

1. INTRODUCTION, DEFINITION, NATURE, SCOPE AND SIGNIFICANCE OF LEGAL THEORY

(MOST IMPORTANT)

SYNOPSIS:

- A. Introduction**
- B. Evolution of Jurisprudence**
- C. Definition of Jurisprudence**
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A. INTRODUCTION:

Jurisprudence (Legal theory) means “Knowledge or Science of Law”. It attempts to explain the nature of law and its interactions with the life of the community. In the life of the community, the relationship of man with properties, with other men, etc, are involved.

Thus every system of law has got certain basic concepts like property, ownership rights, punishments, liability, etc., Jurisprudence tries to explore and explain such basic concepts of law.

B. EVOLUTION OF JURISPRUDENCE:

Jurisprudence is not a creation but a growth over centuries. It is an evolution by steady and silent development by millions of people over a period of time.

The evolution of Jurisprudence may be studied under **three** periods namely:

1. Pre - Roman Period
2. Roman Period
3. Post Roman Period

In the ancient **Pre-Roman Period**, Jurisprudence was practically ignored. Coherent and systematic science of legal relations was absent. Sir Henry Maine States that no durable legal system existed in this period.

Only during **Roman Period**, the beginning of legal science started. The term “Jurisprudence” is of Roman origin signifying “knowledge of law”. The Romans were the first to study legal science as a distinct branch of learning.

During the **Post Roman Period**, Jurisprudence again lost its independent nature and became a branch of **Theology** (study of Religion). Only during the 19th century, it again started gaining momentum and independence.

C. DEFINITION OF JURISPRUDENCE:

1. AUSTIN:

Austin defines Jurisprudence as the philosophy of positive law (Juspositivum). It means - the law pronounced by the political Sovereign for controlling the human conduct.

2. SALMOND:

Salmond defines Jurisprudence as the science of first principles of civil law. It means that Jurisprudence deals specifically with the principles of Civil Law only. (Civil law means rules applied by Courts in the administration of justice).

Jurisprudence, thus, is different from theology and ethics, which deal with the religious laws to regulate human conduct. The judicial laws regulate the external human conduct whereas theology and ethics regulate the inner moral beliefs by fear of divine sanction.

3. SIR HOLLAND:

Sir Holland defines Jurisprudence as ‘the formal science of positive law’. The formal science deals with the fundamental principles underlying the positive legal concepts like property, contract, possession, ownership, negligence, etc.

4. GRAY:

Gray defines Jurisprudence as “the Science of law, dealing with the Statement and systematic arrangement of the rules followed by the Courts and the Principles involved in those rules”.

5. CLARK:

Clark defines Jurisprudence as “the science of law in general”.

6. BEALE:

Beale terms Jurisprudence as “the Science of Justice”.

7. ULPIAN:

Ulpian is a Roman Jurist. He defines jurisprudence as the knowledge of things relating to **human beings and the divine power**. It is also the science of **the just and the unjust**.

The Ulpian definition of jurisprudence thus covers religion (knowledge of divinity), ethics (knowledge of human conduct) and philosophy (science of just and unjust).

Ulpian definition jurisprudence is based on the law prevailed in the beginning of Roman civilization. Further his definition is similar to the term of ‘Dharma’ of Hindu religion, which preaches religion, ethics and philosophy as basis of law. Dharma prescribes rules for human conduct for attaining material and spiritual salvation of human kind.

Dharma is applicable to all people irrespective of castes, status, etc., It is equally applicable to the King and the common man.

8. PATON:

Jurisprudence is a particular method of study not of the law of one country, but of the general notions of the law itself.

All the above eight definitions of jurisprudence **emphasises two things:**

- i. It is a Science of Law.
- ii. It is not the study of law itself, but of its underlying basic concepts.

D. TYPES / BRANCHES OF JURISPRUDENCE:

Jurisprudence is divided into **three** types/branches

1. GENERAL JURISPRUDENCE:

It deals with the fundamental concepts of law, common to all legal systems. The term “Jurisprudence” is used to denote only general Jurisprudence. E.g., Basic concepts like property, possession, etc.

2. PARTICULAR JURISPRUDENCE:

It deals with the special features of a particular legal system. For e.g., Ancient Hindu Legal System, American Legal System, etc.

Difference between Particular and General Jurisprudence:

Austin says that **Particular Jurisprudence** is the science of any actual system of law. It is the study of practical Jurisprudence in particular. In other words, particular Jurisprudence is the science of any **one of the system of law.**

General or universal Jurisprudence is a description of subjects and laws common to all systems and resemblances between different legal systems.

