

# Civil Disobedience and Its Justification in Respect to Moral Aspects

Monalisha Biswas

## Abstract

Civil disobedience has been a central issue in recent times in the field of political philosophy. The most important moral question related to the problem of civil disobedience concerns the limits of a citizen's obedience owed to the state. The problem of political obligation raises questions such as:

1. To what extent does the citizen have an obligation to obey the laws of the state?
2. Is the citizen of a state, whether democratic or otherwise, under an obligation to obey the unjust laws of the state?

There are two different positions or viewpoints concerning the character of the obligation to obey the laws of the State.

1. The first position states....."one has an absolute obligation to obey the law and therefore disobedience to the state law is never justified".
2. The second position asserts----- "one has a Prima facie obligation to obey the law, but this obligation can be overridden by conflicting obligations. Hence, disobedience to the state law can be justified in the presence of outweighing circumstances".

**Keywords:** *Civil Disobedience, Moral Justification, Citizen, Obligation, State, Government, Violence, Law*

## Introduction:

Civil disobedience is a type of nonviolent protest in which people purposefully disobey the law or defy orders from the government in order to express their disapproval of policies or perceived injustices. It is a kind of nonviolent political protest used to pressure the government or other authorities into making compromises. In other words, without using violent or overt forms of resistance, civil disobedience is the act of refusing to comply with the orders or demands of a government or occupying force. Its typical goal is to pressure the government or occupying force into making concessions. A key strategy and tenet of the American civil rights movement, the labour, anti-war, and other social movements in many nations, as well as nationalist movements in Africa and India, has been civil

disobedience. The philosophical foundations of civil disobedience are deeply ingrained in Western thinking. Cicero, Thomas Aquinas, John Locke, Thomas Jefferson, and Henry David Thoreau all attempted to defend behaviour by arguing that it was in accordance with some previous superhuman moral norm. Mahatma Gandhi was the one who most clearly defined the contemporary idea of civil disobedience. He created the satyagraha concept, which stresses peaceful opposition to evil, by combining ideas from Eastern and Western philosophy. Gandhi fought for independence and equal rights through satyagraha activities, first in the Transvaal of South Africa in 1906 and then in India with events like the Salt March in 1930.

### **Socrates and the Problem of Political Obligation:**

Why does the citizen have an obligation to obey the laws of the State? Socrates, one of the greatest philosophers of ancient Greece, considered this question well over two thousand years ago, and thereby he provided a basis for a philosophical debate. Socrates was convicted and sentenced to death on charges of atheism and for corrupting the Youth of Athens. His friend Crito visited Socrates in prison and informed him that an escape could be arranged for him and offered several reasons to justify that escape. However, Socrates regarded such reasons as insufficient to warrant his escape and countered with his own reasons. He offered the following reasons in support of his respect for the laws of the state.

1. Since he always taught respect for the law, it would be unprincipled and hypocritical of him to disobey it.
2. His disobedience to the law may lead to a sanction of general disobedience of the law by the public.
3. The citizen's agreement to abide by the state law was a binding obligation on him.
4. Hence, disobedience to the law is an expression of ingratitude and a violation of the principles of Justice.

Since Socrates was convinced that the state is entitled to obedience, rather than to escape from a death sentence, he willfully submitted to the penalty with equanimity and cheer.

### **Social Contract Theory and the Problem of Political Obligation:**

Another argument put forward in favor of political obligation is social contract theory, which claims that individuals, as the citizens of the State, are under an obligation to keep their promises that they have made to the state. The argument appeals to the following considerations.

1. The individual, as a citizen of the state, has given an explicit or implicit promise to obey the laws of the state.
2. The state provides certain benefits and privileges to the citizen.
3. In return for the benefits and privileges he gets from the state, the citizen has to obey the laws of the state.
4. Disobedience to the laws of the state is bad citizenship, because the citizen receives benefits without performing their duties to the state.

The social contract theory makes an attempt to justify political obligation on the basis of an implicit promise made by the citizen to the state. One of the classic arguments of social contract theory was presented by Socrates in Plato's dialogue in "Crito".

