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Q.No 1. According to Weber, that a political regime is legitimate means that its participants have certain beliefs or faith in regard to it: “the basis of every system of authority, and correspondingly of every kind of willingness to obey, is a belief, a belief by virtue of which persons exercising authority are lent prestige”. Critically examine the statement and Weber’s concept of legitimacy in context of the concept of law’s legitimacy.

Max Weber:

Maximilian Weber (1864 –1920) was a German sociologist, & jurist. Max Weber is critic of Karl Marx. Karl Marx considers the exercise of power by the state is illegitimate because state is class institution and thus exercise of coercive power on the poor on behave of the rich.

Legitimacy:

The word legitimacy has been derived from latin word “ legitimus” which means lawful. Its meaning has gradually changed and in modern times it has different meaning. According to Jean, legitimacy is defined as the extent to which the population willingly accept without questioning the organisation which it belongs. It is the capacity of maintaining the belief that the existing political institution are more appropriate for the society. It is the quality of being justified. The exercise of power for which there is consent of people is called legitimacy.

According to ARISTOTLE, legitimacy comes from the consent of people. According to ROUSSEAU, legitimacy comes from GENERAL WILL. According to Weber, a political regime is legitimate means that its participants have certain beliefs or faith in regard to it: “the basis of every system of authority, and

correspondingly of every kind of willingness to obey, is a belief, a belief by virtue of which persons exercising authority are lent prestige". The consent implies that the exercise of power is considered right by the people. According to Max Weber:

Power + Legitimacy = Authority

Weber believes that state has authority for the exercise of power. Like Hobbes Weber also believes that state has monopoly over the exercise of power. Exercise of power by anyone except state is not legitimate. The validity and legitimacy of law often used most interchangeably and in a synonymous way in legal domain these are the independent term having thinner layer of differentiation if examined on the basis of different schools in jurisprudence which the question intends to be excavated exactly here.

Dealing primarily, at its basic level, notions of Legitimacy represents the following four basic ideas as,

Legitimacy as a democratic process: - Being legitimate means it must have recognized democratic norms and values like meritocracy, people's participation, free, fair and impartial election or must accompany the democratic norms and values.

Legitimacy as a legal authority: This means that only legally authorized person can deserve the use of power and their act of exercising power is only valid.

Legitimacy as reliability: Legitimacy prevails if the decision making process meets some threshold requirement and the larger section of the society obey the law in its sincerity I. e the source of entitling reliability.

Liberal Principle of legitimacy: Legitimacy based on human reason. For example Rawls's conception of legitimacy of a constitution. For Rawls's Equal

opportunity and liberal (freedom) principle and for the least advantageous in society difference principle is to be assimilated and considered the higher priority while making law by the state authority.

Basis of Legitimacy

Max weber distinguishes among three sources of legitimacy-usually understood as the acceptance of both of authority and of the need to obey its command.

a. Traditional authority

This means things are done is valid because that is the way things have always been done, or moreover, who merely depends on traditional history, of chronological and hereditary, no breakthrough in authority rather predicted is fixed. For example-Agnet system in Rana regime in Nepal.

b. Charismatic authority

It believes that to the extent the system departs from tradition, it may be deemed legitimate because it was revealed by a recognized prophet or the sudden ambition and certain capacity of any influencing leader would help him to trust as leader and they may formulate law on the basis of their rationality. Hitler, Maotsetung, Gandhi are of these types.

c. Legal rational Authority

This affirms that system may derive its legitimacy from a belief that it is a logically deduced to be absolute. Here Weber has advocated for some criteria like- authority on the basis of legitimate law, had been built on meritocracy basis, and selected from legally authorized body. Finally, the actors may believe that the system is legitimate because it is legal. In this way, Weber also explains legitimacy in terms of *a priori*, charismatic and rational sense.

Weber identifies legitimacy as an important explanatory category for social science, because faith in a particular social order produces social regularities that are more

stable than those that results from the pursuit of self-interest or from habitual role following.

