and ethics.

4. Idealists give importance to the state. they subordinate the individual to the authority of the state.

### **De-merits of idealism:-**

1. The extreme idealists do not distinguish the state from society.
2. Extreme idealism may prove to be dangerous, as it makes the state a super-personality transcending the personality of its members. Such a state becomes omnipotent and infallible.
3. Extreme idealism harms the individual by destroying his liberty and suppressing his personality.
4. Idealism doesn't support the growth of in-tune relationship of states and development of international law.

## **Unit 4**

### POWER

#### QUESTION FORMAT

1. What is power? Explain the various types of power.

Short notes

Power

#### SYNOPSIS

- f. Introduction
- g. Meaning
- h. Definition
- i. Nature of power
- j. Types of power
- k. Conclusion

#### INTRODUCTION

The term power is considered as an important subject in local, national and international level. Now days it is involved equally in economic, social, political, and religious factors. In the study of politics 'power' is usually regarded as a key concept. Power is central to the study of politics. It is seen as a struggle for power. It can be seen as evil or unjust but the exercise of power is accepted as endemic to humans as social beings.

#### MEANING

The word power is derived from the Greek word 'politics'. Aristotle classified the constitution on the basis of the location of power. The study of power is concerned

with how it is obtained, exercised and controlled. Power is often used to mean control, influence, authority, force, might and domination. Power is the crux of politics. Since, the beginning of humanity power has been occupying position. Power means the strength of the body and mind. In political science power means the power of a man over the mind and actions of other men. It is the ability to control the behaviour of others in accordance with one's own intention.

#### DEFINITIONS

1. Bertrand Russell – “Power is the capacity to influence the actions of others.”
2. Hans. J. Morgenthau – “The power of man over the minds and actions of others.”
3. Lasswell – “Power is the participation in the making of decisions.”

#### NATURE OF POWER

Ever since the ‘Leviathan’ of Hobbes appeared in 1651, the concept of power in the realms of politics has become a momentous subject of investigation so that now it is regarded as the key area of politics.

1. Power is the psychological phenomenon. Therefore the relation between those who exercise power and those over whom it is exercised is a psychological relation with the impact derived from three sources viz.,

- a. the expectation of benefits,
- b. fear of consequences, and
- c. the respect or love for men or institutions

2. Power is the capacity to influence the behaviour of others. A person when influences other persons according to his wishes, this is considered as power.

3. Power is a certain kind of human relationship. A proper understanding of political power involves an examination of the way the relationship is conducted.

4. Political power has to be seen as a relationship for the use of power, the presence of an actor or subject and some other individual is essential so that the actor can influence other individuals according to his capacity or wish.

5. The principle of power is that it should be backed by sanction. Power is the capacity to affect another's behaviour by the threat of some form of sanction. The greater the sanction, the greater will be political power.

6. Power is not only relational but also influential. The person who exercises power affects the behaviour of the other individuals and nations. Law does not recognize bad power of undue influence, coercion, violence, etc..

#### TYPES OR KINDS OF POWER

The classification of power is as follow

1. DIRECT AND INDIRECT POWER – When a person or group of persons use

power, against others it is called direct power, while a person or group of persons authorize others to use power or uses through subordinates, it is called indirect power. A person has the right to sell away his property. When he sells his house to someone, it means he used his power directly. At the same time, he can give power to another person through 'general power of attorney'. If he sells his house authorizing someone to sell his house, it means he used his power indirectly.

2. LEGITIMATE AND ILLEGITIMATE POWER – Legitimate power accrues through law and illegitimate power is accrued by force or violence and it is against the laws. Constitution or accepted customs, or acts sanction the same rights to the public and if they act according to the rules and regulations, the power is considered as legitimate power. Illegitimate power can only be acquired by force, aggression and violence. The people obey legitimate power and revolt against illegitimate power as they will tolerate them.

3. POLITICAL POWER AND MILITARY POWER – Political power rests with the state. Political power lies in the administration of the state, military power lies with the army, navy and air force. The military is too directed by the ministry of defense which is a part of political power. Military power is subordinate to political power. The primary function of military power is to protect the boundaries of the state and to defend the nation against the external aggression. Political power is based on psychological influences. Military power is based on the real strength of the army men and armaments. Political power is patent and military power is latent.

4. MANIFEST POWER AND LATENT POWER – The power which can be exercised openly and clearly is called manifest power. Military power is an example of manifest power. The power which cannot be exercised openly or clearly is called latent power. Media such as the press and TV are examples of latent power.

5. CENTRALIZED AND DECENTRALIZED POWER – When the power has been concentrated with one authority it is called centralized power. When the power is distributed and decentralized it is called decentralized power. In India and USA power is decentralized in different states.

6. UNILATERAL AND BILATERAL STATES – If one person uses his power on another, whereas the other person cannot use his on that person who used power on him, then the power is called unilateral power. When both sides use power for each other, it is called bilateral power. Parties of a sale deed, mortgage, and lease are examples of bilateral power.

7. DOMESTIC AND INTERNATIONAL POWER – There are certain major

differences in the role of power of a state in domestic affairs and international policies. In civil societies there exist a number of alternatives to violence. Realizing that all the relations cannot be regulated by physical strength alone, a system of general rules of procedures has been adopted by each society to redress the wrongs in a non-violent way. Individuals no longer have the right to take the law into their own hands. In international relations, due to lack of generally agreed upon rules and devices, the states have to protect their rights and to rectify injuries through the use of force.

## CONCLUSION

Politics is nothing but the struggle for power. Politics has now changed from one of being 'a study of state and government' to that of being 'a study of power'. Curtis says, "Politics is an organized dispute about power and its use involving choice among competing values, ideas, persons, interests, and demands. The study of politics is concerned with the description and analyses of the manner in which power is obtained, exercised, and controlled and the purpose for which it is used, the manner in which decisions are made, the factors which influence the making of those decisions, and the context in which those decisions take place."

## FURTHER READING

1. Political Obligations – Dr. S.R. Myneni
2. Foundations of Political Obligations – A.S. Bhagyashree Mallikarjun
3. Wikipedia

## AUTHORITY

### QUESTION FORMAT

1. What is authority? Explain the various types of authority and also explain how authority is legitimate? [2007,2004]

Short notes

Authority [2008,2006]

## SYNOPSIS

- h. Introduction
- i. Meaning
- j. Definitions
- k. Characteristics
- l. Sources
- m. Kinds or types of authority
- n. Authority and legitimacy
- o. Conclusion

## INTRODUCTION

Right to exercise powers, to implement and enforce laws; to exact obedience; to command; to judge; control over; and permission are synonymous with power. Authority is a person or persons, or a body exercising power of command as the civil and military authorities. Authority is the power or admitted right to command or act, whether original or delegated, as, the authority of a prince over subjects and of parents over children. Authority is a body having jurisdiction in certain matters of public nature. The word authority includes central and state governments. Authority means the institutionalized exercise of power backed by law or constitution and common consent.

