UNIT 13: LAW AND CIVIL DISOBEDIENCE (WHEN IS RESISTANCE JUSTIFIED?)*

Structure

13.0 Objectives

13.1 Introduction

13.2 Understanding the Meaning of Law

13.2.1 The Traditionalists

13.2.2 The Realists

13.2.3 The Marxist School

13.2.4 The Feminists

13.3 The Concept of Law, Obligation and Consent

13.4 State and Resistance

13.5 Understanding Civil Disobedience

13.5.1 Features of Civil Disobedience

13.5.2 When is Resistance Justified?

13.6 Let Us Sum Up

13.7 References

13.8 Answers to Check Your Progress Exercises

13.0 OBJECTIVES

In this unit, you will read about concepts of law and civil disobedience. After studying this unit, you should be able to:

- Explain the meaning law
- Know various concepts like obligation and consent
- Describe relationship between law, state and civil disobedience

13.1 INTRODUCTION

Law is a realm of duty and obligation. It demands actions as well as inaction from the citizens of a state. It requires individuals to follow orders of the authorities who may ask to pay taxes, to participate in the wars, to protect environment, to refrain from assaults, to follow traffic rules and so forth. Thus, a law puts certain bindings and obligations over individuals. However,

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it's not uncertain that an individual may face a dilemma. The obligatory character of law may come in conflict with other important obligations like an obligation of a father towards his child with his duty as a soldier. Law may also clash with the moral principles or religious faith of a citizen. There may be a situation where citizens are compelled to question the legitimacy of a law or regard it as repressive in character like laws formulated by the authorities during colonial rule in India. The question is, what should one do in such a case of conflict? Or why one should obey the law and give up on his/her liberty? What does an individual get in return from the state, once s/he follows all the rules and regulations? Whether following orders is the only duty of a moral individual in a society? Is there any justification for not following orders? What are the lawful means to register one's dissent in a state?

The history of political thought is replete with attempts to provide a satisfactory answer of the questions raised above, from the time of Socrates to the present. These attempts have become increasingly complicated in recent years and the troublesome nature of law with obligation has made the study imperative. This unit tries to analyze the relationship between law and obedience and also searches the grey areas where the legitimacy of a law can be questioned. It also focuses on the means of dissent and the lawfulness of an attempted disobedience.

13.2 UNDERSTANDING THE MEANING OF LAW

The term law is used in various manners which makes the task of its definition difficult. Scholars have tried to understand its meaning in the realm of "What it is and/or what it should be?" In general, law is a set of rules imposed by a government and enforced by the courts with the aim to regulate the relationship between the state and its citizens on one hand, and among citizens on the other. This statement presupposes that law is a socio-political phenomenon with certain universal characteristics based on philosophical foundations. Plato took the widest possible view of law and defined it as "an embodiment of reason", whether in the individual or a community. He identified law with nature and "goodness" and suggested the end of law was to produce men who were "completely good". His views of legal law were intertwined with morality and even led him to assert that a bad law is no law. The definitions of law can be categorized under various schools of thought like the traditionalists, the realists, the marxist perspective and the feminist perspective.

13.2.1 The Traditionalists

Classical or traditionalist school is the oldest school of legal thought which finds its complete expression in formalism. It does not distinguish between law in reality and its ideal nature. To traditionalists, source of law is God's will, nature or moral philosophy and it is exogenous to politics, society or

human beings. Law is not the product of human decisions and institutions; rather can only be inherited and interpreted to decide its application in individual's life. Sir Edward Coke and Blackstone can be regarded as the stalwarts of this school of thought. Coke in his own words explains that "law is an act which requires long study and experience, before that a man can attain to the cognizance of it". He stresses the superiority of 'common law' over monarchy which eventually became a part of the English Constitution.