"Although we have brought you into the world and reared you and educated you, and given you and all your fellow citizens a share in all the good things at our disposal ... on attaining to manhood and seeing for himself the political organization of the state and us its laws, is permitted, if he is not satisfied with us, to take his property and go away wherever he likes."<sup>1</sup>

Socrates' argument provides the following reasons for one's obligation to obey the laws of the state.

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<sup>1</sup> Plato, "Crito", trans. Hugh Tredennick, in *The Collected Dialogues of Plato*, Pantheon Books, New York, 1961, pp.36-37.

1. In return to the benefits he gets from the state, the citizen promises to obey the laws of the state.
2. If any citizen feels that the laws of the state are unjust, he can make an effort to convince the state of its mistake by following certain procedures.
3. If any citizen believes that the contract with the state is not producing benefits to him or that the laws of the state are unjust, he is free to leave that state at any time.
4. So long as the citizen continues to stay in the state, he ought to obey the laws of the state as promised by him.
5. Hence, one is free either to obey the laws of the state or leave that state and go elsewhere.

The argument offered by Socrates or the social contract theory enters into a difficult situation with regard to the contract made between the citizen and the state. The contract is not valid unless it fulfills the following conditions.

1. The clauses of the contract made between the citizen and the state must be appropriate.
2. The contract must not be made under duress.
3. The contract must contain escape clauses.
4. The contract must be based on the moral acceptance of both contractors.
5. The state must abide by its contract obligations.

In fact, any contract made between two parties equally places responsibilities and obligations on both parties. The failure of one party to carry out its obligations retracts the moral obligation on the other party.

### **The Conflict between Legal and Moral Obligations:**

Socrates' position concerning "one's obedience to the laws of the State" is not acceptable to many people. To mention a few among the many well-known persons - Henry David Thoreau, M. K. Gandhi, Martin Luther King Jr. - have chosen a different position in relation to a citizen's obligation to obey the laws of

the State. They insist that in addition to the political criteria, the system of laws must meet moral criteria as well. They refused to consider an unjust law as a law. It is not simply enough to sanction a law by the state, but that law must have adequate justification. Therefore, to have an obligation to obey the law, the law must be morally justified. Making a distinction between a just and an unjust law, Martin Luther King Jr. observed: "A Just law is a manmade code that squares with the moral law or the law of God. An unjust law is a code that is out of harmony with the moral law".<sup>2</sup>

Many moral philosophers regarded the legal version of "one's obligation to the laws of the state" as not sufficient. They argued that Prima facie the citizen has a primary duty to obey the laws of the state, but at the same time he has a right to break the law if it seriously violates fundamental moral principles. In the name of law, if the state creates situations such as discrimination against its citizens or violation of individual liberties or any other such injustice, then the citizen has a moral duty to violate such laws.

John Locke regarded that the citizen's obligation to the state holds good only if the state secures Justice. If the state acts unjustly or if the state is not a means to a moral end, it loses its right to be obeyed. The Utilitarian Philosophers held that if the state is harming instead of promoting the common good, it loses its right to obedience. Thus, political obligation is not absolute, and the citizens are not obliged to obey anything that the state will decree. If any individual citizen thinks that a particular law is unjust or harmful to the common good, he is morally entitled to disobey such a law. Thoreau's classic treatise on 'Civil Disobedience' adopts this approach and justifies disobedience. Thoreau held: "The only obligation which I have a right to assume, is to do at any time what I think right ... There will never be a really free and enlightened state, until the state comes to recognize the individual as a higher and more independent power, from which all its own power and authority are derived and treats him accordingly."<sup>3</sup> John Rawls, in his essay on

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<sup>2</sup> Martin Luther King Jr., "Letter from The Birmingham City Jail", in James Rachels, *The Right Thing to Do*, Random House, New York, 1989, p.242.

<sup>3</sup> Henry David Thoreau, "Civil Disobedience", Ticknor and Fields, Boston, 1866, pp. 125, 151.