## MEANING

The word 'authority' is derived from the old Roman notion of 'Auctor' or Auctoritas'. The senate, the upper house in Rome gave its counsel to the popular assembly and this council was called 'Auctor' or Auctoritas'. Authority means the institutionalized exercise of legitimate power backed by law or constitution and common consent. Although political power rests on the potentiality to invoke coercion, from historical days it has been found that coercion by way of threat of sanction is not an adequate instrument to elicit obedience. If the power is to subsist for long, it must receive general acceptance. Obedience may be obtained by the use of threat of sanctions, yet it rests upon a form of consent. It is this consent to or acceptance of power of the ruler by the ruled that strengthens the power and gives him the authority. Political authority is based on the acceptance of the right to rule.

## DEFINITIONS OF AUTHORITY

1. The term authority has been defined with various shades of meaning. They are :
2. Max Weber – "Political authority is based on the acceptance of the right to rule, and this is also called legitimacy."
3. Friedrich ".....authority and reason are closely linked indeed.....authority rests upon the ability to issue communications which are capable of reasoned elaboration."
4. McIver "Authority is often defined as being power, the power to command obedience."

## NATURE OR CHARACTERISTICS OF AUTHORITY

Authority is invested in a person or a body exercising power of command, having superior power. The subordinate obey the rules and regulations framed by the superior. The authority may be transferred by a principal to agent. Authority is nothing but a power to do something; it is sometimes given in words, and sometimes by writing and

in the modern period mainly by ways of rules, regulations and constitutions. There is an obligation on the subordinates to obey the rules framed by their superior, to whom such authority is entrusted. Political authority is based on the acceptance of the right to rule, or what Max Weber called 'legitimacy'. The rules framed by a superior officer must be obeyed by his subordinates, if his authority springs from proper legitimacy.

i. The authority possesses dominance over the subordinates. It implies that superior authority has the right to receive obedience. The person or the body to whom authority is invested, exercise dominance over the subordinates.

Dominance is an important characteristic of authority. Authority is not a power, but some times that accompanies power.

ii. Authority is the embodiment of reason and depends on the capacity of reasoned elaboration.

iii. Authority also has responsibility. Responsibility and accountability are important essentials of authority. Authority is responsible to those who authorized it to function on their behalf.

iv. Power can undergo a subtle transformation into authority with the growing support from the political community. Political authority may change from one regime to another. The new regime will then rely on political power for the moment, not political authority. It will take some time for the new regime to gain general popular acceptance.

#### SOURCES OF AUTHORITY.

The following are the sources or grounds of legitimate authority:

1. DIVINE RIGHT – At the more primitive level, all rules are alike. Religious, customary and legal. During those days, the chief or the king was selected from one royal family, and would be required to demonstrate his divine appointments by prowess in arms or other visible customary sign. He was then formally acknowledged by his people, as God's gift to them. It was generally admitted that God had instituted the government because men needed it. The king's right to rule is divine and the subjects had to obey the king's orders. However, it is not accepted in the modern age.

2. RELIGION – Thirteenth century was a period of great religious movements. The church preached that eternal law governs the whole universe. It represents the reason of God. Divine law consists of commands of God communicated by revelation. The secular government is subject to the church, because the former is concerned with intermediate ends, whereas the latter is concerned with the ultimate end, the salvation of the souls. The Pope of the Vatican, Dalai Lama obtained authority in the name of religion.

3. FORCE – Force is also one of the sources of obtaining authority. Soldiers with advanced armaments, cavalry, use of guns and cannons, air force and atomic

bombs provide force to the person and the states. Force is considered as one of the sources of obtaining authority.

4. REVOLUTION – Karl Marx believed that the authority is an economic phenomenon and it has been concentrated in the hands of land lords, bourgeois and capitalists. They got the power by exploiting the slaves, artisans and workers. Therefore, he advocated not obeying the rule of such authority and suggested class-war, revolution and revolt. He wanted to see classless society without exploitation with the real authority vested in the hands of working class and peasants.

5. ELITE – Due to superior education and training, some people go up the social ladder; they also tend to create a status symbol for a particular section of the people. Due to their leadership qualities, the government of the people by an elite sprung from the people. Thus. There exists in each society minority elite of the population, which comes to power to make decisions in the society and hold authority.

6. TRADITIONAL – According to Max Weber, political authority derived from an established belief in the sanctity of immemorial traditions and the legitimacy of the status of those exercising authority over them. When the right to rule is accrued from a continuous use of political power based on customs and traditions, it is called traditional authority.

7. CHARISMATIC – Charisma means gift of grace. According to Max Weber, political authority rests on the devotion to the specific and exceptional sanctity, heroism or exemplary patterns of order revealed or ordained by him. When the right to rule is accrued from the great qualities and charisma of a political leader, it is called charismatic authority.

8. LEGAL-RATIONAL – As per Max Weber, political authority is said to rest on a high belief in the legality patterns of normative rules and the right of those elevated to the authority under such rules to issue commands. When the right to rule is accrued according to the constitutional rules of the state, it is called legalrational authority.

## KINDS OR TYPES OF AUTHORITY

Max Weber's classification of authority

1. TRADITIONAL AUTHORITY – Traditional authority, that is, the right to rule emerging from a continuous exercise of political power. A king's authority belongs to this category. Authority from this point of view is legitimate if sanctioned by tradition – but so are the limitations of authority if they also are traditionally prescribed.

2. CHARISMATIC AUTHORITY – When the people submit themselves to be ruled by a man mainly on their behalf in the extraordinary quality of a ruler, that rule over them is referred to as ‘charismatic authority’. The legitimacy of rule rests upon the belief in the magical powers, and hero worship and revelations.

3. LEGAL- RATIONAL AUTHORITY – Legal-rational authority is anchored in impersonal rules that have come to characterize social relations in modern societies.

The other kinds of authority are as follows;

#### GENERAL AUTHORITY

An authority is general when it extends to all acts, or all connected with a particular employment, and special when confined to a single act.

#### LEGAL AND POLITICAL AUTHORITY

Legal authority is that which frames and subordinates obey them. In legal authority the legitimacy of the power-holder to issue commands rests upon rules that are rationally established by enactment, by agreement, or by imposition. Political authority is obtained with the people giving voluntarily their consent. It enhances the nationality of the people of the state. In every political system, it is true a process of psychic manipulation that the political authority seeks to create a belief about its legitimacy. Political power, for the sake of continuity and acceptability, has to be legitimate power.

#### CENTRALIZED AND DECENTRALIZED AUTHORITY

In the unitary states like the UK, France etc, the authority is centralized. In federal states like India, USA etc, the authority is distributed between the centre and the states of the nation.

#### DEFACTO AND DEJURE AUTHORITY

Ability to get one’s proposals, commands, and pronouncements accepted and thus determine other people’s behaviour is to have authority de facto, whereas to have the right to make pronouncements, issue commands of certain kinds and get others to obey them is to have authority de jure. De jure authority exercises authority through speech and word and enjoys the right to receive obedience. It determines who shall be the author. It is concerned with a prior set of rules. De facto authority has no real authority in its hands but enjoy the same position. If the man who has de facto authority starts using force, he shall be described as exercising power, not authority.