13.2.2 The Realists

Legal realism is a broad category inclusive of positive realist legal theories and normative realist legal theories. Positive realists view law as made by humans who have power to serve their objectives or solidify their authority. Normative realists, on the other hand, are Kantian in their perspective as they view the creation of law as a means to obtain social objectives. The first generation of realists belonged to the Sociological Jurisprudential School (SJS) and was represented by Holmes, Cardozo, Pound and H. L. A. Hart. Scholars of this school stressed the concept that law has certain social consequences and thus, it has to be regarded as an element of, or input to, policy. Professor Hart in his book *The Concept of Law* (1961), analyses the relationship between law, coercion and morality. He views law as "a system of rules, a union of primary and secondary rules" where laws that impose duties and obligations on individuals is categorized as "primary rules" and "secondary rules" in a legal system may include rules of recognition, change and adjudication. According to him, "Law is a command and there is no necessary connection between law and morals or law as it is (*lex lata*) and law as it ought to be (*de lege ferenda*)" (Hart 1994). In a similar pattern, Modern realists like Llewellyn, Landis and Posner treat law as policies itself i.e., an allocation of resources or a division of winners and losers by use of force. Thus, unlike Traditionalists, Realists perceive law as a product of human reason to fulfill their own objectives.

13.2.3 The Marxist School

The works of sociologists such as William Chambliss, Milton Mankoff, Frank Pearce, Mannheim, and Laureen Snider is remarkable to understand the concept of law from the Marxist perspective. The Marxist scholars view power as largely held by those who own and control the means of production. The superstructure reflects the relationship between "haves" and "have nots". As part of the superstructure, the state, the law and other agencies of social control serve the interest of the ruling class. Marxists argue that laws are not an expression of value consensus as suggested by traditionalists or normative realists, but a reflection of ruling-class ideology. Thus, they argue that a general commitment to laws by the members of society as a whole is an aspect of "false consciousness", since, in practice, laws benefit only the ruling minority. Marxists argue that laws were used in a capitalist state to protect property. As Mannheim explains, "the history of criminal legislation

in England and many other countries shows that excessive prominence was given by the law to the protection of property". In a similar pattern, Snider notes that the capitalist state is often reluctant to pass laws which regulate large capitalist concerns and which might threaten their profitability and elucidates, "the state is reluctant to pass or enforce stringent laws against pollution, worker health and safety, or monopolies. Such measures frighten off the much sought-after investment and engender the equally dreaded loss of confidence".

Neo-Marxists are also critical of capitalist societies and the existence of unequal distribution of power and wealth within such societies. Ian Taylor, Paul Walton and Jock Young accept that the key to understand crime lies in the "material basis of society". Thus, it can be understood that both Marxist and Neo-Marxists are critical of the existing capitalist structure and view the objective, formulation and implementation of law exists only for the interests of the powerful "haves" or bourgeoisie of the society.

13.2.4 The Feminists

Feminist philosophy identifies law as a very important source for reaffirming patriarchy in society. The feminist critics argue that one of the primary purposes of law as traditionally understood is to promote stability and order in society. Since in society men have always remained at prominent and powerful position, they used law as an instrument to reinforce adherence to predominant male biased norms, representing them not only as the official values of a society, but even as natural, universal and inevitable. One of the major issues being discussed at the first national gathering of the American feminists held at Seneca Falls, New York in 1848 was the patriarchal nature of laws and the manner in which it is used to suppress women in the state. The Declaration of Sentiments and Resolutions pointed to the denial of the vote, divorce law "wholly regardless of the happiness of women" and marriage law that made a wife "civilly dead," among the "injuries and usurpations on the part of man toward woman, having in direct object the establishment of an absolute tyranny over her". Thus, the criticism of law became an important part of the early feminist movement, which succeeded in eradicating the most blatant examples of legal sexism.

In 1960's and 1970's many scholars focused on gender as their central theme of research with the feminist aim of "to question everything". The concept of "feminist jurisprudence" started gaining momentum. The phrase was first used by Ann Scales in her article "Toward a feminist jurisprudence" published in 1978. The feminist jurisprudence is a reaction to existing order where law is seen as a process for interpreting and perpetuating a universal, gender neutral concept of public morality. Feminist scholars argue that it fails to acknowledge and respond to the interests, fears, values and experiences of women in society and is not gender neutral, rather male biased in character. Thus, feminist philosophers view law as an instrument

of suppression and bias in the hands of males in society. However, liberal feminists also argued that law should be used to bring about gender equality in society. They argued that law can be used to ensure equal political and civic rights for women in society.

Thus, as we can understand from the above discussion, the question of what is law and what it should be has opened a Pandora's Box with various scholars having divergent opinions. Although, it has also to be noted that law is an inevitable part of a cognizant society which makes it imperative to understand the various types as well as characteristics of a "good" law.

Check Your Progress Exercise 1

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Explain the Marxist perspective on law.

