

HLA HART

- He was born in 1907.
- He earned his bachelor's degree in 1929 from Oxford University. He practiced as a barrister in the Chancery courts of London.
- Tutor in philosophy from 1946 to 1952. In 1952, Hart served as a professor of jurisprudence.
- Famous works: The concept of Law (1961), The Causation in the Law (1959) and Law Liberty and Morality (1963).

FOLLOWING 7 STEPS WILL BE COVERED IN THIS VIDEO

1. Criticism to Austin's theory.
2. Law according to Hart
3. Concept of Habit of Obedience and its effect on the continuity of law
4. Social Rule v. Social Habit
5. Division of Rules that create obligation
6. Law as primary rules and secondary rules
7. Criticisms

HART'S CRITICISM TO AUSTIN'S THEORY

- Hart criticizes Austin's concept of law where he described law as the command backed by the threat of sanction.

Criminal law

Power-conferring laws

- He criticized the concept of Sovereignty because of conferring unlimited power.
- He considers that the concept of the habit of obedience is deficient because it fails to explain the continuity of law and succession to sovereignty.

LAW

- Where there is law, there human conduct is made in some sense non-optional or obligatory.
- Law: Set of rules. The concept of obligation is the core concept of rule.

THE HABIT OF OBEDIENCE AND THE CONTINUITY OF LAW

REX I

orders

Law

Habit of obedience

If a determinate human superior, not in the habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society and the society (including the superior) is a society political and independent.

Rex I dies

Rex II

- Habit v. Rule
- Rule of Succession

Orders

Austin's theory failed to explain the continuity of law

No law

No habit of obedience

SOCIAL RULES AND SOCIAL HABITS

- Similarity between social rules and habit: There is general behaviour which is repeated when occasion arises by most of the group.
- Difference between Social rules and habits:
 1. On the basis of common behaviour and deviation from it and criticisms for deviation.
 2. On the basis of internal aspect of rules: According to Hart Social habits have only external aspect but social rules have external as well as internal aspect.

Internal aspect of Rule: Critical Reflective Attitude – Accept rules as general standard or universal standard. Whatever actions to be taken it should be according to the general standard. This standard can be used to assert the validity, righteousness, wrongness or invalidity of actions of oneself and of others.

RULES THAT CONSTITUTE OBLIGATION

Rules that constitute obligation are divided into two:

- **Moral code of society:** Demand and social pressure. Social pressure like hostile reaction. These are moral code of society and obligations are called as moral obligations.
- **Rule as law:** Physical sanction. Obligations in such type of rules are legal obligations.

PRIMARY RULES AND SECONDARY RULES

He says that there are two kinds of legal rules:

PRIMARY RULES

People are required to do or abstains from certain actions.

SECONDARY RULES

It lays down the ways in which primary rules are introduced, changed and enforced.

Rule of recognition:
It helps to determine the validity of a rule.

Rule of change

Rule of adjudication

Sanction imposing rules

CRITICISMS

- How the rules of recognition are recognized?
- Whether it is possible to reduce all the rules of the legal systems to rules which imposes duties and to rules which confers powers. This is the over-simplification of a point.
- **Neil Mac Cormick:** Few rules neither confer power nor duty. There may rules about secondary rules, which may be power or duty conferring.