#### AUTHORITY AND LEGITIMACY

Authority is the institutionalized exercise of legitimate power. Power is the capacity to influence the actions of others. Power is the ability to win over others. Force is an adjacent but not the essence of power. Power is the latent force and force is the patent power. Authority and power are both ways of regulating social behaviour and conduct. Authority is always legitimate. When the authority is legitimate, the majority people

obey the rules, decisions, laws etc, passed by such authority, without any force or persuasion. The people obey such laws unquestionably. Legitimacy is the foundation of political power in as much as it is exercised both with the consciousness on the government's part that it has a right to govern and with some recognition by the governed of that right. The party having the majority in the legislature has the authority to pass laws, and it has acquired legitimacy. The government which possess real and strong majority can acquire legitimacy. Legitimacy includes political authority and non-political authority. It covers both political and non-political organizations depending upon the circumstances. The exercise of authority becomes legitimate when it is exercised according to constitutional and legal principles; according to customs and traditions and by a charismatic leader.

## CONCLUSION

Although political power rests on the potentiality to invoke coercion, from historical days it has been found that coercion by way of threat of sanction is not an adequate instrument to elicit obedience. If power is to sustain for long it must receive the general acceptance. Obedience may be obtained by the use of threat of sanctions, yet it rests upon a form of consent. It is this consent to or acceptance of power of the ruler by the ruled that strengthens the power and gives him the authority. Political authority is based on the acceptance of the right to rule.

## FURTHER READING

1. Political Obligations – Dr. S.R. Myneni
2. Foundations of Political Obligations – A.S. Bhagyashree Mallikarjun

## LEGITIMACY

### QUESTION FORMAT

1. Explain the concept of legitimacy. Discuss the various types of legitimacy with illustrations? [2004,2007]

### SYNOPSIS

- g. Introduction
- h. Meaning
- i. Definitions
- j. Concept of legitimacy
- k. Nature
- l. Classification of legitimacy according to
  - i. Max Weber
  - ii. Fredrich
- m. Conclusion

## INTRODUCTION

Legitimacy is a concept that is intimately linked with the concepts of power and authority. The earliest traces of legitimacy are found in the writings of Plato and Aristotle. In modern times Max Weber has dealt with the notion of legitimacy.

Legitimacy is the foundation of political power in as much as it is exercised both with a consciousness on the government's part that it has a right to govern and with some recognition by the governed of that right.

## MEANING

Political authority is based on the acceptance of the right to rule or what Max Weber called legitimacy. The term legitimacy has been derived from the Latin word 'legitimus' meaning lawful or according to law. It normally stands for something authorized to do an action which does not violate the laws.

## DEFINITIONS

1. Lipset – “Legitimacy includes the capacity to produce and maintain a belief that the existing political institutions or forms are the most appropriate for the society.”
2. *Blondel* – “It is an external extent to which the population accepts the organization without questioning it.”

## CONCEPT OF LEGITIMACY : NATURE

According to H.G Wells, stability of a democratic political system depends not only upon the economic development, but also upon its legitimacy. Legitimacy rests upon the confidence of the people in the existing political institutions. Decision making process characterizes the operation of a modern political system. Authority and legitimacy are two important components of the decision-making system. People's consent legitimizes the exercise of political power.

Since the state generally has a considerable amount of power at its disposal to enforce its laws, it is clear that one in a position of political authority enjoys a great amount of power. If the government is a 'legitimate government', then the source of its power lies with the approval of the people.

Legitimacy applies to the cases where the set-up and use of political authority is in accordance with the established and accepted procedures and rules in a society.

Legitimacy clears whether decisions are being made by the right kind of people i.e., by the people who, according to rules, should be making the decisions, and whether the decisions are being made in accordance with the rules of the particular society.

Legitimacy is not related to the goodness or badness of the people or their decisions. A regime may be legitimate in the sense that it came to power in accordance with the

rules of the land, and not yet be benevolent, wise or good. Goodness is not exhausted by the legitimacy. Sometimes, a good government may be legitimate and yet tyrannical. The question of legitimacy is decided by determining whether the person in authority acts within the sphere recognized to be his under these rules, and by asking whether the person in command really satisfies the conditions laid down by the rules. Different societies have different kinds of normative rules which bestow legitimacy. Legitimacy is limited to the requirements of the procedures and it is not correct to ask whether a command is wise, prudent or otherwise desirable before obeying it. Such considerations are essential when we deal with the question of justification of authority.

## CLASSIFICATION OF LEGITIMACY ACCORDING TO MAX WEBER

Max Weber has classified legitimacy into three kinds. He states his classification as follows;

- i) traditional
- ii) charismatic
- iii) legal-rational

**TRADITIONAL LEGITIMACY** – It depends on traditions, customs and usages. People obey the rules as matter of tradition. Traditions have a certain limitation which is followed by the ruler as well as the people.

**CHARISMATIC LEGITIMACY** – it depends on the extraordinary feature of the political leader. When people submit themselves to be ruled by a man mainly on their belief in the extraordinary quality of such a ruler, that rule over them is referred to as 'charismatic authority'. The legitimacy of charismatic rule rests upon the belief in magical powers, and hero worship and revelations

**LEGAL- RATIONAL** – The authority that comes from a well established legal system is called legal-rational legitimacy. The power of the prime minister is based on the constitutional law.

## FREDRICH

Fredrich classifies legitimacy into;

- i) **RELIGIOUS LEGITIMACY** – has its concept from the time of ancient empire, when the king was considered as the son of god. For eg divine origin theory of state.
- ii) **PHILOSOPHICAL LEGITIMACY** – is based on the reasoning power of a ruler. For e.g. Plato said that philosophers should be the king and vice-versa.
- iii) **PROCEDURAL LEGITIMACY** – is based on election by which people elect their representatives according to the procedures laid down by the

constitution. Here the majority is given priority, also called democratic legitimacy.

iv) PRAGMATIC LEGITIMACY – depends on the performance of duties like maintenance of law, success in war, economic progress etc.

## CONCLUSION

Legitimacy is the foundation of political power in as much as it is exercised both with a consciousness on government's part that it has a right to govern and with some recognition by the governed of that right. Legitimacy is integral to a government's authority. In order to maintain it, all governments must in some way be able to satisfy the basic needs of their citizens. The conversion of people's needs into policies is basic to all forms of government, even in primitive tribes that must feed and shelter their members.

## FURTHER READING

1. Political Obligations – Dr. S.R. Myneni
2. Foundations of Political Obligations – A.S. Bhagyashree Mallikarjun
3. Wikipedia

## Unit V

### UNJUST LAWS

#### QUESTION FORMAT

1. Explain the problems of obedience to unjust laws. [2008]
2. Should unjust laws be obeyed? Discuss. [2007, 2006]

#### SYNOPSIS

What is a law?

Definition of law

Nature

What are unjust laws?

Why people disobey unjust laws?

Disobedience to unjust laws

Situations of justified obedience

Safeguards against unjust laws

### WHAT IS A LAW?

Men live in society. They differ in their ideas, aims and ideals. Hence there must be some 'uniform rules' to control their activities. These uniform rules which regulate human behaviors are called laws. The concept of law occupies a significant place of political theory. Law is closely associated with State that state without law is anarchic and law without state is meaningless. To MacIver "the State is both the child and parent of law". Law not only prescribes the rules of behavior for citizens in the state but also

provides a social order without which no civilization and economic development is possible. The word law is derived from an old Teutonic root 'lag' which means something which lies fixed or evenly. The word law is also associated with the Latin word 'jus' which again is associated with another word 'jungere' giving the meaning 'a bond or tie'. The general meaning of law is 'a body of rules to guide human action. It is the product of human action and endeavour.