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13.3 THE CONCEPT OF LAW, OBLIGATION AND CONSENT

The section above although provides an understanding of the meaning of law, still one question remains pertinent: why one should obey laws? Do we obey laws due to fear and/or obligation or our consent? If we obey laws by consent, what is the basis of this consent? This section will be focusing on these realms. Political Scientists while discussing the reasons for consent assert that apart from prudential and self-motivated reasons like to avoid punishment or social humiliation, it is the moral responsibility of the individuals to obey the laws of the state. There are various theories supporting the reasons for political obligation. They can be understood as explained below.

13.3.1 Divine Command

In the history of political thought, the concept of divine law and divine rule had always maintained its prominent position. Particularly in the medieval era, kings were regarded as representatives of God on earth, thus it was the duty of citizens to obey the laws which were regarded as divine commands. It can be explained from the text of Paul's *Epistle to the Romans*, where he states, "For there is no authority except from God, and those that exist have

been instituted by God. Therefore he who resists the authorities resists what God has appointed, and those who resist will incur judgment".

13.3.2 The Social Contract

The philosophers of Social Contract tradition argue that state was created by man to suit his particular purposes. The tradition developed in seventeenth century when Thomas Hobbes and John Locke used the theory to prove rather different ends. Both the philosophers explain, although differently, that there were certain inconveniences being faced by man in the 'state of nature' due to the absence of the existence of clear laws and authority. Thus, state was created when man agreed to enter into contract where all gave their consent to give up some amount of liberty for the establishment of an authority to maintain a peaceful society. Thus, it is the moral and political obligation of the individuals to obey laws.

13.3.3 Contemporary Theories of Political Obligation

Contemporary political philosophers elucidate that political obligation is acquired through some moral transaction between the citizen and his compatriots or between the citizen and the state. Its justification is sought on the basis of consent, gratitude, fair play, membership, or natural duty. Some philosophers advance a combination of two or more of these approaches, and others believe that a pluralistic theory is necessary. Although, the attempts to justify a general obligation to law can be understood from the following arguments:

13.3.4 Fairness

The principle of fairness applies to a political society where its members regard it as a cooperative enterprise. In this cooperative arrangement everyone participating gets certain benefits because of certain restrictions applied over all. Thus, to enjoy the benefits without submitting to the agreed restrictions will not be fair and will create imbalance in society. Although, the principle can be traced back to Socrates, its classic formulation can be traced into the arguments of H.L.A. Hart who states, "when a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission". This principle was subsequently adopted by John Rawls as well. Thus, "duty of fair play" becomes one of the most highlighted arguments to support the concept of political obligation.

13.3.5 Gratitude

The concept of gratitude in the debate on political obligation can be traced back to the noted work of Plato in his book *Crito*, but the modern day analysis can be found in the works of Simmons and A.D.M Walker. According to this argument, all the citizens owe a debt of gratitude to the state and its

machinery for the benefits that is provided by it. This debt is owed by the citizens, regardless of the fact, whether these benefits are accepted or merely received, and the debt is repaid through obedience to law.

13.3.6 Consent

The concept of political obligation is justified and grounded in the consent of the individuals governed. Leslie Green explains, "In Hobbes, Locke, Rousseau, and Kant we find many variations on the claim that our duties to law are determined by some form of individual agreement, whether express or tacit. Promises, contracts, oaths, and vows all fall into this general area. In its core meaning, consent of these sorts is not only voluntary, it is performative: it is given with the intention of changing the rights, duties, powers, or liabilities of another, and it succeeds in part because it is known to be done with that intention".

Thus, the theories above try to provide an answer to the question "why do we obey the laws" in their own peculiar manner, but they do exhaust the existence of other possible answers. Political philosophers like Klosko, Dudley Knowles and Jonathan Wolff have explicitly focused over a pluralistic or multiple-principle approach to the concept of political obligation. They argue that there is no single answer to the multifaceted problem of political obligation and thus, the search for "why" continues in the study of law and politics.

Check Your Progress Exercise 2

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) What are the reasons behind political obligation?

