

MS COLLEGE OF LAW MUMBRA, THANE



JURISPRUDENCE

JURISPRUDENCE

- Jurisprudence is the study of fundamental legal principles
- Juris means legal
- Prudentia means knowledge



JURISPRUDENCE

- Holland-
- the formal science of positive law
- Allen-
- The scientific synthesis of the essential principles of law



JURISPRUDENCE

In general it covers following three topics

- Legal exposition- the purpose of which is to set forth the contents of an actual legal system as existing at any time
- Legal history- the purpose of which is to set forth the historical process whereby any legal system came to be what it is and what it was
- The science of legislation, the purpose of which is to set forth the law as it ought to be. This aspect of jurisprudence deals with the ideal future and purpose of law

JURISPRUDENCE

- Technically
- Jurisprudence is the science of the first principles of civil law.
- It deals not only with the outlines of the law, but also with its ultimate conception.

JURISPRUDENCE



HISTORICAL SCHOOL

ANALYTICAL SCHOOL

ETHICAL OR PHILOSOPHICAL

COMPARATIVE SCHOOL

SOCIOLOGICAL SCHOOL

SYNTHETIC SCHOOL

HISTORICAL SCHOOL

- It deal with the general principles governing the origin and development of law and with the influences that affect the law.
- According to Sir Henry Maine, **MONTESQUIEU** is the first jurist of this school
- *Esprit des Lois* (Spirit of the Laws)
- All laws should have the basis of historical observations

HISTORICAL SCHOOL

- According to Savigny , “ the organic evolution of Law with the life and character of people, develops with the ages; and in this, it resembles language. As in the latter, so in the Law, there can be no rest; there is always movement and development. Law is governed by the same power of internal necessity as simple phenomena. Law grows with a nation, increases with it, and dies at its dissolution, and is a characteristic of it”.

ANALYTICAL SCHOOL

Purpose is to analyze the first principles of law without reference either to their historical origin or development or to their ethical significance or validity

❖ Contributions

- Positive law and ideal law have been kept strictly distinct
- All positive law is deduced from a clearly determinable law give e.g. SOVEREIGN
- It lays down the essential elements that go to make up the whole fabric of law, as for instance, State sovereignty and the administration of justice

ANALYTICAL SCHOOL

It favors codification of law, and regards law as a conscious enactment or command with legal sanction behind it.

The works of Bentham, Austin and Salmond are all based on analytical school of jurisprudence.

ETHICAL OR PHILOSOPHICAL SCHOOL

- This school seeks to investigate the purpose for which a particular law has been enacted
- It deals with the following matters:-
- The concept of law and hence of justice
- The relation between law and justice
- How justice is maintained in a society through its system of law
- The distinction between law and morality and how each can contribute to the ends of justice
- The fundamental legal concepts and principles which have ethical significance.

ETHICAL OR PHILOSOPHICAL SCHOOL

- Greatest contributors
- Bacon, Grotius, Spinoza and Kant
- Ethical school of jurisprudence is prevalent throughout Europe while in England, it is the Analytical school that dominates

COMPARATIVE SCHOOL OF JURISPRUDENCE

- It is concerned with the comparative study of the systems of jurisprudence in the different countries of the world
- The Germans have adopted this method successfully
- **IHERING** as a representative of this school, regards laws as an efficient means to an end, which should be good for the good of humanity

COMPARATIVE SCHOOL OF JURISPRUDENCE

- According to Salmond
- What passes as comparative jurisprudence is not a separate branch of jurisprudence, which is coordinate with the analytical, historical and ethical jurisprudence.
- It is study of the resemblances and differences between different legal system

THE SOCIOLOGICAL SCHOOL OF JURISPRUDENCE

- This school is comparatively modern, and it devotes itself to the study of law as a social phenomenon, and tries to examine the consequences of law on human beings in civilized societies
- By sociology is meant the study of man in society, and in studying man, the sociologist studies the law, not as it is understood by the lawyer in his professional capacity, but in so far as law actually governs the behavior of an ordinary citizen

THE SYNTHETIC SCHOOL OF JURISPRUDENCE

- Most recent school formed in India in 1955 by an eminent jurist Dr. M.J. Sethna
- It attempts to arrive at a harmonious blend of all the other schools of jurisprudence and in the words Dr. Sethna, “ the jurist of the twentieth century should turn their attention more and more to synthetic jurisprudence. It is no use regarding jurisprudence as merely analytical or merely historical. Jurisprudence should be at the same time, analytical, historical, comparative, philosophical and sociological”