

How Far is the Analytical School of Jurisprudence Relevant in Today's Governance?

Dr. Dheerendra Singh*

LL.M. Ph.D., Assistant Professor, IIMT College of Law, Greater Noida

Abstract – Austin is one of the most important jurists who have offered something exceptional to the world and to the subject of Jurisprudence. From all the four schools, quite a lot more attention and importance is given to the Analytical School of Jurisprudence. The historical development of the subject of jurisprudence is incomplete without the analytical thinking and positivism theories propounded by various jurists who supported and added to the views of Austin. The importance of the theory is so much that the concept is relevant even today. Ages have passed and the governance has changed from dictatorship to authoritative governments to democratic and a republican form of Government. The concept is even today relevant and the correct application of the theory would definitely help Jurists and modern day government forerunners to develop an even better governance for all. The Author through this paper stresses on the importance of the analytical thoughts propounded by Austin and proposes them in a way to explain all the theoretical aspects first and then goes to explain how the same is relevant in today's constitutional principles. The concept of positivism is incomplete without the theory of sovereignty and thus, the same is covered in depth.

Key Words: Analytical School, Jurisprudence, Austin, Positivism, Sovereignty

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INTRODUCTION

Jurisprudence is one of the important branches in law. Without the studying of jurisprudence concepts, none of the other legal themes and concepts would make sense. Jurisprudence is one field which discussed everything about law starting from the functional aspects, the relationship which exists between morals and law, the notion of preventive justice, concept of independence and the relationship jurisprudence shares with other social sciences which makes it a further important area of study.[1] Amidst the various important themes within the study of jurisprudence, the school of analytical jurisprudence is one which is pertinent to be discussed. As the name suggests, Analytical Jurisprudence means anything which is derived out of logic and a complete reasoning.[2] Analytical School of Jurisprudence follows the same idea and is also known as positive school of jurisprudence. The main profounder of the school of positivism is John Austin and was followed by many more. The French Jurist Auguste Comte named it the positive school owing to the concepts which relies on the fact that the theories put forward are not just related to the past nor to the future but applies directly to the present.

THE ANALYTICAL SCHOOL: AN OVERVIEW

As soon as the name Analytical School is taken, everybody is compelled to remember John Austin, father of English Jurisprudence.[3] Though the concept of analytical school which is also known as the imperative school of jurisprudence is bought forward by Bentham, major accreditations are given to Austin.

According to Austin, law is a sovereign body and there are two major parts in which law is divided: one which is proper and the other which is improper. The subject of proper law is further divided into two subjects namely the one set by god and the laws available for human beings. Laws set by the god are something beyond human control and pertains to subjects which are natural and exists from the time of the birth of a generation.

The laws available for humans can be further categorized into:

- A. **Positive Law** – The law that emanates directly from the sovereign body is what comes under this category. Those

according to Austin are considered to be of primary importance and are to be followed without a miss. It always flows from a higher body to a lower body and deals with subjects surrounding obedience, discipline and efficient management in a society. All these are called positive law.

- B. Other Law** – All laws and rules other than those coming from a sovereign body is covered under this head. For instance, rules of a playground, a park, a club, or rules of sports etc. comes under this head. All these are called positive morality.

If a thorough analysis is given to the definition put forward by Austin, it is evident that there are two important parties, one the sovereign which passes laws which are equivalent to a command and the followers are the disciples. Whenever a command is expressed or intimated, one party signifies a wish that another shall do or forbear; and the latter is obnoxious to an evil which the former intends to inflict in case the wish be disregarded.[4] Every sanction properly so called is an eventual evil annexed to a command. Every duty properly so called supposes a command by which it is created and duty properly so called is obnoxious to evils of the kind.

There are 4 main important postulates-

- Command, which arises from an authority
- Duty which is imposed on people to follow what is being commanded from them
- Sanction from an authority which has the right to give the sanction
- Sovereignty means the supreme power which is the law making body.

Bentham was the igniter of the theory of analytical thought however, his thoughts mostly relied on the freedom of an individual on the larger side and less on the side of a sovereign body. He believed on the theory of utilitarianism which provides that all pain must come to an end and there should be pleasure prevailing and both of these should be spread to the maximum number so as that they can benefit from it. Though both Austin and Bentham had same thoughts, their ideologies differed.

The Austinian School of thought relies majorly on civil law and draws a deep difference between civil law and other types of law. It focusses majorly on an authority and extends the views that one rule can be said to be a law only when it emerges from the sovereign body. There is always a theory of obligation related to the analytical school and it gives a glimpse of how the law should function in a nutshell as well as in a broader perception.