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13.4 STATE AND RESISTANCE

With the development of state and its complex functions, many tools were required to maintain the peace and stability, and rule of law is one among them. We have already discussed that why law and its obedience are necessary, but

what if law formulation and/or is biased and not transparent in nature? What if law is repressive or unjust in character? Do the individuals have the right to resist? Right to resist has occupied an ambiguous position in the study of politics. Modern philosophers like John Locke regard right to resist as a “natural right” of the individuals whereas in practice, modern western states treat actual political acts of resistance as illegitimate, if not criminal in all cases. The traces of right to resist can be first found in the political and legal thought of Chinese Civilization. This doctrine further was reflected in the writings of Thomas Aquinas in the medieval period when law was regarded as the “Will of God”. Aquinas grants citizens a surprisingly wide ambit for resistance to tyrants but the condition is that such actions, even the most virtuous citizens, must be the final end of the citizen representing God’s will. Thus, for him, the source of law as well as resistance has to be divine in nature. The concept was popularized in the modern sense by scholars like Locke, Hobbes, Samuel Rutherford, Algernon Sidney, Thomas Jefferson and Paine, Thoreau and others. Resistance in the study of politics is an action to register one’s dissent against the government. Many times resistance, law breaking and civil disobedience are used as synonym. Since the focus of the study is civil disobedience, it has to be understood that these are different terms with different meanings.

13.5 UNDERSTANDING CIVIL DISOBEDIENCE

Civil disobedience is the non-violent way of registering dissent by breaking a law on moral grounds. The concept of civil disobedience is particularly important in a democratic society as it not only touches the moral limits of a majority rule, but also forces us to reflect on the justifications *for* majority rule. Political theorists in the pre-modern and early modern periods were more concerned with the right to rebel, but the fundamental question raised by civil disobedience in a modern society is how is it possible to have a general respect for the rule of law and yet gain legitimacy to break a specific law?

The term ‘civil disobedience’ was coined by Henry David Thoreau in his essay *The Relation of the Individual to the State* (1849) to describe his refusal to pay the state poll tax implemented by the American government to prosecute a war in Mexico and to enforce the Fugitive Slave Law. However, it is not difficult to trace it back to Socrates, religious figures like Christ or the in the philosophy of the religion of Buddhism and Jainism. In the contemporary world, it was popularised by Tolstoy, Martin Luther King and Mahatma Gandhi. The justification of civil disobedience at length has also got placed in the writings of John Rawls. Civil disobedience for Thoreau is not simply an act of law breaking; rather “conscience and duty” is the central aspect of the argument. His famous essay opens with the maxim, “That government is best which governs least”. He argues that the state came into existence to ensure individual freedom and using the example

of "The Mexican War", he appeals, the moment it starts hindering the purpose for which it was instituted, it is the moral 'duty' of the individuals to resist the "unjust laws" in order to obey a "higher" law. In a similar way, Tolstoy also focuses on the 'conscience' while discussing civil disobedience which he variously calls "law of love" or the "law of non-resistance". Unlike Thoreau, Tolstoy's opposition to the state is not simply a matter of opposition to policies or elitism in politics. But, more consistently he rejects the state itself as an institutionalized mechanism of violence. Thus, Tolstoy was an anarchist who saw state as an evil institution, but he appeals "We ought to oppose evil by every righteous means in our power, but not by evil." Tolstoy resists to evil state with the mechanism of civil disobedience or "law of love" which according to him, "is inherently capable of bringing desirable changes into the lives of its followers without the need of any external training or orientation".

The concept of non-violent civil disobedience secures central position in the Gandhian philosophy. Gandhi was greatly influenced by his predecessors like Tolstoy and Thoreau. For him it is an active, strong and extreme form of "Satyagraha". Mahatma Gandhi in his journal *Harijan* conceived it as a "substitute for violence or armed rebellion. It is a non-coercive method which any law-abiding citizen can adopt, provided he is saturated with the spirit of non-violence and is ready for utmost sacrifices". Thus, for Mahatma Gandhi civil disobedience, which should be used as a last resort, is a complete, effective and bloodless substitute of armed revolt.

John Rawl's discussion on civil disobedience in his book *A theory of Justice* (1972) goes to the heart of the moral basis of democracy. For Rawls, civil disobedience is an appeal to the "sense of justice" of majority in a democratic society. He explains that civil disobedience has a role only in a society where there is partial, rather than strict, compliance with principles of justice. He states, in a fully just society there would be no need for civil disobedience and in an unjust society there is no sense of justice which one can appeal to. For him, civil disobedience involves a judgment not between just and unjust laws, but between "different types of unjust laws" as there are various other legal means in a democratic society to register one's dissent. He suggests civil disobedience is justified when a particular group, recurrently rather than occasionally, bears the burden of injustice. The coloured community in the southern states of the United States up until the civil rights legislation of the 1960's is an obvious example.

