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WHY DO WE OBEY LAW POSITIVISM OR NATURALISM

AUTHORED BY - SAMIR HALDER

Abstract

Sought to this answer behind this society; I have discussed about NATURALISM AND POSITIVISM. How Naturalism and positivism these two philosophical aspects or instruments is totally oppose to each other, where naturalism simply talks about nature and morality and positivism is positive theory of law, which is focused on what is law. Jurists definition and Debate has been discussed here and clarified here that which one is most important between the both and why we should obey the law between the both.

Introduction

Natural law is an obscure terminology; in jurisprudence natural law is not only legal theory, also a theories of morality. It not only define about law of nature but also make the relation between the law and morality."FRIEDMANN point out that natural law inspired by two ideas, one is Universal order which is governing to the men another is inalienable rights of the individual, “natural laws are made for or by the logic and reason not for the emotions or passions,

Natural law is an obscure terminology;in jurisprudence natural law is not only legal theory, also a theories of morality.it not only define about law of nature but also make the relation between the law and morality."FRIEDMANN point out that natural law inspired by two ideas, one is Universal order which is governing to the men another is inalienable rights of the individual, “natural laws are made for or by the logic and reason not for the emotions or passions,

Positivism means in the sense of law emanating from a real source, which is obligatory, binding and sanction. Positivist are focused on what is law, and on the legal theories.

The best way to describe about the basic theories on natural law or positive law then :-If a

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beggar come to me and need some food for eat, then if I ignore him/her to give some foods, after then if I knocked that beggar person has died then whether should I be liable under IPC; no because ignore to giving him/her some foods is morality because there was not my intention to kill him/her. That is called morality. And positivist will try to clarify the reason behind then, as that beggar person could have been earned for save himself by working and fooding, but he did not. If everyone showing morality to every beggar to giving foods, cloths then beggar persons will leave to earn and doing job. Then begging will be increase day by day thus however it is not obligatory to provide foods, cloths, money to every beggar persons, due to the above reasons reasons if the beggar got died it is not an offence. So type of overlap between the legal and moral theories is most noticeable.

Law is needed in the society for maintaining the society, if there is no law there not will be order. If we not find any punishment for any offence, then offence will be increasing day by day, so naturalism and positivism is tha natural humanistic approach towards law and and punishments which is based on this approach. But this natural humanistic approach is different for different peopls and different situations, Example:- if A murder B then A will be punishable under section 302 of IPC, but if anyone died due to get insufficient food then that will be fall in morality then others person will not be liable for the died person.

Literature Review

Understanding why individuals obey laws is a crucial inquiry within legal theory and social science. This literature review explores key theories and frameworks from legal positivism and natural law, highlighting their contributions to our understanding of legal obedience in this research paper.

Hypothesis

Hypothesis Statement: The reasons individuals obey the law can be understood through two distinct frameworks: legal positivism, which posits that obedience is primarily a function of social authority and institutional legitimacy, and natural law, which argues that obedience arises from an inherent moral obligation aligned with universal ethical principles.

Key Components of the Hypothesis

1. **Legal Positivism**:

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- **Authority Recognition**: Individuals obey the law because they recognize the authority of legal institutions and understand the consequences of non-compliance.
- **Social Order**: Obedience is motivated by a desire for social stability and predictability, where laws function as guidelines for behavior within society.
- **Pragmatic Compliance**: Fear of punishment or desire for social approval leads individuals to conform to legal norms.

2. **Natural Law**:
   - **Moral Obligation**: Individuals obey the law because they believe in a moral duty to adhere to principles that reflect justice and the common good.
   - **Innate Sense of Justice**: There exists an inherent understanding of right and wrong that influences compliance with laws perceived as morally just.
   - **Alignment with Ethical Standards**: Laws that resonate with universal ethical principles foster voluntary compliance, as individuals feel a sense of responsibility to uphold these values.

Research Implications

- **Comparative Analysis**: This hypothesis invites empirical research to examine the relative influence of authority versus morality in legal obedience across different cultures and legal systems.
- **Interplay of Factors**: Investigating how elements of both positivism and naturalism interact could provide deeper insights into legal compliance.
- **Contextual Variations**: Understanding how situational factors (e.g., the perceived legitimacy of the law, social norms, individual beliefs) impact obedience can further refine this hypothesis.