General Jurisprudence is the science concerned with the exposition of the principles, notions and distinctions which are common to the system of law.

According to **Salmond**, the above division is an unnatural division. General Jurisprudence is not the study of legal system in general, but the study of the fundamental elements of a particular legal system.

Holland says - Particular Jurisprudence is a system of generalisation extending over a limited area, but holds good everywhere. The term particular Jurisprudence is not correct. Both the general and particular Jurisprudence are expressions of one and the same. They represent science of the basic principles of law.

3. COMPARATIVE JURISPRUDENCE:

Comparative Jurisprudence is the study of similarities and differences existing in basic legal concepts in different legal systems. It is not an expert branch of Jurisprudence but a comparative study of systems in all its branches in two or more legal systems.

For e.g. Comparison of Ancient Roman law with Ancient Hindu Law, Comparison of American Legal system with Indian Legal system, etc.

E. NATURE OF JURISPRUDENCE:

Paton comments - ‘the great modern controversy has concerned the boundaries of jurisprudence and the methods it should employ’. He says so, because the nature of jurisprudence or its methods of application cannot be confined to fixed boundaries.

Thus regarding the nature of Jurisprudence, at present there are **three** different opinions. Majority of jurists call Jurisprudence as a **Social Science**. Some other jurists call it a **Formal Science**.

1. JURISPRUDENCE - A SOCIAL SCIENCE:

Social Science is the study of human activities from the social and spiritual point of view. Thus Social Science is different from Natural Science in that the latter deals with human biology or physiology, while the former deals with the moral and social activities of human being.

Jurisprudence is classified as a branch of social science attempting to explore and explain the social and moral rules of human conduct.

Sociology, ethics, theology, psychology and economics are also concerned with the man - as a social being and as such related to Jurisprudence as part of Social Science.

2. JURISPRUDENCE - A FORMAL SCIENCE:

Sir Holland calls Jurisprudence as the formal science of positive law. It is a formal or analytical study of law.

A formal science is a science dealing with the fundamental principles underlying certain concrete details. It is different from material science in that the material science deals with the concrete details only, while the formal science deals with the basic principles underlying such details.

Jurisprudence is a formal science because it deals with the underlying purposes and principles of certain general basic details like property, ownership, possession, title, liability etc., common to all material legal systems. Sir Holland calls Jurisprudence as a formal science of relation of mankind with those which are generally recognised as having legal consequences.

Sir Salmond calls it as the science of first principles of the civil law meaning that it concerns with general civil concepts like Property, Contract, Possession, Ownership etc., and thus constitutes the basis of a developed civil legal system.

F. JURISPRUDENCE AND ITS RELATION WITH OTHER SUBJECTS:

1. DEFINITIONS OF JURISPRUDENCE:

The **Roman Jurist Ulpian** defined Jurisprudence as the knowledge of things **divine and human**, the science of the **just and unjust**.

Julius Stone describes Jurisprudence as the lawyer’s extra version. It is the lawyer’s examination of the concepts, ideals and techniques of the law in the

light derived from present knowledge in disciplines other than the Law.

According to Austin, the science of Jurisprudence is concerned with positive law. Austin divided the subject into general and particular Jurisprudence.

Sir Thomas Erskine Holland defined, "Jurisprudence as the formal science of positive law."

John Salmond defined, "Jurisprudence as the Science of Law".

G.W. Paton defined, "Jurisprudence is a particular method of study, not of law of one country, but of the general notion of itself."

2. RELATIONS OF JURISPRUDENCE WITH OTHER SOCIAL SCIENCES:

Different branches of knowledge (Subjects) are so inter-related to jurisprudence.

According to **Paton**, "Modern Jurisprudence crosses into the fields of social sciences and of philosophy; it digs into the historical past and attempts to create the symmetry of a garden out of the luxuriant chaos of conflicting legal systems".

Roscoe Pound of the Harvard Law School, explained, "Jurisprudence, ethics, economics, politics and sociology are distinct enough at the core, but shade out into each other."

a) Relation between Jurisprudence and Sociology:

Sociological Jurisprudence is based on Sociological theories. It is essentially concerned with the **influence of law on society at large**, particularly social welfare.