## DEFINITION OF LAW

Law is, in its widest abstract sense, any uniformity of events, or any rule of action.

1. Montesquieu says, "Laws, in the most extended signification, are the necessary relations which flow from the nature of things; and in this sense all beings have their laws; divinity has her law; the material world has her laws; intelligence superior to human beings have their laws; human beings have their laws."

2. According to Blackstone, "Law, in its most general and comprehensive sense signifies a rule of action whether animate or inanimate, rational or irrational."

3. According to Salmond, "the law may be defined as the body of the principles recognized and applied by the State in the administration of justice.

## NATURE

- i. The most dominating feature of law is its uniformity.
- ii. The most dominating feature law is that it is in the nature of enjoinders to be kept.
- iii. The law should conform to the principles of justice.
- iv. Law consists largely of 'ought' [normative] propositions prescribing how people ought to behave but not control their inner thoughts and motives.
- v. Another valuable character of law is its capabilities in procuring remedies in cases of infringement.
- vi. Law is universal in the sense that no individual is exempted from law.
- vii. The main aim of law is to ensure social order for the general good of all.
- viii. Laws are a part of the institutional system in society.
- ix. Laws confer enjoyment of powers or rights.
- x. Law should be dynamic and not static.

## WHAT ARE UNJUST LAWS?

The legislatures, who have brute majority in the legislature, or huge powers in their hands, may pass certain bad and unjust laws to satisfy a section of society and a section of people suffer a lot with troubles. Unjust laws are the most unwanted defect of law. Unjust laws means laws of not just, unfair, cruel, bad, etc. General people prefer law-abiding society instead of lawlessness, anarchy, and unjust laws when the laws are unjust in the view of majority people of the state, they disobey such laws, the legal system would breakdown, become ineffective and cease to be law. For Augustine "Lex

injusta non est lex” meaning ‘an unjust law is no law’. An unjust man, act or law is automatically immoral. Wickedness can take other forms than justice. Unjust laws make people suffer. Unjust laws lead to unequal distribution of wealth and break down of law system and to revolt against the sovereign and government. In certain occasion of unjust laws and atrocities by the rulers the people may refuse to obey the laws and decide not to carry out their obligations. Unjust laws cease to be law by becoming ineffective for it only by being accepted and obeyed that law remains effective and continues to be law. Unjust laws are the laws that treat one or more persons more harshly or more favorably than others in the same situation. A father who picks on one child and makes a favourite of another is an unjust parent. Similarly, if the government imposes heavy taxes or restrictions on people or a group of people such laws are unjust laws. Under Nazi government, Hitler passed several unjust laws against the followers of Judaism. In an unjust law, the society will be divided. The principle “All are equal before the law” is badly effected. The effected people would revolt against such law and government. Peace will be disturbed. Customs are the sources of law. Majority of the people follow customs in every society. Legislature adopts such laws which are accustomed to customs. Some customs may turn bad due to changed society. For eg. sati, child marriages, dowry was followed once and now they are evil customs. If the legislature enacts in support of them, they are considered as unjust laws. Unjust laws enacted by majority of legislature are not at all and there is no obligation on people to obey such laws. Such unjust laws of discrimination were disobeyed in America under the leadership of Martin Luther king, and in South Africa and India by the Gandhians. People have the right to revolt against such laws if they are in practice.

#### WHY PEOPLE DISOBEY UNJUST LAWS?

The obligation of the state is to make laws which are beneficial to the people and which are acceptable to public. Similarly, the obligation of individuals is to obey laws of the state. The problem arises only when the laws are unjust. Is it desirable to obey such unjust laws? Many political thinkers propose to disobey unjust laws. They foresee that revolution take place if the laws are unjust.

#### DISOBEDIENCE TO UNJUST LAWS

Disobedience is the action which produces increasing tension between laws and behaviour. In permissive societies, the emphasis on liberty inspires resistance to duty; and a deep-seated religious or social antagonism sharpens the tensions and foster rapid changes in moral ideas.

There is a legal duty to obey laws. But the individual has the inner moral liberty to obey or disobey. Disobedience of an immoral law would not be necessarily thought immoral even by those who would still deem it ‘law’ though they would treat it as illegal.

Consent is the reason why people ought to obey laws. Another reason for obedience is that disobedience sets a bad example. Disobedience may bring hardship on others.

Disobedience may topple the government in authority. Economy of the state may

become turbulence. Political unrest creates new problems to the existing ones.

## SITUATIONS OF JUSTIFIED DISOBEDIENCE

It is argued that some actions are legitimized by law even when they are departures from it. For example a doctor performed an abortion on a girl, who was pregnant as a result of rape, knowing fully well that as per law he was committing a crime. He was in fact held not guilty because the court retrospectively enlarged the scope of necessity. Non- enforcement or non- prosecution of some offences are examples of legitimized disobedience.

## SAFEGUARDS AGAINST UNJUST LAWS

In modern society, democratic form of government makes laws through legislatures consisting of representatives elected by the people. According to the doctrine of separation of powers, the judiciary has the power of judicial review when an act is against the rights given by the constitution. There are so many safeguards against enacting unjust laws in a democratic state. They are:

1. Opposition parties – The opposition parties initiate amendments to the bills proposed by the ruling parties, wherever they feel that certain clauses are unjust.
2. Executive – The president or the head of the state may ask the legislature to consider once again the changes to be made by sending back the bills.
3. Judiciary – The judiciary cannot interfere in the affairs of the enactment but, in the interest of justice and to protect the fundamental freedoms of the individual, in certain cases, take up judicial review and quash unjust parts of acts or the provisions of such unjust laws.
4. Public agitation – In certain occasions, common people also agitate against unjust laws by demonstrations, hartals, boycotts, etc.
5. Public Opinion through press and the mass media – Press criticizes unjust laws through articles, letters to the editors and the statements of eminent public figures. Mass media educate the public regarding unjust laws.

## THOREAU AND GANDHI ON CIVIL DISOBEDIENCE AND SATYAGRAHA

### QUESTION FORMAT

1. Explain the different steps of Satyagraha and Sarvodaya as a technique of change.

2. Write notes on Satyagraha and Sarvodaya.
3. Explain the political and economic ideas of Mahatma Gandhi.

Short notes

Civil disobedience

## SYNOPSIS

- o. Henry David Thoreau on civil disobedience
- p. Essay on civil disobedience
- q. Good government
- r. Right of revolution
- s. Disobedience to unjust laws
- t. Respect for individual
- u. The problem of Gandhian civil disobedience and political obligation
- v. Doctrine of satyagraha
- w. Satyagraha vs. duragraha
- x. Satyagraha : Gandhi's approach to peacemaking
- y. Gandhiji on political obligation towards the state or Gandhian civil disobedience vs. political obligation
- z. Criticisms
- aa. Sarvodaya
- bb. Origin and Gandhian political ideal

## HENRY DAVID THOREAU ON CIVIL DISOBEDIENCE

Henry Thoreau is considered one of the most influential figures in American thought and literature. A supreme individualist, he championed the human spirit against materialism and social conformity. The influences of Rousseau, Jefferson and Tolstoy on Thoreau were 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.