Research Problem

The question of why individuals obey the law remains a central issue in legal theory and social science. This research seeks to explore the underlying motivations for legal obedience through the lenses of legal positivism and natural law. Specifically, the problem lies in understanding how these two frameworks account for compliance with legal norms and the implications for governance, social order, and moral behavior.

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Key Questions

1. **What motivates individuals to obey laws from a positivist perspective?**
   - How do authority, social constructs, and fear of sanctions influence legal compliance?
   - What role do institutions play in shaping perceptions of legitimacy?
2. **What motivates individuals to obey laws from a natural law perspective?**
   - How does an individual's moral belief system affect their perception of legal obligations?
   - To what extent do universal ethical principles inform compliance with laws?
3. **How do positivism and naturalism interact in influencing legal obedience?**
   - Are there situations where one framework predominates over the other?
   - How do cultural, social, and situational factors mediate the relationship between these theories and actual behavior?

Rationale for the Research

Understanding why individuals obey the law is crucial for:

- **Legal Theory**: Providing insights into the foundational principles that guide legal systems and their effectiveness.
- **Policy Making**: Informing lawmakers about how to design laws that promote compliance and enhance social order.
- **Social Justice**: Exploring how perceptions of morality and justice influence adherence to laws, particularly in diverse societies.

Research Objectives

1. To analyze the motivations for legal obedience through the frameworks of positivism and natural law.
2. To assess the influence of social authority versus moral obligation on compliance with laws.
3. To evaluate how contextual factors shape the interplay between positivist and naturalist motivations in different populations.

Methodology

The proposed research will be conducted using doctrinal as well as empirical approach, especially using qualitative, descriptive, and analytical techniques. The proposed study will draw data from both primary and secondary sources from books and journals.

POSITIVISM

Positivism word first used by August Compete who was a sociological professor.
Positivism comes from Latin word positus which means to posit,postulate or Strongly covering the existence of something. which means "as it is" not "ought to be"
Legal positivism is school of thought of analytical jurisprudence which was developed by legal philosophers during 18TH and 19TH centuries Geremy Bentham and John Austin is the profounder of legal positivism who were developed the positivist theory, Austin was rejects the natural law on the ground that it is Ambiguous and misleading. No natural rights are for the individual against the state all rights are created by states only.

Positivists believes that only legitimate source of law, which may be written rules regulations ,principles which have been enacted, or recognised by government ,judicial body, or tribunal etc. when some question is arises like “what is law ?" Is it written? where does it come from? Etc.

Legal positivism is a theory which answers these questions.

during 19thcentury Natural Law Theory was no more considered to be significant due to influence of scientific methods upon social sciences including jurisprudenc.Jurist of this school emphasis on the analysis of positive law means Law as it is not ought to be., this school is known as ‘positivist school of jurisprudence ‘and their jurist came to be called“positivists”or“analysts”.

Positivism means in the sense of law emanating from a real source, which is obligatory, binding and sanction. Positivist are focused on what is law, and on the legal theories.

The best way to describe about the basic theories on natural law or positive law then :-If a beggar come to me and need some food for eat, then if I ignore him/her to give some foods, after then if I knocked that beggar person has died then whether should I be liable under IPC;

no because ignore to giving him/her some foods is morality because there was not my intention to kill him/her. That is called morality.

And positivist will try to clarify the reason behind then, as that beggar person could have been earned for save himself by working and fooding,but he did not.

Positivist are Deserving through analytical school which is known as analytical positivism also.

In the beginning of 19th century Jeremy Bentham is the founder of analytical school of Law in jurisprudence. He first time utilised the analytical method to study law in a piece of abstract method of natural Law school.

Salmond says that analytical jurisprudence as "systematic jurisprudence " where C.A Allen as imperative jurisprudence. Jurists are treated the law as imperative for command emanating from the state. The purpose of analytical jurisprudence is to analyse without development of their historical origin.

Positivism has been generally understood in the sense of law emanating from real source which is binding, obligatory, and function. In jurisprudence 19th century is time of beginning of the positivist movement.

Prof. H.L.A Hart

Professor Hart give some meaning of positivism which are……

1. Laws are command.
2. The analysis legal concept in following distnict from sociological and historical inquires.
3. The law is actually postium means "as it is" and separate from the law that "ought to be".
4. Pre-determined rules can deduce decisions.

Positivists are prefer only pure fact of law,logic is the main instrument.