For eg.,

- i. In the case of crime (a subject of jurisprudence) in society, its causes are to a very great extent **sociological** and to understand their pros and cons, one must have **knowledge of society**.
- ii. Sociology has helped jurisprudence in its approach to the problem of **prison reforms** and has suggested ways and means of **preventing social wrongs**.
- iii. Behind all legal aspects, there is something social. The causes of crimes are partly sociological and an understanding of sociology helps the legislators to make prison reforms and prevention of crimes.
- iv. Motives, aims and theories of punishment and the efficacy of the various types of punishments are helped by sociology.
- v. The study of sociology has given a new orientation to the study of Jurisprudence.
- vi. In the sociology of law, the emphasis is on **society** but in sociological Jurisprudence emphasis is on the **relation between law and society**.

- vii. The sociology of law is a branch of sociology dealing with the **law and legal institutions in the light of sociological principles, aims and methods.**

b) Relation between Jurisprudence and Psychology

- i. Psychology is defined as the **science of mind and behavior**. Human science can be better discussed properly only with a thorough knowledge of the human mind and hence it is closely connected with jurisprudence.
- ii. In the study of criminal jurisprudence, there is a great scope for the study of psychological principles in order to understand the criminal mind behind the crime.
- iii. Both psychology and jurisprudence are interested in solving such questions as the **motive for crime, a criminal personality, whether a criminal gets pleasure in committing a crime, why there are more crimes in one society than in another and what punishment should be given** in any particular case.
- iv. In criminology, psychology plays an important part. It is the duty of a lawyer to understand the criminal and the working of a criminal mind.
- v. Jurisprudence is concerned with man's external conduct and not his thoughts and mental processes, but penology has benefited from the knowledge made available by psychological researchers.

a) Relation between Jurisprudence and Ethics:

- i. Ethics is defined as the **science of human conduct**. It deals **how man behaves** and what should be the **ideal human behaviour**. There is the **ideal moral code and the positive moral code**.
- ii. Ethics is concerned with **good or proper human conduct** in the light of public opinion. Public opinion varies from the place to place, from time to time and from people to people.
- iii. Jurisprudence is related to **positive morality** in so far as law is considered as the instrument through which positive ethics ties to assert itself. Positive morality is not dependent upon the good actions of a good man only. It requires a **strong coercive influence** for maintaining public conscience.
- iv. The branches of ethical jurisprudence tries to examine the existing ethical opinions and standards of conduct in terms of law. It makes suggestions for necessary changes so that it can properly depict the public conscience.
- v. There are many **ethical rules of conduct which are not considered** as crimes. The law ignores trifles. It may be immoral to tell a lie but it is not a crime. Many acts are unethical but all unethical acts are not necessarily criminal.

One has to consider the problem of laws which are considered undesirable by society. All that is prohibited by law is not necessarily immoral.

For enforcing certain ethical conduct, ethics depends upon law through police, law courts, judges and the system of courts and punishment.

- vi. Legislation must be based on ethical principles. It must not be divorced from human values. No law can be good if it is not based on sound ethical principles. Ethics lays down the rules for human conduct based upon higher and nobler values of life.

b) Relation between Jurisprudence and Economics

- i. Economics studies **man's efforts in satisfying his wants and producing and distributing wealth.**
- ii. Economics is the **science of wealth** and Jurisprudence is the **science of law**. There is a close relationship between the two. Very often, **economic factors are responsible for crimes**. Economic problems arise from day to day and it is the duty of the law - giver to tackle those problems.
- iii. The aim of the economist is to **improve the standard of life of the people** and also to **develop their personality**. Jurisprudence teaches legislators how to **make laws which will promote social and economic welfare**.

- iv. Both jurisprudence and economics aim at the **betterment of the lives of the people**. There are laws relating to workmen's compensation, factory legislation, laws relating to labour, insurance, maternity welfare, bonus, leave facilities and other concessions given to workmen.
- v. Both Jurisprudence and economics help each other in furthering the **welfare of society**.

c) Relation between Jurisprudence and History:

- i. History studies **past events in their different perspectives**. The relation between Jurisprudence and history is so close that there is a **separate 'Historical School of Jurisprudence'**.
- ii. History furnishes the back ground in which a correct idea of Jurisprudence can be realized.

d) Relation between Jurisprudence and Politics:

- i. Jurisprudence is linked at one end with philosophy and at the other end with political theory.
- ii. Politics deals with the principles governing governmental organization. In a politically organized society, there exist regulations which are called laws and they lay down authoritatively **what men may do and what they may not do**.