13.5.1 Features of Civil Disobedience

Civil disobedience may be defined as "selective and public performance of actions (commissions or omissions) truly believed to be illegal for reasons which agent takes to be morally compelling". There are certain peculiar characteristics of civil disobedience which can be understood as following:

(a) **Non-Violence:** Civil disobedience is often defined as non-violent in character. Other definitions allow an act to be included under the banner of civil disobedience if it involves violence which was not instigated by the

protestors, but by opponents or the police, or was solely against property. However, in its classical sense, it has to be completely non-violent. Rawls states that violent acts are incompatible with civil disobedience as a mode of address. 'Indeed', says Rawls, 'any interference with the civil liberties of others tends to obscure the civilly disobedient quality of one's act'.

(b) **Conscientiousness:** One of the most highlighted feature of civil disobedience is that is based on the foundation of sincerity and moral conviction of its practitioner. As in Mahatma Gandhi's satyagrah, "moral purity" and "insistence on truth" is central to the concept. For Rawls, civil disobedience is needed only when the policy makers have not respected the "principles of justice". Thus, conscience, morality and justice are one of the most important aspects of civil disobedience.

(c) **Communication:** Practitioners of civil disobedience, generally have both forward-looking and backward-looking aims. They seek not only to convey their disavowal and condemnation of a certain law or policy, but also want to draw public attention and thereby to instigate a change in the law or policy. For example the "Pride Parade" by LGBTQ community is a peaceful way to present their dissent with the existing system. The mode of communication may vary in several ways; like it can be individual or collective, it may be direct or indirect and at the same time, it can be cooperative or uncooperative with the authorities. Generally, civil disobedience is collective but there are examples of individual acts of civil disobedience as well. The act of Mordecai Vanunu revealing Israel's secret possession of nuclear weapons or Irom Sharmila's fight against human rights violation in Manipur, India can be regarded as a notable example. Civil disobedience may be direct where the law broken is the law protested (For ex: Gandhi's Salt March and breaking the Salt Law) and it can be indirect where one law is broken in protest of another (For ex: nonpayment of taxes by Thoreau to register his dissent against Mexican war).

(d) **Publicity:** This feature is a mandatory condition according to Rawls for an act to be considered that of civil disobedience. He asserts that civil disobedience is a communicative act where the majority is being given "fair notice" of an unjust law. It also includes not only providing information through a covert action, rather it is an "appeal" or address to the majority. Thus, the civil disobedient is willing to accept the penalties for law breaking. The idea is to make the audience uncomfortable with the thought that whether they really want to punish a moral individual for resisting a draconian law. Apart from the above discussed features, Rawls also suggest that civil disobedience must take place within the "fidelity to law". The aim of civil disobedient is not to threaten the stability of the political system; rather it seeks to strengthen it by removing injustice, such that the system will be able to instill improvements. In this sense, the civil disobedient seem to demonstrate their faithfulness to the "higher" law.

13.5.2 When is Resistance Justified?

The sections discussed above clearly provide the relationship between law and civil disobedience. It has also tried to analyse various nuances related to the concepts of law and civil disobedience. Still the question remains looming whether civil disobedience is justified? The concept of civil disobedience still remains debatable as there are scholars who question the concept on the basis of its relevance (particularly in a democratic society), nature and high ideals. This section will try to understand these issues.

Civil disobedience is a controversial issue as it involves questioning the tenets of law, which is illegal in character. Critics argue the act of advocating rebellion and the justification of disobedience is in conflict with the concept of 'Rule of Law'. Critics base it on the twin arguments of Socrates to obey the laws, even unjust laws. Firstly, he argued that all the individual who are receiving the benefits from the state have a moral duty to reciprocate by following orders. An objection to this argument is given by Simmons who argues that public benefits are funded by taxes of the citizens and members of government are not doing any sacrifice, rather it's a job for which they are paid handsomely.