In contrast to weber's descriptive concept the normative concept of political legitimacy refers to some benchmark of acceptability of justification of political power or authority and possibly obligation. One view held by John Rawls and Ripstein. For example:

Legitimacy refers in the first instance, refers to the justification of coercive power (political). Whether a political body such as state is legitimate and whether citizens have political obligation towards it depends, on the view on whether the coercive political power that the state exercises is justified.

On a widely held alternative view, legitimacy is linked to the justification of political authority. On this view, political bodies such as state may be effective or defacto authorities without being legitimate. They claim the right to rule and to create obligation to be obeyed, and as long as these claims are met with sufficient acquiescence, they are authoritative.

Legitimate authority on this view differ from merely effective or defacto authority in that it actually holds the right to rule and create political obligations. The thought is that a political authority (such as state) may be permitted to issue commands that citizens are not obliged to obey. An act may be normatively legitimate but not descriptively and vice versa. Legitimacy of an act may change from one basis to another with the aid of concept of validity such as establishment of concept of civil disobedience.

Regarding legitimacy and consent as per Locke consent may be given tacitly by any peaceful behavior that takes place within the territory of the just government. For Kant, actual consent is unnecessary so long as it would be rational to consent to authority in question.

Whereas, Raz and Joseph Raz's autonomy of the individual argues that the defacto authorities are not necessarily legitimate and that legitimate authorities do not get their legitimacy from consent but from the service to the autonomy of the individual.

Hence, Raz argues there is no general obligation to obey the law. One should obey law only if it serves one's autonomy and then one obeys it because of its content and not because it is law.

Types of Legitimacy:

Ideological Legitimacy:

When the source of legitimacy is the ideology prevalent in the society then it is called ideological legitimacy. Ideology portrays the aims and states the objective of political system.

Structural Legitimacy

Structural Legitimacy is based on an independent belief in the validity of the existing structure and norms and the incumbent of the authority.

Personal Legitimacy

In personal legitimacy the validity of the authority is based on the personal qualities.

Mature Legal Order of Weber

Legitimacy of law is the need of establishing binding force of law which is independent of coercive sanction. Weber's theory of law does not turn on the identification of any particular source of law, nor on the establishment of any proper content for law. Rather, it is a theory of law that emphasizes the mode of administration of rules or norms. The structure for such administration is crucial.

In Weber's view most mature type of legal system was one in which the law is administered in a "formally rational" manner (logical and internally coherent manner). Weber maintained that the administration of the law (both establishment of legal norms and application of those legal norms to concrete facts) could be either rational or irrational in either a formal or a substantive sense. Administration of the law is irrational if it is not guided by general rules." Thus, administration is formally irrational to the extent that it employs "means

which cannot be controlled by the intellect, for instance when recourse is had to oracles or substitutes therefor. Administration is substantively irrational to the extent that particular cases are decided on ethical, emotional, or political reaction to the facts of the particular case.

Positivist held that the legitimacy of law is same as the legitimacy of political authority. However, Natural school of law accepts both validity and legitimacy.

Criticism:

Max Weber's instrumental reason has been criticized by HABERMAS. In his theory of communicative rationality, Jurgen Habermas talks about legitimation crisis. Legitimation crisis is an identity crisis that result from a loss of confidence in administrative institution though they still retain legal authority to govern. For Example : Present Taliban government in Afghanistan has legal authority to govern as they modified the law accordingly. People too followed the law made by its government. This shows that the government still retain legal authority to rule. But there is lack of consent of people for such law and such laws are not perfectly valid. Obedience of the Taliban laws by the Afghan people is not willful. Thus, the legal authorities are suffering legitimation crisis in Afghanistan.

Conclusion:

Thus, it has been observed that having a legal authority to rule doesn't necessarily mean that the rule is legitimate. Legitimacy of the government and its rule depends not on fearful obedience but on willful obedience of the laws by the people.