



AN ANALYTICS OF LAW AND JURISPRUDENCE

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ABSTRACT

Jurisprudence, which explains WHAT IS LAW? And to answer that question, a student of Jurisprudence must look upon the Jurists. For getting the answer of WHAT IS LAW, and the definition of law, defined by the different jurists and law schools, which follows the ideology of that jurists. If we talk about the legal systems which are present in the world in comparison to India then there is a huge list including India.

KEYWORDS – Jurisprudence, major legal system, what is law, a basic principle of laws.

BASIC THEORIES OF LAW

The question is, WHAT IS LAW? It is finding the synonym of Law. But when we have a glance at the term jurisprudence then it is mainly finding the multi-dimensional study or examination of the term Law not only of one country but finding the general notions of the Term LAW, through Jurisprudential concepts or ideas which are propounded by the famous jurists.

Meaning of Jurisprudence

The word Jurisprudence is derived from the term "*Jurisprudentia*", which again must be divided into two different parts, "Juris" and "prudentia". Juris means "legal" and Prudentia means "knowledge" so in combination, we can say that Jurisprudence means the "knowledge of the law".

In short, jurisprudence is the name given to certain types of an investigation into law, and that investigation may take the form of an abstract, general and theoretical nature, which tries to find the essential feature of law.

Holland observed, "The ever-renewed complexity of human relations calls for an increasing complexity of legal details, till a

merely empirical knowledge of law becomes impossible".¹

Thus jurisprudence throws light on law of the society.

Definition of Jurisprudence by some jurist

Salmond gave the definition of Jurisprudence in two different means, that is one is in the narrow sense and another is in the broad sense.

In a narrow sense, he said that jurisprudence is the Science of the first principle of law and in a broad sense, he said that jurisprudence includes the entire body of legal doctrine² And also said that this is a Synonym of law.

Allen said that "Jurisprudence is the scientific synthesis of the law's essential principle"³

Roscoe Pound said, "A consideration of the ethical and social merits of legal rules"⁴

Keeton—According to Keeton "jurisprudence is the study and scientific, synthesis of the general principles of law" the definition seeks to explain

¹ Holland T. E. : Elements of Jurisprudence (13th ed.) p. 1

² N.V. Pranjape: Studies in Jurisprudence and Legal Theory (6th ed.) p. 3

³ N.V. Pranjape: Studies in Jurisprudence and Legal Theory (6th ed.) p. 5

⁴ N.V. Pranjape: Studies in Jurisprudence and Legal Theory (6th ed.) p. 5



the distinction between public and private laws".⁵

E. W. Patterson defined jurisprudence as a body of ordered knowledge which deals with a particular species of law⁶

So jurisprudence deals with the "theoretical principle of Law". The study of the Fundamental principle of jurisprudence also includes the study of the philosophical, historical, analytical and sociological components of law.

The traditional approach to studying jurisprudence is based upon the schools like analytical, historical, ethical and sociological methods have now been substituted by empirical and a priori methods.

SCHOOLS OF JURISPRUDENCE

For understanding what is the law we have to look at different schools of law. So majorly we have 5 schools of law:

1. Analytical Law School
2. Natural Law School
3. Historical Law School
4. Sociological Law School
5. Realist Law School

ANALYTICAL SCHOOL

Jurisprudence in its technical sense is divisible into three different branches and according to Salmond, the major law schools were 1) Analytical school (2) Historical school; and (3) Ethical school.

The major area of the analytical school of jurisprudence is to deal with the law as it is in existence or in its present form. And according to the Analytical School of Law, Law should be in relation to the State. They treat the law as a Command of the sovereign means the command should be made by the State or by that person who is sovereign and this is the reason that this law is called the imperative law school.

The jurists always believe that the law is neither concerned with the past nor with the future of it but should consent to the present situation of that. Hence in short Analytical school is the belief that the "LAW AS IT IS".

It is for this reason that this school is also termed the Positive School of Jurisprudence. Bentham and Austin are considered to be the forerunners of this school in England, hence, it is also sometimes known as the Austinian School of Jurisprudence.⁷

Jurists of Analytical School:

Jeremy Bentham: He was a positivist but at the same time an individualist and a utilitarian and his Legal Philosophy is called "**Utilitarian Individualism**".

The principle of utility: Bentham says, "Nature has placed mankind under the governance of two sovereign masters, pain and pleasure".

Bentham believed that the most important quality of mankind's beings was their sentience i.e., their ability to feel pleasure (which he regarded as good and therefore to be pursued and maximized) and pain (which was bad and had to be reduced).

Around 1830, Benthamite utilitarianism had become the most popular creed of English legislative reforms. Bentham proceeded from the axiom that nature has placed mankind under the governance of two sovereign masters i.e. pleasure and pain. They alone point out to us what we ought to do and what we should refrain from doing. The good or evil of an action should be measured by the quality of pain and pleasure resulting from it.