JEREMY, BENTHAM (1748-1832) IMPERATIVE THEORY

Bentham was the ambassador of analytical method in England. who was the intellectual God Father of John Austin, from whome Austin was developed the theory of analytical positivism.

Jeremy Bentham was observed analysis of structure was essential tremble to reform.

Jeremy Bentham has divided the jurisprudence into parts

1. Expositorial :- means the analysis of what the law is.
2. Censorial :- finding out what the law ought to be.

He was the greatest analytical jurist.

JOHNAUSTIN (1790-1859)

John Austin was the father of english jurisprudence and also a founder of analytical school.

Prof. C.k Allen thinks proper That Austin school as a imperative school. The school founded by him called by various names" analytical", "positivism". Austin always opposed the theory of natural law, his imperative theory of law distinguishes. That whether a rule is a legal rule from it is a just rule. Austin says that positive law is the proper subject matter through the study of jurisprudence, and also says that jurisprudence is the general science of positive law.

Austin delivered his lecture in the London University, which were published on his book "the province of jurisprudence determined" where he told that the nature of law and its proper bounds, where he also discuss the sources of law.

Austin divided the law into two parts **"properly"** and **"improperly"** and law properly is divided into two parts "law of God" means laws set by God for men, another is "Human law" means law are made by man for man.

"laws in properly so called" are divided into two parts "law by metaphor" and "law by analogy".

LAW IS THE COMMAND OF THE SOVEREIGN

Austin says on his lectures on jurisprudence that "law is the command of sovereign". He further said positive law consists of comments set as General rules of conduct by a sovereign to a member or members of the independent political, society, where author of the law is supreme.

SOVEREIGN: - according to the Austin sovereign is the source of law because sovereign is the supreme authority of any person or body of persons who obey the bulk of the members of

the political society. And also says that nothing is law if that laws are not the sovereign command, so law is rule which is imposed by sovereign and enforced by the sovereign, it is the product of sovereign.

COMMAND:- Austin says in his command theory "the law is command of sovereign which are imposing a duty which is enforceable by sanction,
Austin in his positive law has classified the law in three characteristics.

1. Law is a type of command.
2. It is laid by political sovereign.
3. Enforceable by sanction.

Comment is the desire of the sovereign authority that the subject send to for refrain from doing a particular act otherwise some evil will be inflicted.

But all comments are not law just it is only general command which compels the subjects to conduct.

SANCTION:- sanctions are logical part of the concept of law.
Austin means law must follows and observed by people, only when there is a sanction behind it. Laws are consists of the penalties when persons or person inflict the law of the orders of the sovereign, then they will be punished for the violation of law.

The great jurist **Hans kelsen (1881-1973)** who is the Australian jurist gave a theory to is positivism whose theory is known as "pure theory of law" who says that law is a normative science. Hans kelsen was a professor in Vienna University (Austria) so his pure theory of law is also known as "Vienna school" and "Grundnorm theory".

As the positivism approach professor kelson says that law is a normative science but law norms may be distinguished from science norms. Law is the knowledge of what the law ought to be laws do not have a causal connection they are normative connections. According to him law does not attempt to describe that what is occur by only describe certain rules.

According to the **Kelson** and in his theory, theory of law must be distinguished from law itself. A theory of law must be uniform and must be free from ethics, history, politics, and sociology

etc. It must be pure.

Kelson pure theory of law is based on pyramidical structure of hierarchy of norm which derive their validity from the basic norm which he termed as grundnorm. If any law which would violate the Grundnorm theory then law will be unconstitutional.

The constitution of India may be termed as grundnorm but India is se socialist society where law and models are complement to each other. So this is not advantageous to this country.

Kelson rejects the Austin theory and define that on sovereign may not be termed as songs of law, interpreted the pure principle which is necessary to achieve the source of law can be traced. The aimed of his theory as of normative science, is to reduce chaos and multiplicity to unity.

Law is normative not a natural science in this theory kelson separates the law from morality.

Naturalism

In the respondents term natural law means some rules and principles which are nominated some supreme sources other than any political or wordly authority. Natural law known as higher law or law of nature, moral law, Law of God and written law.

Moral principles based on the essential nature of the universe and discovered by natural reason.
There is no single theory about the natural law many jurist has given their opinions
When the natural law used in a general sense then we can only assume that loves which are coming from nature.

