Different Legal Theories And Implications For Obligation In Contemporary Jurisprudence

Shrishti Bajaj, O.P. Jindal Global University, Sonipat.[*]

Abstract

This paper helps us to understand how different theories have implications for legal obligation and for understanding the law. We first understand the meaning of law according to different theorists and then portray a relationship with obligation. Additionally, we see how different theorists of different schools have understood legal obligation and then we conclude by saying which theory or what aspect of theory is appealing to me considering **integrative jurisprudence.**

[*] Pursuing L.L.B. (Hons.), (Batch of 2021-2024) from Jindal Global Law School, O.P. Jindal Global University, Sonipat.

In the words of "Thurman Arnold, law can never be defined."[1] We can hardly begin our "analysis of law, legal theories and what obligation" it brings without some shared understanding of what we are talking about. Law can never be defined as a plain black or white; it has been variously defined by various individuals from different points of view. Herein, different legal theories were developed by legal theorists and were further divided into various schools of laws, which created an implication of obligation in understanding law. Some jurists are primarily interested in the sources. Some define it in terms of its social impact. Others define law in terms of the end or purpose of law. **"Law is a realm of obligation and duty."**[2] ***"Obligations" are considered central to the social role of law and its necessary in understanding it's nature.*** In layman language it means to "have a reason to act or refrain from acting- a reason with which one is in some sense bound to conform." For example, under Hindu Marriage Act, 1955, we have an obligation to abstain from practicing polygamy, under IPC it's an obligation which states that you can't murder somebody, so it's not optional. i.e., law doesn't have optional character it's obligatory that you can't. So, we can state that where there's law, obligation or duty follows.

Legal Obligation as defined by "***Analytical School of law"*** which is also called as "positive school because the exponents of this school are concerned neither with the past nor with the future of law but with law as it exists, i.e., with law as it is"[3]. ***John Austin*** and ***Jeremy Bentham*** defined law and obligation in similar lines. Accordingly, Austin attempted to provide a descriptive, value-free understanding of legal obligation i.e., why individuals obey law, by breaking it down into ostensibly neutral aspects such as ***"sovereignty", "command" and "sanctions".*** The legal obligation arises from the sovereign command and sovereign has the power and will to enforce command by applying sanctions in the event of disobedience. In other words, we can state that command and duty to obey are therefore "correlatives." The very concept of command includes the possibility of a sanction if the command is disobeyed. ***"Obligation is therefore defined in terms of sanctions."*** For example- In Britain, the Crown-in-Parliament is the sovereign i.e., the supreme law-maker.

[1] V.D. Mahajan, Jurisprudence and Legal Theory 23 (EBC Publishing 2021).
[2] Green, Leslie, "Law and Obligations" (2002). Articles & Book Chapters. Paper 119. http://digitalcommons.osgoode.yorku.ca/scholarly_works/119
[3] Suri Ratnapala Jurisprudence (Cambridge 2009) 36-47

Similarly, Sovereignty was a fundamental notion for Bentham. Furthermore, according to Austin his entire analysis was to be uncontaminated by any notions of justice or morality. However, both based their theory on the power of superiors. This links us with the "***Hobbes and Pufendorf***", "who maintained that there is no obligation until a sovereign capable of enforcing the laws of nature is in power. Obligation must come from law, and law from the will of a legislating sovereign; morality only comes into the world when laws are made."[4] In simpler words, both ***"believed that it takes God or godlike sovereign to impose moral properties on the indifferent world of nature"*** and ***"traced obligation ultimately to divine command."***

Taking the above theory as defined by Austin and other positivists into consideration, we can state that the way these theories created obligation in historical times is what is appealing, wherein the rule of kings and monarchs was supreme because people used to believe them and whatever they used to say was considered law. For example, in colonial times, wherein Hitler was the king and was the only superior, and his command was supreme, it did create an obligation, but it created a negative obligation. Such laws may be legally valid, but they fail to actualize the moral ideals implicit in the concept of law because they cannot give an appropriate "justification for the exercise of state coercive power." As a result, they are not obligatory in the widest sense. Such laws, in this view, are "legally binding but not entirely law." Moreover, with the changing times and increasing complexities, every country has a modern democracy, wherein power is divided and there is no one sovereign. So, if we understand the ***application of these theories back in time, then it's appealing because it did create a sustainable obligation to follow the law.*** But in modern times, the "law is way more than the decree of a gunman: a command backed up by sanction."[5]

Herein where, the **Hart's theory** of soft positivism came in. To begin with, it acknowledges that *"law may exist in society as a matter of practise and observance even if it is not officially declared to be law.* ***This is the practice thesis."***[6] Second, it "*acknowledges that the legal system may allow a court to resolve a dispute by using a moral standard."*[7]

[4] Christine Korsgaard Sources of Normativity (extracts).
[5] Raymond Wacks, Understanding Jurisprudence 80-81 (Oxford University Press)
[6] Suri Ratnapala Jurisprudence (Cambridge 2009), HLA Hart.
[7] Id.

This is not to suggest that morality takes precedence over law; rather, the "legal system's rules of recognition" allow the court to weigh morality while identifying or creating new legislation. For example, personal laws; Hindu's, Muslims and other religion has different tradition and rituals as to marriage and death. There are customs or customary laws which are be followed from so many years; it's not be officially declared as a law but still it's nature of practice makes people feel obliged to so.

