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## **ABOUT US**

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# **IMPORTANCE OF JURISPRUDENCE IN LEGAL STUDIES**

AUTHORED BY - RITIKA S

## **INTRODUCTION:**

The jurisprudence is the basic key for the study of the law like alphabets for language. It is essential to know about jurisprudence to get a clear concept understanding about the civil and criminal concepts of the laws. The word jurisprudence is the word derived from a latin word “jurisprudentia” which consist of two words, whereas “juris” and “prudentia” which means “knowledge or science or philosophy of law” respectively. Thus the jurisprudence is the research or the knowledge and the theory of law. There are several jurists who had given their idea on the basis of their own view on the jurisprudence. To understand the nature, purpose, sources and operation of law, jurisprudence is the key to learn them in a proper manner. Jeremy Bentham is known as the father of jurisprudence and John Austin took his work further.

## **HISTORICAL BACKGROUND:**

The origin and function of the jurisprudence has undergone the periodical changes. There are three stage of periods which are being classified on the basis of the periods of civilization of jurisprudence.

- 1.PRE ROMAN PERIOD
- 2.ROMAN PERIOD
- 3.POST ROMAN PERIOD

### **1. PRE ROMAN PERIOD:**

In the roman period the importance is not spread as there is no knowledge about the jurisprudence and the ruler is considered to be the head of the people and his orders are considered to be the law which are compesred the people to follow and obey it. If they omits to obey them, then they are punished for the action.

### **2. ROMAN PERIOD:**

The period where the jurisprudence has bloosomed its importance. The importance of the study

of the jurisprudence has lead a main role in learning the law and enforcing them in the society for a equal justice to be spread over the society.

### **3. POST ROMAN PERIOD:**

The importance of the jurisprudence has been lost and it is attached with the branch study of the theology. But at the later it gained its importance and became a separate study of law.

## **THE IMPORTANCE OF THE JURISPRUDENCE:**

One of the most crucial importances of the study of Jurisprudence is its fundamental value. Jurisprudence mainly consists of research and the method to construct and clarify the basic concepts of law. Jurisprudence has nothing to do with the creation of new laws, rather its main focus stays on the existing laws that are present in the system. The theories and analysis can help the lawyers in making their fundamentals strong.

Jurisprudence can also be a guiding light for the students. It has a major scholastic value in the life of students. The impact of jurisprudence is not just limited to primary legal rules, rather it also talks about the social impact of the same laws.

Jurisprudence is an amalgamation of logical and theoretical analysis of legal concepts. Thus, it escalates the analytical methods and techniques of a student which helps him/her to grow strong with the legal fundamentals.

Jurisprudence also focuses on social values. It talks about equity and fairness. Jurisprudence deals with the basic fundamentals of the law and it is considered as the eye of law. It creates a bridge for people to understand the thoughts and divisions of law.

## **MAJOR THEORY OF JURISPRUDENCE:**

There are several theories of jurisprudence in the understanding of the study. The most important and major theories of the jurisprudence are:

1. NATURAL LAW
2. LEGAL POSITIVISM
3. LEGAL REALISM

### 1. NATURAL LAW:

Natural law is a theory that posits the existence of universal moral principles inherent in nature. It holds that certain rights and principles are inherent to human beings. This reflects the moral orders of the law which means about the law and orders which are enforced in the society but are not legally enforced but they were formed by the natural source of function. It is universal and unchangeable.

Key thinkers: Thomas Aquinas, Hugo Grotius, John Finns

Country of origin: Italy, Netherlands, UK.

### 2. LEGAL POSITIVISM:

Law as it is vs. law as it ought to be which are being followed to be in the manner of legal positivism concept. It is based on human decisions and authority. It ignores the moral implication and gives importance only to the human idealisms. Law is set of rules created by sovererign or a legislative body and separate from morality.

Key thinkers: John Austin, H.L.A.Hart, Hans Kelsen

### 3. LEGAL REALISM:

Law in action vs. law in books. In this part it clearly states about the difference between the theory and the action of the law. The law of action is difference from the theory of the subject. It focuses on how law is applied and enforced. Thus it is seen as cynical or overly pragmatic in law of nature.

Key thinkers: Oliver Wendell Holmes Jr., Karl Llewellyn, Jerome Frank.

Country of origin: US.

## SCHOOLS OF JURISPRUDENCE:

Over time, various schools of jurisprudence emerged, each with its unique approach to understanding law. Rather than these theories, there are five major schools which are also considered to be as the important school of the jurisprudence:

1. PHILOSOPHICAL SCHOOL
2. HISTORICAL SCHOOL
3. ANALYTICAL SCHOOL
4. SOCIOLOGICAL SCHOOL
5. REALIST SCHOOL

These schools evolved through the contributions of influential jurists and legal thinkers.

**1. PHILOSOPHICAL SCHOOL:**

The Philosophical School aims at the theory of natural law. This school tries to find out the reason why a law is enacted and what are the consequences of such a law in our daily lives. They have faith that the purpose of the law is to enhance the nobility of humanity.

