THE EVOLUTION OF JURISPRUDENCE "BEHIND DUE PROCESS OF LAW"

Nandu Dangi*

INTRODUCTION

The word 'jurisprudence' is derived from the combination of two Latin words 'Juris' and 'Prudentia'. The word 'Juris' means law while the word Prudencia means knowledge. Thus the literal meaning of Jurisprudence is 'knowledge of the law'. In reality, it is not just knowledge of the law but systematic knowledge of the law that is why 'Salmond' has described jurisprudence as the 'Science of Law'. Here 'Science' means the systematic study of the subject. According to Moyle, the ultimate goal of jurisprudence is generally the same as that of any other science. This is the reason why jurisprudence is called a precise and systematic study of the principles of law. Fitzgerald considers jurisprudence as the science of law as a special kind of investigation or investigation. The purpose of this research is to determine the basic principles of law and the legal system. But the nature of this investigation is abstract, general, and theoretical. Jurisprudence and legal theory have been used in similar meanings and sometimes in unequal senses. The word 'jurisprudence' has been used in the title of the books of jurisprudence by Pound, Patton, Dias, and Salmond, while the title of the books of Friedman and Finch 'Legal principle'. Prima facie, from the use of two different meanings, it appears that the meaning and scope of both are different. This appears to be due to the approaches to analysis, description, and formulation of the method. In the Anglo-Saxon countries and British colonies, the meaning of jurisprudence has been taken to mean a special type of analytical study which presents the study of the status quo legal system based on rationality. This can be considered the tradition of Bentham, Austin, and Kelsen. This study is purely logical and empirical, its task is to ensure stability and legal justice. It ignores the objectives of the method. In contrast, continental jurists' approach is to explain a legal theory, which includes philosophical, ethical, and social implications. For this reason, Ihering, Stammler, Duguit, Kohler, Geny, and American jurists have made living law, with the ever-changing subject matter, the context of law, needs, and interests, social forces, and process explained the method. This study is not just an analytical or conceptual study but is based on an evaluation and philosophical approach, in which the role of moral, social, and human elements has been given

*BA LLB, SECOND YEAR, NRI VIDYADAYINI INSTITUTE OF SCIENCE, MANAGEMENT AND TECHNOLOGY BHOPAL.

a proper place. Friedman has clarified that the pre-nineteenth-century legal theory was mainly derived from philosophy, religion, ethics, and politics as the great legal thinkers were mainly philosophers, pastors, or politicians. After that such a legal theory emerged which was based on legal research, methods, and professional teachings.[1]

CLASSIFICATION OF JURISPRUDENCE

Classification of Jurisprudence by John Austin[2]

(i) General Jurisprudence

In general jurisprudence, all those purposes, principles, concepts, and distinctions of law mentioned are common in all legal systems. Systems of law means such systems which have developed into mature legal systems due to their reasoning power and maturity. For this reason, general jurisprudence is also called theoretical jurisprudence. Austin has called general jurisprudence the 'philosophy of positive law'.

(ii) Specialized Jurisprudence

Specialized jurisprudence is the science of an actual method of any part of the law. In other words, specialized jurisprudence is a narrow science under which any such present or past legal system is studied that has been confined to a particular nation. That is why specific jurisprudence is also called applied jurisprudence or national jurisprudence.

Salmond's classification of jurisprudence[3]

Samand has divided jurisprudence into three parts. By discussing these different aspects of law separately, the subject of jurisprudence itself will be incomplete, due to which it is necessary to include these three in order to study jurisprudence. There is a historical and ethical branch.

(i) Analytical Jurisprudence

Analytical jurisprudence refers to the analysis of the primary principles of methods. In this analysis, their historical origin or development or moral importance, etc. is not represented. The pioneer of this branch of jurisprudence was John Austin. Analytical jurisprudence considers its relation to the state as the most important aspect of law. This law has been

[1] https://lawcorner.in/meaning-and-definitions-of-jurisprudence/
[2] https://blog.ipleaders.in/john-austins-analytical-approach-positive-law/
[3] https://desikaanoon.in/salmonds-theory-of-jurisprudence-and-its-relevance-in-modern-world/

considered the mandate of the sovereign of the state. That is why it is also called the Imperative School of Law.

(ii) Historical Jurisprudence

The history of the primary principles and basic concepts of the legal system has been called 'historic jurisprudence'. First of all, the famous jurist Savigny started historical jurisprudence by adopting a historical approach to jurisprudence. Sir Henry Maine of England is considered the founder of historical jurisprudence. The purpose of this branch is to formulate the general principles of the origin, and development of law and the various factors affecting law. In historical jurisprudence, instead of giving special importance to the relation of law to the state, more importance is given to the social practices from which the law has been created. Historical jurisprudence focuses its attention on the ancient legal institutions of society.