## ESSAY ON CIVIL DISOBEDIENCE

One of Thoreau's most important works, 'Civil Disobedience' [1848], grew out of an over-night stay in prison as a result of his conscientious refusal to pay a poll tax that supported the Mexican War, to which Thoreau represented an effort to extend slavery.

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Thoreau's advocacy of civil disobedience as a means to protest those actions of the government that he considers unjust has had a passive resistance independence movement led by Gandhi in India, and the non-violent civil rights movement led by Martin Luther King in the United States. Thoreau in his 'Civil Disobedience' clearly

explained the rights of the individual to obey the dictates of his conscience rather than the dictates of the state. Thoreau, in his essay 'Civil Disobedience' explains good government as stated below.

## GOOD GOVERNMENT

Thoreau accepts the motto, "That government is the best that governs the least." He also believes, "That government is best which governs not at all." The government is at best but an expedient. However, most governments are usually inexpedient. The government itself, which is only the mode which the people have chosen to execute their will is equally liable to be abused and perverted before the people can act through it. He gives the example of a few individuals using the standing government as their tool; for in the outset, the people would not have consented to this measure.

American government, though a recent one, is endeavoring to transmit itself unimpaired to posterity, but each instant losing of its integrity. The government has not the vitality and force of a single man can bend it to his will. Government is a sort of a wooden gun to the people themselves. Government is excellent, we must all allow. Yet the government never of itself furthered any enterprise, but by the alacrity with which it got out of its way. The government does not keep the country free. For government is an expedient, by which men would fain succeed in letting one another alone; and when it is most expedient, the governed are let alone by it. Thoreau asked for a better government which educates masses, promotes trade and commerce and keeps the country free. If the traders go out of law, then they would deserve to be classed and punished with those mischievous persons who put obstructions on the rail roads. Let every man make known what kind of government would command respect.

When the power is once in the hands of the people, a majority are permitted, and for a long period continue to rule, is not because they are most likely to be in the right, nor because this seems fairest to the minority, but because they are physically the strongest. But a government in which the majority rules in all cases cannot be based on justice, even as far as men understand it. It is not the majority that decides right and wrong but the conscience. Every citizen should be a man first and subject later. It is not desirable to cultivate a respect for the law, so much as far as for the right. The only obligation which one has a right to assume is to do at anytime that he thinks right. A common and undue respect for law is that one may see a 'state with file of force' and men buried under arms. The masses of men serve the state not as men but as machines, with their bodies. In most cases there is no free exercise whatever of the judgment or of the moral sense; but they put themselves on a level with wood and earth and stones. Yet, such as these even are commonly esteemed good citizens. Often most politicians, lawyers, ministers and office-holders serve the state chiefly with their heads, and they rarely make any moral distinction. A wise man will only be useful as a man, and will not submit to be 'clay' and 'stop a hole to keep the wind away', but leave that office to his dust at least. Thus, according to Thoreau, a good government is always based on the consent of the individuals and allows them to live honestly and comfortably.

## RIGHT OF REVOLUTION

Thoreau says about right of revolution thus:

“All men recognize the right to revolution; that is, the to refuse to allegiance to, and to resist, the government, when its tyranny or its inefficiency are great and unendurable.” He further says, “.....when a sixth of the population of a nation which has undertaken to be the refuge of liberty are slaves, and a whole country is unjustly overrun and conquered by a foreign army, and subjected to military law, I think that is not too soon for honest men to rebel and revolutionize. What makes this duty the more urgent is that the country so overrun is not our own but ours is the invading army.” Thoreau says, that Parley, in his essay on the “Duty of Submission to Civil Government” resolves all civil obligation into expediency; and he proceeds to say that “so long as the interest of the whole society requires it, that is, so long as the established government cannot be resisted or changed without public inconveniency, it is the will of God.....that the established government be obeyed.....and no longer.

This principle being admitted, the justice of every particular case of resistance is reduced to a computation of the quantity of the danger and grievance on the one side, and the probability and expenses of redressing it on the other.” Of this, Parley says, every man shall judge for himself. But Parley appears to have contemplated those cases to which the rule of expediency does not apply, in which a people as well as an individual must do justice, cost what it may.”

## 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.

## RESPECT FOR INDIVIDUAL

Thoreau asserted, like many individualists, that the authority of the government is an impure one. But the government must have the sanction and consent of the governed in order to be strictly just. It can have no pure right over individual and property but what he concedes to it. The progress from an absolute to a limited monarchy, from a limited monarchy to a democracy, is a progress towards a true respect for the individual. Even the Chinese philosopher, Confucius was wise enough to regard the individual as the basis of the empire. Is democracy, such as we know it, the last improvement possible in government? There will never be a really free and enlightened state until the state comes to recognize the individual as a higher and independent power, from which all its own power and authority are derived, and treats him accordingly.

Thoreau concludes his essay ‘Civil Disobedience’ by saying, “I please myself with imagining a state at last which can afford to be just to all men, and to treat the individual with respect as a neighbour; which even would not think it inconsistent with

its own response if a few were to like aloof from it, nor embraced by it, who fulfilled all the duties of neighbour and fellow men. A state which bore this kind of fruit, and suffered it to drop off as fast as it ripened, would prepare the way for a still more perfect and glorious state, which I have also imagined, but not yet anywhere seen.”

## THE PROBLEM OF GANDHIAN CIVIL DISOBEDIENCE AND POLITICAL OBLIGATION

DOCTRINE OF SATYAGRAHA [SATYAGRAHA, AS A TECHNIQUE OF CIVIL DISOBEDIENCE : Gandhiji used Satyagraha as a technique of the fight of an oppressed people against foreign rule. According to Gandhi, every nation should have ‘swaraj’. Swaraj is the birth right of every citizen. Every nation should have independence. Gandhi frankly called the alien rule as ‘satanic’. Swaraj means a state such that the citizens can maintain our separate existence without foreign rule. Swaraj is an ideal society in which everyone has the capacity to resist the abuse of authority. Swaraj implies the reign of complete social justice, equality and freedom. Swaraj also desires a social order without egoistic interests that causes social conflicts and tensions. Swaraj means the rule of the people of a nation-state. Gandhi evolved the technique of Satyagraha, a novel and a unique way to resist the evil of foreign rule. It is a device through which the unjust, impure, untruthful and evil are tested.