Key thinkers: Plato, Aristotle, Immanuel Kant

**2. HISTORICAL SCHOOL:**

The Historical School runs in a belief that law is a consequence of years of evolution of our society. The historical school believes that the sources of law are related to religious philosophies, customs, and, societal norms. Historical school is too past-oriented, nonetheless, it still states that the law must change with the people. It evolves with society and reflects the cultural and historical context of the people.

Key thinkers: Friedrich Carl Von Savigny, Sir Henry Maine, Gaustav Hugo

Country of origin: Germany, UK

**3. ANALYTICAL SCHOOL:**

Analytical School is mostly about the theory of imperative law. It is related to the origin of Civil Law. Analytical School revolves around the concept of rights and duties. It also emphasizes legal models such as acts and contracts. Analytical School of the law runs by the ideology that the law should be codified and it must be governed by the state with the aim of benefitting people.

Key thinkers: John Austin, Jeremy Bentham, H.L.A.Hart

Country of origin: UK

**4. SOCIOLOGICAL SCHOOL:**

Sociological School concentrates majorly on the function of law rather than its impalpable content. The sociological school had an aim to connect law with society and law can be adjusted according to the requirement of the society. Sociological schools are all about doctrines, legal institutions, law and justice, and other theoretical aspects of law. Law should reflect and address societal needs and interests.

Key thinkers: Roscoe Pound, Eugen Ehrlich, Leon Petrazycki

Country of origin: US, Australia, Poland

## 5. REALIST SCHOOL:

Technically, the Realist School is not a school of jurisprudence. The school is more based on tutoring of thoughts. The school focuses much more on the actions of the Court and what they create. Realist schools hardly make any logical assumptions from the general law.

Key thinkers: Oliver Wendell Holmes Jr., Karl Hewellyn

### AUTHORS VIEW OF JURISPRUDENCE:

There are many of the authors and legal thinkers who had served their idea over the view of jurisprudence and the concept of the study. In it the most important jurists are John Austin, Salmond, Holland, Keeton, Dias and Hughes, Roscoe Pound.

### JOHN AUSTIN'S VIEW ON JURISPRUDENCE:

**"PHILOSOPHY OF POSITIVE LAW"** John Austin was the founder of the Analytical School of Jurisprudence and was also considered as the Father of English Jurisprudence. He was the first jurist to term jurisprudence as a "Science of Law" which deals with the analysis of various concepts or their underlying principles.

Austin considered the subject of jurisprudence as positive law. His ideology revolved around the notion that jurisprudence is not a moral philosophy but rather a systematically aligned study of actual law as distinguished from moral or natural law.

He segregated morals and theology from the study of jurisprudence.

### SALMOND'S VIEW ON JURISPRUDENCE:

**"THE SCIENCE OF THE FIRST PRINCIPLES OF THE CIVIL LAW"**

According to Salmond's point of view, Jurisprudence can be divided into two senses, the generic sense which is defined as the "Science of Civil Law" and the specific sense which can be defined as the "Science of the First Principle of Civil Law". For Salmond, jurisprudence in the specific sense includes theoretical jurisprudence so it doesn't deal with concrete details but rather deals with fundamental principles and conceptions.

### **HOLLAND'S VIEW ON JURISPRUDENCE:**

#### ***“JURISPRUDENCE IS THE FORMAL SCIENCE OF POSITIVE LAW”***

Holland defined jurisprudence as “the formal science of positive law”. According to Holland, formal science is the arena that deals with several relations that are regulated by legal rules rather than with the rules themselves that guide these relations. Thus, for Holland jurisprudence was a formal science and not a material science. Just like Austin, Holland also considered jurisprudence as a positive law.

### **KEETON'S VIEW ON JURISPRUDENCE:**

#### ***“SYSTEMATIC ARRANGEMENT OF GENERAL PRINCIPLES OF LAW”***

Keeton defined the jurisprudence as “systematic agreement of the general principles of law”. On behalf of him, the jurisprudence is the study of fundamental principles of law and the nature of legal system. Jurisprudence deals with the distinction between public and private laws and considers the contents of principle departments of law. For example, doctrine of separation of power-article 50.

### **R.W.M.DIAS AND GRAHAM HUGHES VIEW ON JURISPRUDENCE:**

They strongly believed that jurisprudence is the any thought or writing about law rather than a technical exposition of a branch of law. For example, drafting and preparatory works.

### **ROSCOE POUND'S VIEW ON JURISPRUDENCE:**

#### ***“THE SCIENCE OF LAW”;* *“LAW IS A SOCIAL INSTITUTION”***

According the Dean Roscoe Pound, the body of principles recognized and enforced by public and regular tribunals in administration of justice. The mostly accepted principles of law and substantive can be considered to be the example for this.

### **CONCLUSION:**

The study of jurisprudence helps to put law in its proper context by considering the needs of the society and by taking notes of advances in related and relevant disciplines. It teach the people to look if not forward, atleast sideways and around them and realize that answers to a new legal problem must be found by a consideration of present social needs and not in the wisdom of the past.