Secondly, he argued that if one does not accept the laws, the individual always has the option to emigrate. The continued "residence" in the state will be treated as tacit consent to the law of the land. This argument has been objected to as mere residence in the state cannot be regarded as agreement or consent to the unjust laws. At the same time the residents do not have the alternative to continued residence because emigration is very costly and as human beings, an individual is emotionally attached with his place of residence So, the supposed consent to the law is not voluntary; rather, it is binding on the citizens.

Further, Dicey's concept of rule of law is based on three principles i.e. supremacy of law, same law and courts for all citizens and general principles of the Constitution are developed by judicial decisions. But civil disobedience is justified when any one or all these parameters are not met by the government. David Hume asserts that the obligation to follow the law is rooted in the value of government under law. Democratic laws may aim to provide rights and power to the individuals but these may prove, in reality, to be empty. The police may be hostile and the courts can be biased. Moreover, the majority may exhibit even in honest elections, a rigid disconcern, intolerable and biased attitudes towards the minority. In such a situation, nonviolent civil disobedience will not only provide voice to the oppressed but will also strengthen the values of true democracy. Another point of criticism is raised by Consquentialists who argue that disobeying laws may result in bad consequences like political instability or anarchy. An objection to this argument is civil disobedience is selective and conscientious in nature which will not have dire consequences. Indeed,

in some circumstances disobeying the law has better consequences than obeying it. The Civil rights movement in America by Martin Luther King can be regarded as the most suitable example in this premise. The justification of civil disobedience is also questioned on the basis of moral duty of an individual to follow the laws. This argument has been opposed by underlying the difference between the legal aspect of law and morality of a law. There may be a situation when the law formulated is in direct conflict with the morality of the citizens. Ronald Dworkin explains if a law wrongly invades moral rights of an individual (Nazi laws against helping Jews or nineteenth-century American laws against helping fugitive slaves), they have a right to break that law. In such a situation, civil disobedience becomes an instrument to uphold the moral values in society.

Another harm usually identified with civil disobedience is that it may encourage general disrespect for law and work as a divisive force in the country. However, it has to be understood that in a situation when there is hopelessness and when the government refuses to listen to conventional forms of communication, civil disobedience without causing much harm, as it is non-violent in nature can be the best viable option for the citizens as well as the state. For example, the Chipko movement that began in 1973 for the protection of trees in India. Thus, civil disobedience rather than dividing the society may contribute towards a better dialogue, not only among citizens, but also between citizens and the state.

Civil disobedience and dissent also contribute to the democratic exchange of ideas and strengthen the concept of liberty. J.S. Mill in his essay, *On Liberty* believes in absolute liberty in case of freedom of thought and expression and argues "if all mankind, minus one were of one opinion, and only one person were of contrary opinion, mankind would no more be justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind". Thus, it can be argued that civil disobedience is the practical manifestation of absolute liberty in case of freedom of speech and expression. Rawls while providing justification to civil disobedience explains "Justified civil disobedience can serve to inhibit departures from justice and to correct departures when they occur; thus it can act as a stabilising force in society". Civil disobedience movement by Nelson Mandela against the apartheid government in South Africa can be regarded as the most suitable example in this regard. This view of dissent and justified civil disobedience aligns with the perception that our responsibilities as citizens is not only to follow laws blindly, rather in certain conditions, our obligations are to resist unjust and unfair schemes which may include a duty to disobey the law. Thus, it can be argued that those who breach the law in justified civil disobedience demonstrate responsible citizenship or civic virtue rather than participating or invoking divisive politics.

John Rawls provides a Kantian justification to civil disobedience. He argues that the "constitutional validity of a law is insufficient to require

obedience and the injustice of a law is insufficient to justify disobedience". He defines civil disobedience as political in the sense that it is guided by public, political principles of justice acceptable to all the citizens and is not appealing to personal morality or religious doctrines that other citizens can reasonably reject. Rawls further suggests two main conditions for justifying the acts of civil disobedience. First, civil disobedience should be selective to instances of 'substantial and clear injustice' namely, violations of equal basic rights or equality of opportunity. The second condition justifying the civil disobedience acts is that all the legal means have already been exhausted, which means it should be treated as extreme and last resort. However, there are scholars who criticize Rawls for restricting the scope of civil disobedience to violations of the principles of equal basic liberties and equal opportunities. They argue that actions of civil disobedience are completely justified against other great evils like cruelty to animals, environmental destruction, military aggression, poverty etc.