The literal meaning of the term ‘Satyagraha’ is ‘persistence for truth’. It is the soul force or love or truth force. The term Satyagraha was coined by Gandhi in South Africa to express the force that Indians there used. It was conceived as a weapon of the strong and excluded the use of violence and hatred in any sphere or form. Satyagraha is a relentless search for truth and a determination to teach truth force through nonviolent means. It literally means holding on to truth. So it is a truth force. It is not based on the force of arms, but on the force of truth and love. According to Gandhi, a satyagrahi is a fearless person. He will never submit to any arbitrary action. He who has attained the satyagrahi’s state of mind will remain victorious under all conditions. So it is belief in the power of the spirit, the power of truth, the power of love by which man can overcome evil through self-suffering and self-sacrifice. His Satyagraha related to two things; it enjoins upon man the duty to eradicate evil and positively, it reminds him of his obligation to serve the community. Satyagraha is a very powerful nonviolent method of direct action. A satyagrahi exhausts all other means before he resorts to Satyagraha. He also uses as his weapon against injustice after having exhausted all other possibilities of persuasion and conciliation. Satyagraha as a weapon of social control is eternal and creative. A satyagrahi does not crave or indulge in for personal gain or glorification, or to humiliate anyone. The entire social life is impossible without Satyagraha which is a true religion. It is not only employed against rulers and ruled, but also the society and the government. It is a practical philosophy. Satyagraha may be understood as a technique for resolving conflicts and a method for fighting evils. According to Gandhi, Satyagraha is practicable in every situation. The satyagrahi becomes mentally strong by enduring physical suffering. In this context Gandhi wrote, “I see that Satyagraha is assured of divinity and that in testing a satyagrahi, the creator imposes on him at every step as much burden as he can bear.” There are three forms of

Satyagraha. These forms may be applied in a satyagraha campaign. These were most commonly employed during the freedom struggle in India under the leadership of Gandhi. There are three forms of Satyagraha, namely: (a) non-cooperation, (b) civil disobedience, and (c) fasting.

Non-cooperation means renunciation of the benefits of a system with which we are associated. It involves voluntary suffering in the process of resisting evil. Secondly, it consists of civil disobedience which involves direct contravention of specific laws like non payment of taxes and so on. The spirit of civil disobedience consists in defying all those laws which are considered unjust. It is an act of civility since it is opposed to all forms of violent and uncivilized behaviour. It involves disobedience to the unjust. But it involves a higher moral law, truth and justice. It advocates a civilized way of life. It opposes all uncivilized acts, uncivil and violent. On the other hand, disobedience is to be civil. Finally, fasting is the most potent form of Satyagraha. It is self inflicted. Fasting is the highest expression of the prayer of a pure and loving heart. It is indispensable.

## SATYAGRAHA VERSUS DURAGRAHA

The essence of Satyagraha is that it seeks to eliminate antagonisms without harming the antagonists themselves, as opposed to violent resistance, which is meant to cause harm to the antagonist. A Satyagrahi therefore does not seek to end or destroy the relationship with the antagonist, but instead seeks to transform or —purify it to a higher level. A euphemism sometimes used for Satyagraha is that it is a —silent force or a —soul force (a term also used by Martin Luther King Jr. during his famous —I Have a Dream speech). It arms the individual with moral power rather than physical power.

Satyagraha is also termed a —universal force, as it essentially —makes no distinction between kinsmen and strangers, young and old, man and woman, friend and foe. Gandhi contrasted Satyagraha (holding on to truth) with —duragraha (holding on by force), as in protest meant more to harass than enlighten opponents. He wrote: —There must be no impatience, no barbarity, no insolence, and no undue pressure. If we want to cultivate a true spirit of democracy, we cannot afford to be intolerant. Intolerance betrays want of faith in one's cause. Civil disobedience and non-cooperation as practiced under Satyagraha are based on the —law of suffering, a doctrine that the endurance of suffering is a means to an end. This end usually implies a moral upliftment or progress of an individual or society. Therefore, non-cooperation in Satyagraha is in fact a means to secure the cooperation of the opponent consistently with truth and justice.

Satyagraha: Gandhi's approach to peacemaking

As a major figure of peace in our century, Mohandas Gandhi warrants serious attention, both for his ideas of nonviolence and for his courageous translation of these ideas into action.

As Martin Luther King, Jr., so aptly said, 'If humanity is to progress, Gandhi is inescapable—we may ignore him at our own risk'

In this article, the Gandhian perspective on peace and the applicability of his thesis of

nonviolent action to contemporary conflict situations is examined. Fundamental concepts:

1. According to Gandhi, the supreme human endeavour should be the pursuit of Satya, Truth. Gandhi often quoted the core philosophical assertion from the Bhagavad-Gita, *satyanasti paro dharma*, 'there is no higher duty than adherence to Truth.' This was the Upanishad concept of the ultimate, eternal Truth that is akin to self-realization, transcending barriers of history, time, and culture. However, it was not the eternal Truth that guided Gandhi's thought and action, but the idea of relative Truth.

2. The basic operative assumption that Gandhi makes is that nonviolence constitutes a positive procedure for promoting worthwhile social change. It is not merely that one should refrain from violence, because it is wrong; sometimes violence is not wrong. There can be conditions in which one is justified in inflicting violence—for instance, if the only other choice is acting in a cowardly manner. Violence is also justified for the protection of those under one's care, or under the care of the larger community. In Gandhi's view, the best response was based on nonviolence; the second best was violent defense. The worst form of response was submission to a tyrant or running away out of fear of consequences. In Gandhi's words: I would rather have India resort to arms in order to defer her honour than that she should, in a cowardly manner, become or remain a helpless witness to her own dishonour.

3. This, then, brings us to the central idea in his thesis, Satyagraha, which literally means 'clinging to truth' or 'holding fast to truth.' The notion of satyagraha combines the ideas of truth and nonviolence

As a concept Satyagraha gave expression to Gandhi's religious and ethical ideas; as a technique, it put these ideas into practice; and as a philosophy, it mobilized Hindu philosophical traditions to eliminate contemporary social injustice

Beginning in South Africa, Gandhi launched Satyagraha against the laws of the Transvaal government, which required every Indian to procure a certificate of registration or face deportation. Another set of South African laws declared Hindu, Muslim, and Parsee marriages illegal. Opposition through Satyagraha involved the imprisonment of thousands of Indians and eventually led to the nullification of those laws. After arriving in India, Gandhi implemented Satyagraha in 1916-17 against the British indigo planters at Champaran in Bihar, where peasant cultivators were unfairly treated and taxed. In 1918 Satyagraha was also brought to bear on the dispute between the textile mill owners and labourers in Ahmedabad and involved a strike by workers. The technique of satyagraha was subsequently practiced in 1924 on behalf of the untouchables, who had been forbidden to use the roads in the vicinity of the Vykombeswarar temple in Travancore, South India. Having refined his strategy on relatively smaller stages, Gandhi launched a series of Satyagraha campaigns, beginning in 1930, which involved mass participation in civil resistance and non-co-operation aimed at the British. In the majority of these campaigns Gandhi achieved remarkable success, gaining ever growing popular participation and support for his declared objectives. Implicit in Satyagraha was Gandhi's assumption that all rulers are dependent for their

position and power upon the obedience and cooperation of the ruled. Their power therefore comes from outside themselves. If subjects withdraw cooperation and refuse to submit, a regime will become seriously weakened.

After an analysis of five major Satyagraha campaigns launched by Gandhi during the struggle for national independence, Joan Bondurant concludes: 'In examining Satyagraha in action, it becomes clear that satyagraha operates as a force to effect change'. To succeed, it required 'a comprehensive program of planning, preparation, and studied execution,' and not simply a spontaneous upsurge of mass protest.