John Austin: Austin and Bentham, were both a positivist and a utilitarian. He is popularly credited for founding analytical positivism in legal theory and for this, he is styled as the 'Father of English Jurisprudence'.

⁵ Keeton C.G. : Elementary Principles of Jurisprudence p. 1-2

⁶ Patterson E. W. : Jurisprudence (1st ed.) 1

⁷ N.V. Pranjape: Studies in Jurisprudence and Legal Theory (6th ed.) p. 116



Austin is considered to be the ‘father of English Jurisprudence’. He confined his study only to the positive law and applied analytical methods for this purpose. By positive law, Austin meant ‘laws properly so called’ as distinguished from morals and other laws which he described as ‘laws improperly so called’ which lack force or sanction of the State. Austin described positive law as ‘the aggregate of rules set by man as politically superior to men as politically inferior subjects. He attributes (1) command, (2) sanction, (3) duty, and (4) sovereignty as the four essential attributes of positive law.⁸

He divides law into two parts, namely,

- (1) Laws set by God for men; and
- (2) Human Law, that is laws made by men for men

Natural Law School

The theory of natural law School has the central notion of the objective and absolute principles of morality or justice which is considered as basic law and can be discovered by natural reasons and common sense. Cicero said, “True law is the right reason in agreement with nature”.

Natural law philosophy is:

- a. Universality and immutability.
- b. It’s standing as a higher law
- c. Its discovery by reason

According to the **Dias**, “Natural law is a law which derives its validity from its own inherent values, differentiated by its living and organic properties”.

Natural law school is very different from the others form of law like common law, constitutional law, international law etc.

Historical evaluation of natural law school can be seen in different time periods:

1. Ancient period
2. Medieval period
3. The period of renaissance

4. Modern period

Historical Law School

The jurist of Historical Law School is Savigny, who is universally recognized as the founder the father of Historical law school. According to **Savigny** [Friedrich Carl von Savigny, German Jurist and Historian]: The source of law is not the command of the sovereign, not even the habits of a community, but the ‘instinctive sense of right possessed by every race’ [i.e. consciousness of people (Volksgeist)]. Since this consciousness is invisible, it is to be discovered by the external acts which manifest themselves in usages, manners and customs.

According to **Puchta** [Georg Friedrich Puchta, German Jurist]: Custom is, for the people that have established it, a mirror in which people may recognise itself. To him, the custom was only self-sufficient and independent of legislative authority but was a condition precedent, of all sound legislation.

Sociological Law School

Roscoe Pound (popularly known as ‘Dean Pound’) was one of the most leading and influential jurists of the 20th century who developed Sociological Jurisprudence in a systematic form and therefore, is considered to be the father of American Sociological Jurisprudence. He emphasised an interdisciplinary approach to the law so that rule of law and life may flow together. The emergence of the Realist School in America in later years owes its origin to Pound’s functional jurisprudence and theory of interests.

Sociological Jurisprudence is an approach in which the LAW is recognized as a dynamic system influenced by social conditions and then, in turn, it influences society as a whole.

In other words, Sociological Jurisprudence is concerned with:

1. the understanding of the role of law in society;

⁸ Id. at p. 42



2. the application of the social sciences to the study of law in action;
3. the rendering of law is more effective as an instrument of social control for the ends that law is designed to accomplish in the civilization of the time and place.

MAJOR LEGAL SYSTEM OF THE WORLD

After understanding major law schools, now those schools are followed by the countries and they developed their legal systems. So we have many legal systems which evolved from time to time:

1. Roman/ Civil Law System
2. English/ Common Law System
3. Family of socialist laws
4. Other legal systems
 - a. China
 - b. Africa
 - c. Jewish Law
 - d. Muslim Law
 - e. Hindu Law

So basically there are 3 major ones, Roman Civil Law System, the English Common Law System and Socialist Law System.

In this world we have two major legal systems, those are **civil laws** and **common law** the basic difference between them is **Common law System** is generally Uncodified and largely based upon precedents and also follows the adversarial system of law and also has the genesis of the concept of writs and courts equity but in **Civil law System**, it follows the Codification of law, continues and comprehensive legal updates, follows an inquisitorial system of law, it is an introduction of the genus like Substantive law, procedural law and penal law.

CONCLUSION:

The above discussion is mainly about the schools which explain the different law school and these law schools explains "What is Law" and how we can relate to the society and their development. It is submitted with respect that it would have been preferable had he enlarged the criteria of evaluating interests instead of

developing particular interests. It is possible that his work has not had the practical impact that it ought to have had because of this somewhat sterile preoccupation with interests and too little attention to the criteria of evaluation.

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