"Civil Disobedience", admits that "one does have a right to disobey if one is subjected to deliberate injustice that violates the liberties of equal citizenship".<sup>4</sup>

### **The Nature and Content of Civil Disobedience:**

Civil disobedience is a form of non-violent protest against unjust laws of the state. It is an instrument of struggle against evil and injustice. The action of a person becomes civilly disobedient if he deliberately violates the laws that have been sustained by the highest legislative and Judicial bodies of the state. The civil disobedient regards the dictates of the conscience as superior to the commands of the state. He violates the unjust laws of the state in order to bend the Government to the will of the people. Explaining his idea of civil disobedience, Gandhi said, "Civil disobedience is civil breach of immoral statutory enactments. . . . It signified the register's outlawry in a civil, i.e., non-violent manner. He invoked the sanctions of the law and cheerfully suffered imprisonment. It is a branch of Satyagraha".<sup>5</sup>

Civil disobedience can be defined as an intentional act of a citizen who violates a valid law for the purpose of registering a moral protest against the state. The emphasis on the words intentional, valid law and moral protest distinguishes civil disobedience from other acts of law breaking. Unlike other people who break the law out of greed or a desire to subvert government, the civil disobedient breaks the law to register his moral protest. Thus, the act of civil disobedience differs from the acts of both the criminal and the revolutionary by its different motives and objectives. The criminal is interested exclusively in personal gain, not in Justice for citizens in general.

A civil disobedient generally supports the legal system of the state and disobeys only some selective laws or judicial decisions that he regards as unjust. He breaks the law in order to register his moral protest. The revolutionary, in contrast, regards the entire legal system of the state as corrupt and advocates complete overthrow of the system. Since the purpose of the state is to provide

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<sup>4</sup> Cf. John Rawls, "The Justification of Disobedience" in James Rachels, *The Right Thing To Do*, Random House, New York, 1989, pp.264-65.

<sup>5</sup> M.K. Gandhi, "Satyagraha", Navajivan Publishing house, Ahmedabad, 1951, pp.3-4.

Justice to all its citizens, the act of a civil disobedient who is pointing out an unjust law or policy of a state in civil procedure must be considered as a good citizen, but not as an ordinary law breaker. Martin Luther King Jr. made a distinction between the law-breaking of a non-violent civil disobedient and clandestine law breaking. He observed:

"One who breaks an unjust law must do it openly, lovingly, and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and willingly accepts the penalty by staying in jail to arouse the conscience of the community over its injustice, in reality expressing the very highest respect for law".<sup>6</sup>

The technique of civil disobedience, Gandhi says, is intended to replace all brutal methods of violence used to resolve social and political conflicts. It aims at the conversion, but not the embarrassment of the Government. The success of the civil disobedience is essentially based on the cause as well as the means employed to resolve it. Since civil disobedience is a powerful method of bringing change in the policies of the state, it must not be used unless all other remedial methods such as negotiation, discussion, arbitration, etc., have been exhausted.

A civil disobedient should give due publicity to the unjust laws or policies of the state to educate the public on the issues as well as to rouse consciousness of the sufferers. Before launching the civil disobedience movement, he must give due notice and the fullest possible time to the state so that the state can correct its wrong policies. Civil disobedience movement includes different methods of agitation such as --- peaceful marches, breach of laws, picketing, courting of arrests, non-cooperation with the Government, etc.

The Appeal to Conscience:

The problem of disobedience is closely connected with "one's duty to one's conscience". The civil disobedient often claims that he disobeys the laws of the state on the basis of his conscience. Many ethical philosophers thought that simply an appeal to conscience alone is not sufficient for one's disobedience to the law.

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<sup>6</sup> Martin Luther King Jr. "Letter from The Birmingham City Jail", in James Rachels, *The Right Thing to Do*, Random House, New York, 1989, p.243.

Claiming something as right on the basis of one's conscience is not sufficient to make it right. We must rely on reason for the justification of such claims.

### **Justification of Civil Disobedience:**

Many philosophers and thinkers regarded that the justification of civil disobedience is necessarily based on certain conditions. Unless the following conditions are satisfied, it is difficult to justify an act of civil disobedience.