Peter Singer gives a utilitarian justification of civil disobedience. He suggests that illegal acts are justified if they are the only and most effective way to prevent greater harm, as for a utilitarian, end justifies the means. For example, illegal act which is aimed towards environmental protection or is against animal cruelty. Thus, it can be suggested that civil disobedience is not against the democratic values of the state rather it's a means to bring about social change and is a voice of the minorities and downtrodden. Here, an observation made by Noam Chomsky in respect of civil disobedience and the Vietnam war is noteworthy, "what justifies an act of civil disobedience is an intolerable evil…A line must be drawn some-where. Beyond that line lies civil disobedience....The limits of civil disobedience must be determined by the extent of the evil one confronts and by considerations of tactical efficiency and moral principle".

Check Your Progress Exercise 3

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Describe features of civil disobedience.

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13.6 LET US SUM UP

On a concluding note it can be said that civil disobedience and law are not contradictory to each other; rather are complimentary as both the concepts aim to establish a coherent, just and peaceful society. History has provided enough evidence that civil disobedience is efficient not only in providing political freedom, but also against exploitation, oppression, social injustice and social evils. The theory of civil disobedience helps in instilling the values of "rule of law" as it limits majoritarianism and becomes the voice of subaltern in a democracy. Thus, it can be said that civil disobedience helps human beings in retaining a degree of moral autonomy vis-à-vis the state.

13.7 REFERENCES

Breidenbach and William Wccormick. (2015). Aquinas on Tyranny, Resistance, and the End of Politics, *Perspectives on Political Science*, 44:10–17.

Cairns, Huntington. (1942). Plato's theory of law, *Harvard Law Review*, 56 (3): 359-387.

Commager, H. S.(1963). *Documents in American History*, New York: Appleton Century Crofts.

Conahagan, Joane. (2000). Reassessing the Feminist Theoretical Project in law, *Journal of Law and Society*, 27 (3): 351-85.

Dagger, Richard and Lefkowitz, David. (2014). Political Obligation, *The Stanford Encyclopedia of Philosophy,* [Online: web] Accessed 28th July, 2018 URL: = <https://plato.stanford.edu/archives/fall2014/entries/political-obligation/>.

Gewirth (1970). Civil Disobedience, Law, And Morality: An Examination Of Justice Fortas 'doctrine", *The Monist*, 54 (4): 536-555.

Green, Leslie. (2004). Law and Obligations", in Jules L. Coleman, Kenneth Einar Himma, and Scott J. Shapiro (eds.) *Jurisprudence and Philosophy of Law,* New York: Oxford University Press.

Hart, H. L. A. (1955). Are There Any Natural Rights?, *Philosophical Review*, 64: 175–91.

Hart, H.L.A. (1994). *The Concept of Law*, Oxford: Clarendon Press.

Hoffman and Graham. (2007). *Introduction to Political Theory,* New Delhi: Pearson Education.

Klosko, G. (1988). Political Obligation and Gratitude, *Philosophy & Public Affairs* 18: 352-358.

Leibman (1965). Civil Disobedience: A Threat to Our Law Society,

American Bar Association Journal, 51 (7): 645-647.

McNollgast (2005). The Political Economy Of Law: Decision-Making By Judicial, Legislative, Executive And Administrative Agencies, URL: https://siepr.stanford.edu/sites/default/files/publications/04-35_0.pdf

Milligan, Tony. (2013). *Civil Disobedience Protest, Justification, and the Law,* New York: Bloomsburry Publishing.

Minda, Garry. (1995). *Postmodern Legal Theories,* New York: NYC Press.

Smith, Paul. (2008). *Moral and Political Philosophy Key Issues, Concepts and Theories,* New York: Palgrave Macmillan.

Walker, A.D. (1987/88). Political Obligation and the Argument from Gratitude, *Philosophy & Public Affairs* 17: 191-211.

Walker, A.D. (1989). Obligations of Gratitude and Political Obligation, *Philosophy & Public Affairs* 18: 359-364.

13.8 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

1) Your answer should highlight following points
   - Law is reflection of ruling-class ideology
   - Laws are used in a capitalist state to protect property

Check Your Progress Exercise 2

1) Your answer should highlight divine command, social contract, fairness, gratitude and consent

Check Your Progress Exercise 3

1) Your answer should highlight non-violence, conscientiousness, communication and publicity

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