Satyagraha failed whenever 'one or more of the stages of the campaign was slighted.' Joan Bondurant maintains that religious or philosophical compatibilities alone do not explain Gandhi's success in India. In fact, the theory of conflict underlying Satyagraha and the strategy it yields have wider applications that go well beyond India. She cites the Khudai Khidmatgar (Servants of God) movement among Pathan Muslims in the Northwest Frontier Province of British India, recruited thousands of Muslim supporters and carried out a successful nonviolent struggle. The Muslim Pathans are known for their bravery, and their general population lives by the creed of military honor and valor in battle. Indeed, in one rather touching episode described by the author, Muslim Pathan women, who are traditionally wont to hide behind a veil, when forced, they lay down with copies of the Quran clutched to their hearts.

Gene Sharp, in his book, *Gandhi as a Political Strategist*, cites several more instances of Satyagraha and persuasively argues that since Gandhi's use of it in India, the technique has been implemented far more widely than is generally believed. Among the most important instances he cites is its adoption by Martin Luther King, Jr., against racist practices in the United States.

Even in totalitarian systems, there have been instances of similar resistance, although nowhere has it led to the overthrow of such regimes. The Norwegian resistance during the Nazi occupation is one of the most significant examples. Other cases include: Major aspects of the Danish resistance, 1940-45, including the successful general strike in Copenhagen in 1944; major parts of the Dutch resistance, 1940-45; the last German rising of June 1953, in which there was massive nonviolent defiance which included women in Jena sitting down in front of Russian tanks; strikes in political prisoners' camps in the Soviet Union 1953, which are credited with being a major influence for improving the lot of prisoners; and the major aspects of the Hungarian revolution, 1956-57, in which in addition to the military battles there was demonstrated the power of the general strike, the large-scale popular nonviolent defiance.

Sharp further points out that the degree of 'success and failure' varies in each case.

## GANDHIJI ON POLITICAL OBLIGATION TOWARDS THE STATE OR GANDHIAN CIVIL

### DISOBEDIENCE VS. POLITICAL OBLIGATION

The concept of political obligation is that the citizen must obey the laws of the state. A law is a good law and should be obeyed only if and when it has triumphed in a trial of strength against the expressed wills of the other groups, that is, if and when it

has been already obeyed. A citizen must have first rendered willing obedience to the law of the state. One must have shown a willing, intelligent and spontaneous obedience to the laws of the state. Civil disobedience is against the concept of political obligation. However, civil disobedience was considered by Gandhiji as a just and moral duty of citizens against an unjust political order. He condemned British rule and Englishmen's racism and violent methods in the administration of India. He condemned imperialism and colonialism. Gandhiji opined if the government would not represent the will of the people and if it would resort to dishonest means to suppress the people and exploit them, then the violence the laws should be disobeyed. Gandhiji fought against state violence with the force of non-violence through Satyagraha. According to him, Satyagraha means the exercise of the purest soul force against all injustice, oppression and exploitation. Satyagraha wants not to endanger the opponent but to overwhelm him by the flooding power of innocence. Gandhiji says, "A satyagrahi obeys the laws of society intelligently and of his own free will because he considered it to be his sacred duty to do so. It is only when a person has thus obeyed the laws of society scrupulously that he is in a position to judge as to which particular rules are good and just, and which unjust. Only then does the right accrue to him of the civil disobedience of certain laws in well-defined circumstances. The capacity for civil resistance comes from the discipline undergone in the process of obeying the civil and moral laws of the state. A satyagrahi while resisting the laws of the government should see that the social structure is not subverted." Civil disobedience of the laws of the government was a strong form of satyagraha. Gandhiji opined complete disobedience implying a refusal to render obedience to state made laws can be a very powerful movement. It would be more dangerous than an armed rebellion, because the stupendous power of innocent suffering undergone on a great scale has a great potency. Gandhiji says, "For me every rule is alien that defies public opinion." Gandhiji believed that Indians were entitled to freedom because of the immense sufferings that they had undergone for it. He severely criticized the imperialistic and colourialistic British rule over the Indians. He justified civil disobedience to British atrocitic government laws. Gandhiji stressed that there was political obligation on every citizen to abide state laws, if they are just and genuine and if they are bad and unjust, the citizens have a right to protest it and to disobey them. According to Gandhi 'soul' is superior and no bad law could stand before its moral value. The dictates and commands of any government, if they conflicted with the sense of higher duty of a person, have to be resisted. Such person or society will risk all dangers for the sake of truth.

#### CRITICISMS OF GANDHIJI'S DOCTRINE OF SATYAGRAHA

1. The doctrine of Satyagraha is too spiritual. Satyagraha may be a superior method in theory but in practice it demands a stronger self-control, a more enduring solidarity of purpose, a greater capacity for passive suffering, a higher ethical development than most human beings have thus far attained.
2. Gandhiji wanted no coercion of any kind, but a satyagrahi may create a situation in which the other party feels so.

**SARVODAYA** is a term meaning 'universal uplift' or 'progress of all'. The term was first coined by Mohandas Gandhi as the title of his 1908 translation of John Ruskin's tract on political economy, *Unto This Last*, and Gandhi came to use the term for the ideal of his own political philosophy. Later Gandhians, like the Indian nonviolence activist Vinoba Bhave, embraced the term as a name for the social movement in post-independence India which strove to ensure that self-determination and equality reached all strata of India society.

## ORIGINS AND GANDHI'S POLITICAL IDEAL

Gandhi received a copy of Ruskin's *Unto This Last* from a British friend, Mr. Henry Polak, while working as a lawyer in South Africa. In his Autobiography, Gandhi remembers the twenty-four hour train ride to Durban (from when he first read the book, being so in the grip of Ruskin's ideas that he could not sleep at all: "I determined to change my life in accordance with the ideals of the book. As Gandhi construed it, Ruskin's outlook on political-economic life extended from three central tenets:

1. That the good of an individual is contained in the good of all.
2. That a lawyer's work has the same value as that of a barber's in as much as they all have the same right of earning their livelihood from their work
3. That the life of a labour, i.e the life of a tiller of the soil and craftsman is the life worth living.

Four years later, in 1908, Gandhi rendered a paraphrased translation of Ruskin's book into his native tongue of Gujarati. He entitled the book *Sarvodaya*, a compound (sandhi) he invented from two Sanskrit roots: *sarva* (all) and *udaya* (uplift) -- "the uplift of all" (or as Gandhi glossed it in his autobiography, "the welfare of all"). Although inspired by Ruskin, the term would for Gandhi come to stand for a political ideal of his own stamp. (Indeed Gandhi was keen to distance himself from Ruskin's more conservative ideas. The ideal which Gandhi strove to put into practice in his ashrams was, he hoped, one that he could persuade the whole of India to embrace, becoming a light to the other nations of the world. The Gandhian social ideal encompassed the dignity of labor, an equitable distribution of wealth, communal self-sufficiency and individual freedom.