According to him, the ***"idea of obligation is at the core of a rule"*** which is based on social considerations. ***Hart's theory is appealing because he explains obligation from a wider view*** i.e., he takes into consideration the shared rules of behaviour that is found in the society. He states that nature of obligation just doesn't come from command but also from the social acceptance, social pressure and observance, from internal and external aspects of a legal rule. The appreciation of the sense of obligation, permits us to perceive the internal aspect of a legal rule as well as its external expression. It allows a person to see the "internal aspect" of a rule i.e., "***sense of obligation to observe the rule***"[8] and "external aspect" i.e., "***the sense of obligation to follow the rule.***"[9] For ex- it is a law in Canada that person below eighteen can consume alcohol, its legally valid. Herein, the statement of observed fact is thereby captured. On the contrary, when it's stated that 'I have an obligation under Indian law to not consume alcohol below the age of twenty-one years, that means I'm not only stating law as fact but also expressing a sense of obligation not to consume alcohol below the age of twenty-one years. Whereas, In the command of sovereign there was no sight of the internal aspect as the individual just had to follow the command. To put it another way, all societies have social rules. These includes "rules relating to morality as well as rules that impose duties or obligations." So, this duties in the form of moral rules can also be called as the ***"minimum content of natural law".*** Further, the law for hart was union of primary rules and secondary rules. According to him, many primary rules are also social rules, as many people adhere to law for the function and success of the society. Thus, its arguable that "**social rules carry a moral duty to observe the law**."

[8] Supra, note 6.
[9] Id.

From this, it is clear that **Hart does rely on social rules in the formation of his theory**. Unlike his predecessors, he did tilt towards morality as being not an integral part of law, but at the same time, he believed that moral values have an influence on law.

Morality now links us to the **natural law theory**, the description of natural law as given by one of the natural lawyers was "that it provides a name for the point of intersection between law and morals."[10] "**Thomas Acquinas** who was one of the most prominent natural law philosophers stated that the standard of morality or moral laws are derived from the nature of the world and the nature of human beings."[11] In simpler words, the primary aspect of his theory is that ***"good must done and evil must be avoided."***

According to Acquinas, we have some moral values inside, which defines the purpose and then laws are made on those moral values. It shows a strong co-relation between law and morality and purpose which makes the law and makes us follow the law. Also called as ***"Overlap Thesis"*** which forms the foundation for Acquinas and Blackstone. "Blackstone states that human beings play a substantial role in the manufacture of law"[12], i.e., There is considerable discretion in the formulation of natural law, but it is confined to moral norms: norms formed by humans will be valid only if they are consistent with morality.

Seeing the ***above theory, it does find appealing as it gives due consideration to the rational nature of human beings and the moral standards that govern human behaviour while creating a law***, unlike Positivist jurists. However, just like the theory of Austin, this theory is also not completely appealing as it does state what is consistent with morality will be valid, but since the definition of morality is very subjective, it differs from person to person. For example, India is a country with different religions and religious practises. What is considered moral for one religion would be immoral for another, i.e., the practise of polygamy is considered moral for Muslims but not for Hindus. Atheists don't believe in God. That's their moral standard that governs their behaviour. On the other hand, we have people who have blind faith and derive their existence from God.

[10] A Passerin D'Entrèves, Natural Law (London: Hutchinson, 1970), 116.
[11] "Kenneth Himma Natural Law Internet Encyclopedia of Philosophy http://www.iep.utm.edu/natlaw."
[12] Id.

So, how can there be a formulation of natural law just on the basis of moral norms, standards, and morality as being very subjective in nature? This demonstrates the theorist's ambiguity.

Understanding the legal obligation in light of social, moral, political, and historical considerations is highly subjective. The political and historical context can be derived from ***Austin's law,*** which stated that laws set by God for his creatures as revealed in the scriptures are laws that are properly so-called and create an obligation, and at the same time, states' customs and customary laws, which comprise rules and are followed by the community, can still be identified as a law and create an obligation in relation to positive morality. Furthermore, the ***social aspect***, as defined by Hart, wherein he states law as a system of rules, is the rules that exist in society that people observe and practice. They do follow such rules because they think it's their right to do so. So, this social consideration does create an obligation. The ***natural school***, which defines legal obligation in terms of morality and states that a "*law will only be a*

if it is moral, i.e., just law." The law is **based on people's moral values and ethics.**

Taking all of the preceding factors into account, we can conclude from these theories that ***no single theory of a specific school creates an obligation in understanding law.*** We live in an interconnected society wherein legal obligation can't be expected just on the basis of sovereign command or morality. There's not one particular theory that I find appealing, as taking the view point of ***Jerome Hall***, who stated that jurisprudence should be adequate in a sense that it will combine positivist, naturalist, and socialist study of law, which he termed ***"integrative jurisprudence"***[13], "which is premised on the belief that each of these competing schools has isolated dimensions of law, and that it is both possible and important to bring the several dimensions into focus."[14] In other words, the command must be given by a superior when it's required and must be considered a law and create a valid legal obligation not because of the fear of sanction but because of the requirement.

[13] "Harold J. Berman, Toward an Integrative Jurisprudence: Politics, Morality and History, 04, California Law Review (July 1988)."
[14] Id.

For example, "The Sexual Harassment of Women at the Workplace Act", which was based on the ***"Vishaka Guidelines"*** developed by the Supreme Court of India, Further, morality and moral values are found in international law as they are based on opinions and sentiments current among nations; the "treaties by which nations accept obligations towards other nations." In all, legal obligation can be derived from studying different aspects together.