1. The Act of civil disobedience must be open and public. The law-breaking of a civil disobedient is a political act of a good citizen. In the case of clandestine law-breaking, the law breaker tries to go undetected. Breaking the law openly and publicly is what distinguishes the civil disobedient from the thief in the night or a clandestine law-breaking directed against the state.
2. To establish justification for the law breaking of the civil disobedient, the issue or the cause related to the protest must be genuine, just and clear.
3. Resorting to civil disobedience is never morally legitimate unless all other methods of remedying the evil complained of are exhausted.
4. The civil disobedient must necessarily accept the legal sanctions and punishments imposed by the laws. The protest should focus on the unjust laws or policies of the state, but not an attack on the state itself. His willingness to accept a penalty indicates that the person is neither at war with the state nor with his fellow citizens.
5. The protest must be based on the philosophy of non-violence and peace, both in its form and activity. Violence does not promote a peaceful atmosphere for a public debate or reexamination of its policies by state.

The civil disobedient must avoid hardship or harm to his fellow citizens, who are not directly responsible for the situation created under protest.

### **Critical Evaluation:**

The problem of political obligation is as old as civil society. There has always been a clash between the claims of political authority and the claims of individual conscience and autonomy. One of the most important questions in the

field of social and political philosophy is - what is the nature and extent of one's obligation to obey the laws of the state? The problem of disobedience is closely related to the nature and limits of the citizen's obligation to obey the law, of the rights and duties of the citizen against the state, and of the relation between the authority of the citizen's conscience and the authority of the state. These questions have an important relevance to the political condition of man in the contemporary world.

### **Is the citizen under an obligation to obey the unjust laws of the state?**

The citizen is not under an obligation to obey the unjust laws of the state. One ought to do what is morally right, and so one ought to follow the rules or orders of the state when they are morally right. Besides legality or even Justice, there are other values in the world, and in certain cases, the prima facie obligation may be overridden by a higher ethical principle. If the state simply requires obedience on the ground that it has sufficient power to make its subjects obey, then the commands of the state would lose all their moral legitimacy. Therefore, the argument of legal absolutists - Jeremy Bentham and John Austin- "one is never justified in violating any law in any circumstances" is unsound, unreasonable and unconvincing.

The violation of a law entails upon the person the obligation of justifying it. Moral justification for violation of a law is a matter of reason, but not of conscience. There must always be a reasonable justification for the violation of rules. The person who breaches his political obligation to obey the laws of the state merely based on his conscience is not enough.

The voice of conscience may appear loud and clear. But it may conflict at times not only with the law but also with another man's conscience. Conscience is neither a special nor an infallible organ of apprehending moral truth.<sup>7</sup> The reliability of conscience needs support from an external source, not simply to be self-certifying. Therefore, conscience without conscientiousness or conscience that does not cover the process of critical reflective morality, is likely to be a prejudice.

Is civil disobedience a legitimate Act?

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<sup>7</sup> Cf. Sidney Hook, "Social protest and civil Disobedience" in *Moral Problems in Contemporary Society*, Ed. By Paul Kurtz, Prentice-Hall, I.N.C., New Jersey, 1969, p. 166.

The justification of civil disobedience depends on the following special conditions.

1. When certain laws, policies and actions of the state are unjust.
2. When there are no meaningful political channels for the legitimate expression of an individual's dissent.
3. When the state authority is too powerful or indifferent to the appeals of the people.
4. When the state violates or suppresses the rights of the individual citizen.
5. When the state becomes corrupt and fails to deliver the goods to all its citizens.

The act of civil disobedience gives an opportunity to the individual citizen to make a moral appeal to their fellow citizens that the policies and practices of the state have violated the rights of some people. It is used as a means for seeking a redress of grievances. The state is forced to reexamine its policies and remain ever vigilant against such injustice situations. Genuine civil disobedience strengthens the state rather than undermining it. Thus, the civil disobedient performs the role of a catalyst for bringing reforms in the policies of the state. Moreover, a state constantly challenged is more likely to be a just one. Hence, a civil disobedient should not be considered as an enemy of the state, but as a good citizen of it.

There are some risks involved in the process of civil obedience. What is begun as civil disobedience may be perverted by the extremists into uncivil disobedience, which alienates a large number of people who have supported the cause of civil disobedience. Hence Gandhi cautioned the civil disobedients and said, "Disobedience without civility, discipline, discrimination and non-violence leads to destruction".<sup>8</sup>

### **Is civil disobedience in a democratic state justifiable?**

Civil disobedience seems to have a central place even in a democratic system. Civil disobedience in a democratic society must be understood as an appeal to the principles of justice. It expresses disobedience to law within the framework

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<sup>8</sup> M. K. Gandhi, op. cit., p. 173.

of fidelity to law. If the appeal against injustice is repeatedly denied, then the civil disobedience may be justified even in a democratic regime. Since we cannot frame a procedure for enactment of only just and effective legislation, it may be possible to pass unjust laws and enforce unjust policies by the Government even under a just constitution. For the practice of democracy, we need some form of the majority principle, but at times the majority may be mistaken, more or less willfully, in what it legislates.