## FURTHER READING

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2. Satyagraha – Wikipedia
3. Sarvodaya – Wikipedia
4. Articles on Gandhi, satyagraha and Sarvodaya
5. Three principles of civil disobedience : Gandhi, King and Thoreau by Nick Gier
6. Gandhi's Political Ethics – Paul F. Power

## PUNISHMENT

## **QUESTION FORMAT**

1. Explain the theories of punishment and the kinds of punishment. [2008]
2. Explain the theories of punishment. [2007]
3. What are the basis of sanctions against crimes? [2007]

### **Short notes**

Criminal sanctions [2007]

### **SYNOPSIS**

Introduction

- What is a crime?
- What is the remedy to crime? (punishment)
- Nature and scope of punishment
- Object of punishment (individual and society)
- Theories of punishment
- v) deterrent
- vi) preventive
- vii) reformative
- viii) retributive
- Conclusion
- 

### **INTRODUCTION**

Each society has its own way of social control for which it frames certain laws and also mentions the sanctions with them. These sanctions are nothing but punishments. The kinds of punishments given are surely influenced by the kind of society one lives in. As punishment generally is provided in criminal law, it becomes imperative on our part to know what crime or an offence really is.

### **WHAT IS A CRIME?**

A crime is any act that violates the law. Crime is behaviour or an action that is punishable by criminal law. A crime is a public, as opposed to a moral wrong. It is an offence committed against the state or the community at large. Many crimes are immoral, but not all actions considered immoral are illegal.

### **WHAT IS THE REMEDY TO CRIME? ( PUNISHMENT)**

Not all violations of law forbidding or commanding an act are crimes. To be a crime there must be a defined punishment. If the law does not set forth the particulars of the punishments for the described act or omission, then it is not a crime.

### **MEANING OF PUNISHMENT**

Punishment is the infliction of pain or loss of life, freedom, rights or property, deliberately imposed on an individual without his consent and against his will. The term punishment means torture that a person should undergo on account of doing a wrong. It is the physical implication of law. Punishment is the penalty for the transgression of the law. It is any damage or pain inflicted on an offender through judicial procedure.

### **NATURE AND SCOPE OF PUNISHMENT**

Punishment may be defined as an evil resulting to an individual from the direct intention

of another, on account of some act that appears to have been done or omitted. Punishment has the following features;

- i) it involves the deprivation of certain normally recognized rights or other measures considered unpleasant.
- ii) It is the consequence of an offence.
- iii) It is applied against the author of the offence.
- iv) It is applied by an organ of the system that made the act an offence.

The concept of punishment includes the following areas;

- i) Punishment inflicted is a feeling of uncomfortable and unpleasant circumstances.
- ii) It is a sequel of a wrongful act.
- iii) There must be some relationship between the punishment inflicted and the crime committed.
- iv) Punishment is a form by which a criminal is made answerable to the society.

### **OBJECT OF PUNISHMENT**

Towards the society – The primary purpose of punishment is a method of protecting the society by reducing the occurrence of criminal behaviour or an end in itself. Prevention of crime by punishment is achieved by three ways;

1. Punishment can protect the society by deterring potential offenders from committing crimes.
2. Punishment can protect the society by preventing the actual offender from committing further offences.
3. punishment can protect the society and minimize crime by reforming and turning the criminal into a law-abiding citizen

In these three ways the dominant object of punishment – prevention of crime- is achieved. The tendency in modern criminal jurisprudence is the emphasis on the reformatory aspect of punishment. The prison is tending to become a place of penitence and education

Towards the individual – Punishment also has a subsidiary purpose and that is the elevation of the moral feelings of the community. The emotion of retributive indignation stirred up by injustice is characteristic of all healthy communities. A noble emotion like righteous indignation deserves to be fostered by the state. Through criminal justice of the state, satisfaction is found for the moral senses of the community.

### **THEORIES OF PUNISHMENT**

Punishment is the infliction of pain. If the sole purpose behind punishment is to cause physical pain to the wrong doer, it serves little purpose. However, if punishment is as such leads him to realize the gravity of the offence committed by him and to repent at once for it, it maybe said to have achieved its desired effect. There are many theories of concerning the justification of punishment. It is clear that the philosophy of punishment will affect the actual standards of liability laid down by the law. Punishment may be distinguished as

- i) deterrent
- ii) preventive

iii) reformative

iv) retributive

### **DETERRENT THEORY**

Punishment is before all things deterrent and the chief of end of the law of crime is to make the evil doer an example and warning to all who are like minded with him. According to this theory, offences are a result of a conflict between the interests of the wrong doer and those of the society. The aim of punishment is to dissolve the conflict of interests by making every offence. This theory has been criticized on the ground that it is ineffective in cases where crime is committed under severe mental stress. In such cases to punish the wrong doer to deter him is meaningless.

### **PREVENTIVE THEORY**

Punishment is, preventive or disabling. Its primary and general purpose being to deter by fear, its secondary and special purpose is wherever possible and expedient, to prevent a repetition by the wrong doer by the disablement of the offender. The most effective mode of disablement is the death penalty, which in practice, in time of peace, is confined to the crime of murder, though it is legally possible for treason and certain form of piracy and arson.

A similar secondary purpose exists in sub-penalties as imprisonment and forfeiture of office, the suspension of driving licenses and the old penalty of exile. The aim of this theory is not to repeat the crime, but this theory takes no note of the criminal. It prefers to disable the wrong doer from committing any more crime but it ignores one of the basic object of criminal law i.e., to reform the criminal.

### **REFORMATIVE THEORY**

A crime is committed as result of conflict between the character and the motive of the criminal. One may commit a crime either because the temptation of the motive is stronger or because the restraint imposed by the character is weaker. The deterrent theory by showing that crime never pays separates the motive, while the reformative theory seems to strengthen the character of the man so that he may not become a victim of his own temptation. This theory would consider punishment to be curative or to perform the function of medicine.

According to this theory crime is like a disease. This theory maintains that you can cure by killing. The ultimate aim of reformists is to try bringing about a change in the personality and character of the offender, so as to make him a useful member of the society.

### **RETRIBUTIVE THEORY**

Retributive punishment, in the only sense in which it is admissible in any rational system of administering justice, is that which serves for the satisfaction of that emotion of retributive indignation which in all healthy communities is strived up by justice. This was formerly based on the theory of 'revenge for revenge' and 'eye for eye'.

The idea behind the retributive theory is that of the restoration of the moral character, the appraisalment of the disturbed conscience of the society itself and the maintenance of the sovereign power of the state which becomes aggrieved

when a crime is committed and inflicts punishments to set matters right. In this it is the deterrent principles which possess predominant influence. It will not be out of place to mention that gandhiji's "hate the sin and not the sinner", is merely a philosophical assertion and cannot furnish a practical guide in the administration of justice.

### **CONCLUSION**

Punishment is a method of social control. There is an attempt to portray punishment as a method of inflicting of unpleasant circumstances over the offender. Though certain theories like the reformative and preventive rely upon humanitarian modes of punishment, but these have weaknesses against hardcore criminals. Punishments such as the retributive and deterrence through the use of fear as an instrument to curb the occurrence of crime helps in controlling the criminals up to a certain extent. As these employ the idea of revenge and vengeance these are much harsher than the others.

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