THEORY OF SOVEREIGNTY

Sovereignty is one major theory which particularly stretches from the views of Austin. A sovereign body according to the analytical school of thought can be an individual or a body corporate but should be capable of superiority and must in a position of dominance. This is particularly important when one needs to understand as to what emerges from a sovereign body with a sanction and without a sanction.

Not all commands[5] can be called as a law and only those commands which arises from a sovereign body with a proper sanction be termed as law. This is the theory of sovereignty. There are certain exceptions to laws which do not come under the head of a sanction and they are as follows:

- Laws which are descriptive in nature: According to Austin, there are certain laws which are explanatory in nature. Such laws cannot be termed as sanctions as they are merely describing or explaining certain things.
- Laws made to cancel other laws: Laws which are passed just to repeal the already existing laws cannot be called as a command or a law as per Austin's views.
- Laws which are passed as an imperfect obligation: Austin had precisely defined what is perfect and what is imperfect based on the theory of duty. Any duty which is negative in nature and any law which mandates the performance of a negative duty is imperfect law. Such laws cannot be called as command.

Theory of Sovereignty completes the true meaning of the Analytical school of thought. It is peremptory in nature and conveys the true meaning to the theory.

RELEVANCE OF ANALYTICAL SCHOOL IN INDIAN GOVERNANCE

The fact that the Imperative thought of jurisprudence is not valid in the present day government is not valid. The major part of democracy and the distributed factors have deep glimpses from the views of Austin. There are certain pointers which needs special mention in this regard and covers both the critical aspects:

- Presuming the Discipline part

According to Austin, there is a sovereign body and there are a number of subjects who oblige what is put forward. This is the case of modern day governance where a well-placed

Government releases rules for its citizens. However, there are slight changes. For Austin, questioning the sovereign body was never an option which is not the case with the modern day governance. People do strike, revolt against the government if a derogatory act or rule is passed. There are many other examples in India only where we have seen people like Anna Hazare, Ramdev and Kejriwal protesting and organizing marches against the government and demanding changes.

b. Excludes common or imperfect laws[6]

Austin's definition and theories do work well but when it comes to the general laws or common laws, it does not extend the same importance as attached to the command. However, the same should not be the case. For a country like India where there are a lot of quasi-judicial bodies, such an aspect cannot be followed. For instance, for people involved in army have a martial court. Any law or judgment or bye-law emerging from the martial court is valid and enforceable on the Army person, even though it does not come under the definition put forward by Austin.

c. Not giving much attention to fundamental values

Fundamental values have been avoided by Austin in his definitions because at the time when the analytical school thoughts were spread, the nations did not know of a concept of democracy. There was no value given to the fundamental rights and directive principles.[7] Also, India because of its religious and cultural diversity, has not been considered as a federal state where all the power is with sovereign by the constitution-makers. It has been beautifully made as a "*Union of states*" and overcame the short sightedness of Austin's definition of rights and duties which was limited to an extent.

d. Excess power to the sovereign

If Austin's theories were to be applied to the everyday present day governance, the government would have been a very powerful body. Austin always believed in a sovereign body which was the supreme body and had the maximum power. Though, it cannot be denied that this is true to an extent, yet in the modern day government, the ministers and leaders themselves are elected by people. So if the government is strong, so are the citizens who are a part of it. This was reiterated as a principle of theory of separation of powers and was explained by the apex court in *Golak Nath vs. State of Punjab*. [8]

e. Undermining value of international law

Austin's theory do not values international laws. It was valid at a time which was completely dominated by rulers and dictators. However, for a period which is modern and under a democracy, to not obey

international law in itself is an offense. Austin's theory though valid, the extension of the definition attached to even the international bodies cannot be ignored.

CONCLUSION

In the light of the all the points discussed above, it can be applied that the Positive School or the Analytical School of Jurisprudence is relevant to India in modern times in a limited way as it does not take into consideration multiple things like international law, doctrine of separation of power, people's participation and democratic form of government, etc which have let India maintain its integrity, unity & prosperity and flourish over the course of time from the colonial British rule to the biggest democracy of the world. Also, because of India's vast cultural, religious heritage and having the most youth in the world, not everything can be done in accordance with the almost 150 years old theory formed under extreme legislative conditions.

But it can't be out rightly denied that Austin's work has not made a very significant contribution in the evolution of law and the whole branch of jurisprudence. Austin was the one of the jurists who were able to articulate law with such simplicity and clarity which has opened up the way for other jurists to evolve that work in modern day legal system.

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Corresponding Author

Dr. Dheerendra Singh*

LL.M. Ph.D., Assistant Professor, IIMT College of Law, Greater Noida