*According to **Aristotle** and **Christian Thomasius :-** law is the the " unwritten law "(jus no scriptum)
*According to **Grotius** and **Gentili**, natural law consist of the 'principles of the mortality'

***Hobbes** and **Locke**:- natural law was concerned rather with man's rights, and sought to derive from the characteristics of human nature certain natural or fundamental rights.

Some jurist and philosopher has define about natural law in many definitions and by theories,
FRIEDMANN: - that natural law has used many different times by many different peoples.

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Some definitions and ancient theories of jurist of the Greek period about natural law

Greeks are the first propounders of natural law, they were thought that "Nature" means entire universe. Some Greeks who gave the conception of natural law that universal law where some how rules principles are equal for all and which is binding on all peoples. Growth of plants movements heavenly e this at the greeks times natural law was both a way of living as well as thinking.

Philosophers view on natural law (Greek theory)

Secretes says that like natural physical law there is a natural moral law, and also says that man has a "inside" and this inside elicit him what is" bad " or "good" and these badness for goodness aware him or makes him know the absolute moral rules. By this "insight" man can judge the law, socrates did not say that if the positive law is not in conformity with moral law it would be disobeyed. He preferred himself to drink poison is obedience to law then run away from the prison his theory was a plea for security and stability.

Aristotle says:- Man is a part of nature, and man is part of creatures of God. He possesses all active reason he can shape his will.
Further Aristotle says that Universal Law or Natural law set by nature, which renders in unchanging and which is valid for all communities. Natural justice is that which is some force in every where.

According to Aristotle Law is the body of rules, which judges and people's are should follow, And it is different from the constitution. Law should be reformed rather than broken.

Stoics view

People or a group of people of Greek thinkers called popularised a maxim " Live according to nature ".
Stoics views are that natural law as only a manifestation of the divine reason in man.

MEDIEVAL THEORIES

IN the middle age,some philosophers (catholic and theologians) were gave a new theory on the natural law.

St. Augastine was views that Natural law was the divine law and which was superior to all the

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laws. Divine laws are based on Nature where human made laws are custom.

According to **Gierke**, medieval period Christian theology were entered into two fundamental principles.

- Unity derived from God, which are belongs from one God, One Faith, One Church.
- Both divine and man made law as a part of universe.

Grotius and Rousseau views on Natural Law

Grotius is the father of international law. Who says that there is no sovereign to control the relation of nation but nature can control the relation between the notions.

Grotius says that Nature is discoverable by man's reason, and it is the duty of sovereign to save the citizens because sovereign was given the power for that purpose,
Grotius claims that nations were still is a state of nature, so bound by the natural law and all man desires peaceful society because man is social being.

Rousseau

Rousseau is the father of sociological school in jurisprudence, who has define the relation between the society with us, even he says in natural law.Rousseau has gave a new interpretation on social contract and natural law, According to the Rousseau before the social contract man was berry happy and free ,and there were equality among them, but now after the social contract mans are not happy, they are preservation of their rights, freedoms, equality. Rousseau gave the name of this system "General Will".

NATURAL LAW IN INDIAN PERSPECTIVE

IN Indian perspective a number of legal principles is embodied in our Indian Constitution, which generates certain basic fundamental rights to the citizens. And some general principles have been borrowed from the England. Many of them are based on natural law, like quasi contract, justice. The supreme court can set aside the orders of high courts if natural justice are violates. The principle of natural justice has been in corporated in article 311, which says nor civil servant can be removed or dismissed or reduce his rank until he has been given reasonable opportunity to showing cause against the action proposed to be taken against him.

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Maneka Gandhi vs. Union of India AIR 1978 SC 597

IN this case laws must have ethical and systematic criteria, otherwise it would not be regarded as Law. And if peoples got complete and absolute liberty without any type of social control then result will be wreck and that will be over through, so, liberty always should be limited.

A.K Gopalan vs. State of Madra AIR 1951 SC 21

Justice patanjali Shastri- observed man desires to do many thing, but in a civil society man's desires have to be controlled, and regulated with the exercise of similar desire by other individuals.

In **Makena Gandhi** case held that, any person depriving of his life or personal liberty must be just fair and reasonable Art 21 Indian Constitution.

Article 19(6) also declares about " Reasonable Restrictions "the word " Reasonable " means intelligent.