Civil disobedience, Gandhi believed, is an inherent right of a citizen. Any action of the state to put down civil disobedience, he considered as an attempt to imprison the conscience of the citizen. When the state resorts to unjust laws or unjust practices, it is the sacred duty of the citizen to protest such laws and policies. He regarded civil disobedience and non-cooperation as efficient and acceptable means to bring pressure on the Government and turn it to the will of the people. Thus, Gandhi held:

"Cooperation with a just Government is a duty; non-cooperation with an unjust Government is equally a duty ... I do not consider non-cooperation to be unconstitutional, but I do believe that of all the constitutional remedies now left open to us, non-cooperation is the only one left for us"<sup>9</sup>

In a democratic state, if a citizen believes that a particular law is against the will of a section of the people, they may campaign against that law. Political protest as such is not a problem in democracy because the very ethos of democracy supports and permits political protests. Moreover, in a democratic set-up, dissent and opposition act as the oxygen of a free society. Civil disobedience, when grounded in morality, guided by conscience, and exercised responsibly, is a powerful tool to uphold justice. It's not a rejection of law, but a call to reform it in line with ethical principles and human dignity. Thus, we may conclude with an observation that unreasonable obedience to any law and unreflective violation of laws at the behest of individual conscience are morally wrong. If the repressed emotions of the dissenter do not come out in non-violent ways, they will come out in ominous expressions of violence, and this is evident from the facts of history.

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<sup>9</sup> Ibid, pp. 159-160.

## References

1. Thoreau, Henry David. *Civil Disobedience*. Boston: Ticknor and Fields, 1849.
2. King, Martin Luther Jr. *Why We Can't Wait*. New York: Signet Classics, 1963.
3. Rawls, John. *A Theory of Justice*. Cambridge, MA: Harvard University Press, 1971.
4. Gandhi, Mahatma. *Hind Swaraj or Indian Home Rule*. Ahmedabad: Navajivan Publishing House, 1909.
5. Brownlee, Kimberley. *Conscience and Conviction: The Case for Civil Disobedience*. Oxford: Oxford University Press, 2012.
6. Habermas, Jürgen. *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. Cambridge, MA: MIT Press, 1996.
7. Raz, Joseph. *The Authority of Law: Essays on Law and Morality*. Oxford: Oxford University Press, 1979.
8. Bedau, Hugo Adam (ed.). *Civil Disobedience: Theory and Practice*. Indianapolis: Bobbs-Merrill, 1969.
9. Dworkin, Ronald. *Taking Rights Seriously*. Cambridge, MA: Harvard University Press, 1977.
10. Celikates, Robin. *Critique as Social Practice: Critical Theory and Social Self-Understanding*. Lanham, MD: Rowman & Littlefield, 2018.
11. Smith, William A. *Civil Disobedience and Deliberative Democracy*. London: Routledge, 2013.
12. Zinn, Howard. *Disobedience and Democracy: Nine Fallacies on Law and Order*. Boston: South End Press, 1968.
13. Markovits, Julia. "Acting for the Right Reasons." *Philosophical Review* 119, no. 2 (2010): 201–42.
14. Arendt, Hannah. *Crises of the Republic*. New York: Harcourt Brace, 1972.
15. Bedau, Hugo Adam (ed.). *Civil Disobedience in Focus*. London: Routledge, 1991.
16. Moraro, Pietro. *Civil Disobedience: A Philosophical Overview*. New York:

Bloomsbury Academic, 2019.

17. Horton, John. "Rawls, Public Reason and the Limits of Liberal Justification." *Contemporary Political Theory* 2, no. 1 (2003): 5–23.
18. Estlund, David. *Democratic Authority: A Philosophical Framework*. Princeton: University Press, 2008.