G. SCOPE, PURPOSES AND OBJECTIVES OF JURISPRUDENCE:

The following are the scope, purposes and objectives of Jurisprudence:

1. It is for the synthesis and developmental of the fundamental principles and conceptions of law.
2. Its objective is to give theoretical foundation for law.
3. It aims to universalise the common element existing in one legal system to all other legal systems.
4. It attempts at providing definitions for many legal terms which enable lawyers and jurists to have clear understanding of the concepts. It acts like a grammar to a particular language.
5. By providing definitions and explanations to many basic legal concepts, it aims to help lawyers to make correct usage of legal terms in their pleadings and similarly the legislators for enacting legally correct legislations.
6. It aims to make a lawyer efficient by educating him in legal concepts.
7. By crystallizing moral ideas, it is of assistance for progressive societies.
8. Jurisprudence constructs and elucidates concepts to make them more rational and thus help to improve their practice.

9. Jurisprudence also has educational value. The legal concepts sharpens the lawyer's logic.
10. The study of jurisprudence changes the static and formal approach of lawyers, as the concepts in jurisprudence are changed according to the needs and scientific advances of the society.
11. Jurisprudence teaches lawyers to look and search in all sides including the present social needs to find answers to new legal problems.

H. ADVANTAGES /VALUE OF THE STUDY OF JURISPRUDENCE:

1. By study of Jurisprudence, a person knows the basis of law. He gains knowledge of the basic ideas and the fundamental principles of law. Study of jurisprudence also helps a lawyer to solve new and difficult legal problems.

For e.g., the knowledge of rules constituting possession would help a lawyer to find out who is the actual possessor of a property etc.

2. Jurisprudence also helps the Court in interpreting the true meaning of legislations, customs, etc.
3. It also helps the student community to understand the civil life of the society so that they could adjust themselves in the society without causing trouble to their fellow citizens.

4. The study of Jurisprudence also helps to suggest changes for the betterment of the existing laws.
5. By virtue of the definitions in Jurisprudence, the legislators need not define expressions like right, duty, negligence, etc, in every context.

I. MAGNA CARTA

Magna Carta is called "**the Great Charter**". It is a charter agreed by King John of England in 1215 to make peace between the unpopular King (King John) and a group of rebel barons.

It promised the protection of church rights, protection for the barons from illegal imprisonment, access to swift justice, and limitations on feudal payments to the Crown.

However, both the parties to the agreement did not conform to their promises.

After King John's death, his son Henry III, reissued the document at the end of the Barons' war in 1217. It formed part of the peace treaty and the document acquired the name Magna Carta.

This Magna Carta was reissued in 1225 and in 1297, the Magna Carta was confirmed as part of England's statute law. After the Magna Carta, the English Parliament passed new laws and hence the Magna Carta lost some of its practical significance.

In 1628, the Magna Carta was given a statutory status by the Parliament by including many more rights to the subjects and it was named as '**Petition of Rights**'. The Petition of Rights recognized Parliamentary superiority over the Crown as regards the rights of the subjects were concerned.

The Petition of Rights became '**Bill of Rights**' in the year 1689. It gave the Parliament not only superiority over the Crown but also documentary authority as regards the rights of the subjects were concerned.

The Magna Carta influenced the formation of the American Constitution in 1789, which became the supreme law of the land in the Republic of the United States.

Magna Carta still forms an important symbol of liberty today and is held in great respect by the British and its colonies and also the American legal communities.

As per Magna Carta, monarchs should rule in accordance with the custom and the law and respect the rights of the subjects.

J. CONCLUSION:

Jurisprudence thus introduces **reasoning** to the study of law and it sets the goal of law for an ideal order in which justice, social, economic and political is assured to all the people in the State.

UNIVERSITY QUESTIONS FOR REVIEW:

1. *“Jurisprudence is the science of the first principles of the civil law” - Salmond. Elaborate.*
2. *Define Jurisprudence and discuss the nature and types of Jurisprudence.*
3. *‘Jurisprudence is the scientific synthesis of the essential principles of law’ – C.K. Allen. Comment.*
4. *“Jurisprudence is a social science” - Comment.*
5. *Explain a few definitions of Jurisprudence.*
6. *‘Jurisprudence is the study of fundamental legal concepts’. In what way, it is different from the study of other legal subjects.*
7. *‘The great modern controversy has concerned the boundaries of jurisprudence and the methods it should employ’ – Paton – Explain.*