Chintamani Rao vs. state of H.P AIR 1951 SC 118

Term Reasonable Restriction in art. 19(6) signify that limitation imposed on a person for the enjoyment of his right should not be excessive nature, beyond what is actually required in the interest of the peoples.

STATE OF MADRAS VS. V.G RAO AIR 1951 SC 196

There is not exact pattern of Reasonableness that can be laid down for all cases.

NAREDRA KUMAR VS. UNION OF INDIA AIR 1960 SC 430

Restriction may amount to prohibition under certain circumstances.

POSITIVIST VS. NATURALIST WITH HART AND FULLER CONTROVERSY

Naturalist and positivist are not an issue, just they have been operating in two different frames.

H.L.A Hart, in positivism arguing and based it for need a clear cut method for identifying the Law.

Naturalist think that mainly in a continuum and positivist are present frames.

According to the naturalist separation of law from morals is not possible, by positivist it possible.

Hart, thinks that about continuety, morality is essential but that should be clear cut and identifying laws.

Fuller, morality and concept of law upon the time from of reference, morality externally and internally related to law, which takes account of implications of continuety, and concepts are operating the present time frame.

Positivist say that there are no limits, but naturalist says limits are define by principles of morality and by natural Justice.

Hart, views that law must have a minimum moral quality, and he observed that law and morality are inter connected.

Hart, argues that a legal system must give a men minimum protection of life and property but he does not maintain the man's right to their life. Where limits and property are also protected by law.

Fuller, suggest that if any formal rule could examine then it strike some moral principle

So, it is also clear that total separation of "is" and "ought" is not possible.
Actually law is, what it's makers thinks it ought to be.

It undeniable, that moral,social,political and some other factors make them, what and where they are so the judge will declare the rule, what it is and what ought to be.

In this point try to analysis a situation positivism to naturalism in a strict sense, which will be very easy to understand for us the issue at large. If we assume that a situation has create where a person made a judge without any legal training. Charles Fried assistant professor of Law, Harvard Law School published it in Harvard law review in 1964. This scenario is discussed from an article titled:- “Two concept of interest reflection of supreme courts balancing test “is that judge would ignored the Law? Truth is that the article said that the system will go on, but

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the judge will underperform with the collegiums in a comparison, where the judge will be reflect his position with basic natural assumption. But it is not that the judge will be compared with those who having knowledge but even without compared with knowledgeable persons the judge knows that he having a crucial role playing in a legal argumentative situation which is highly structured. Hence this type of various illustrations make us retrospect. So this article clarifying that whether do we obey Law behind it's sanction or just moral reasoning of all human about judging what is good or bad. So there has Both parties have a tendency to characterize their legal position as more 'positive', that is, the law which is so and should not allow any deviation, or should maintain the notion that the law is more 'natural'. ', That is, leaning more towards the humanitarian approach and the ideal code that moves people forward. Positivism and naturalism are not only comparison but state the impotant truth also.

Point Of View:- I have discussed in the above about the main features, definations, and debates between the "Naturalism and Positivsm" where I have faced some questions,that :- which on is the most important between the both and which one should we obey in the matter of "why should we obey the law Natuaism and Positivsm" ?
I collected some data from the internet (website) and from books which I have read out, Thus I would like to choose the Positivism.

I have found that Positivism means "As it is" and "Not ought to be" which is developed by the positivists. Positivism means "A philosophical system recognised only that which can be scientifically verified or which is capable of logical or mathematical proof ".
Positivism is an important role in the society where Naturalism is the creature of God, and the morality. Where positivists separate the pure law from the morality but every natural law is not appropriate for the society because when Society needs law will perform, hence it should not be inclined to disobey the Natural Law. Positivism is the study of law brought many benefits and promoted the development in study about on the Society. Positivista are criticised some way of Natural objectives.

Positivism provides to the people a way to avoid speculation but to make a scientific rational prediction through the study and this method is used more nad more in the study of human society.

Positivism considered meaningless and reject the other ways of knowing, such as theology,

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metaphysics, intuition or introspection.

The positivists thesis does not say that laws merit are unintelligible, unimportant or peripheral to the philosophy of Law.

Conclusion

Positivism playing the important role in our society find out that, naturalism is the creature of God and positivism is the identifying as pure Law which are hides behind the nature, positivist are separate the law from morality. Every natural law are not appropriate for the society, but when the society needs then Law will perform as per the needs of society. We should follow the both naturalism and positivism because sometime nature is also a source of law.

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