(iii) Ethical Jurisprudence

Ethical jurisprudence is concerned with the ethical aspect of law. It is not the work of moral jurisprudence to discuss how the law is or was, but its main function is how the law or law should be. Salmond considered ethical jurisprudence to be the common basis of ethics and jurisprudence. The main purpose of ethical jurisprudence is to determine the aims of the law and to discover the idealistic facts that society wants to accept.

Classification of Jurisprudence by Germi Bentham[4]

(i) Interpretive Jurisprudence

What is law or law under explanatory jurisprudence? This is explained In other words, morality or immorality is not concerned with law, it is concerned only with the analysis of the prevailing law. These ideas of Bentham are mentioned in the book 'Limits of Jurisprudence Defined' written by him in 1782, and published by Everett in 1945.

(ii) Evaluative Jurisprudence

The purpose of appraisal jurisprudence is how the method should be. In simple words, it means how and how the law should be.

Sociological Jurisprudence

[4] https://kuscholarworks.ku.edu/bitstream/handle/1808/25944/Chapter_9_Bentham.pdf?sequence=12

The emergence of sociological jurisprudence took place in the nineteenth century when human beings began to understand that for the development of society, it was necessary for them to follow the path of mutual cooperation by staying in the social discipline. As a result, a new method of jurisprudence emerged which evolved into the name of sociological jurisprudence.

The main objective of sociological jurisprudence is to protect and promote the interests of man, due to which it has also been called 'Jurisprudence of Interest'. According to the German jurist Rudolf Ehring, the law has neither developed independently nor is it an arbitrary product of the state. Its basic objective is to establish coordination and uniformity in the conflicting interests of society by eliminating the situation of conflict.

Comparative Jurisprudence[5]

Dr. Allen has called the method of a comparative study of two or more methods of law called Comparative Jurisprudence. Similarly, the study of civil law is called civil jurisprudence, the discipline related to the study of criminal law is called criminal jurisprudence and the study of law related to the medical field is called medical jurisprudence. Describing such classification as unnecessary and useless, Prof. Holland expressed the view that it would limit the field of jurisprudence by dividing it into many parts. The credit for developing comparative jurisprudence is given to two jurists – Kant and Storey, who emphasized that comparative studies play an important role in bringing about practical reforms in legislation and law. Salmond also said that the comparative evaluation of indigenous law is on the basis of the merits of the laws of different countries, but he refuses to consider comparative jurisprudence as an independent branch of jurisprudence. According to him, it is only a method of study of jurisprudence.

VARIOUS SCHOOLS OF JURISPRUDENCE [6]

1. Philosophical School or Natural Law

The natural principle or natural branch was propounded long ago. Its development has taken place in several stages. Status in the Greek and Roman eras, respectively, from the sixteenth to the nineteenth century, there was an unprecedented change and enhancement. In the 20th century, it is considered preferable to follow natural laws. Thomas Aquinas and St. Augustine have been instrumental in the development of this theory. According to him, two types of

[5] https://academic.oup.com/book/2825/chapter/143378102
[6] https://www.legalserviceindia.com/legal/article-6240-definition-of-law-and-schools-of-jurisprudence.html

methods were valid. One is the Immutable Lex Eternal, which was considered to be applicable to man by divine power. To follow them, the man himself morally considered himself to be a Buddha and that thought acted as a sanction. The second man-made law was followed by the people because as subordinates, they considered it necessary to obey the law enforced by their sovereign. The biggest feature of this theory has been that it seeks to see the law in the context of natural justice and lays special emphasis on acting according to nature. Efforts are being made in India to re-apply the natural principle in the administration of justice.

2. Analytical School

This theory emphasizes analyzing the method and finding out its merits and demerits. It is also called the Imperative or Positive principle. All the jurists in this school lay more emphasis on law and state relations. In this, along with the relationship between the state and its subordinate citizens, things like property, possession, gratitude, liability, etc. are also studied, which are related to the daily life of human beings. This theory is particularly prevalent in England. That is why it is also called English School. It was founded by John Austin hence it is also called Austinian School. This theory analyzes various concepts and throws light on their interrelationship. Also, considering the principles of the law-making, judicial process, and customary laws, makes them aware of their merits and demerits.

3. Historical School

This theory emphasizes the historical study of law and gives information about its advantages and disadvantages. Thus it also studies ancient society. The legal basis according to this principle should be historical observation. It would be better to frame the law from the perspective of history itself. The main proponents of this theory were Savini and Maine. It was also supported by Montesquieu Hugo. This theory does not want to base the method only on logic, but it considers it appropriate to make its basis an analysis of historical progress. It would be good if we go ahead with the historical perspective.

4. Sociological School

This theory studies the mutual relations, rights, and duties of society, the state, and the people living in it. Its main goal is social upliftment. The purpose of this principle is to remove social evils, to give the necessary favorable opportunities for the all-around development of individuals, and to fulfill the dream of establishing a welfare state. It lays special emphasis on the gradual elimination of social inequalities. The names Ehring, Ehrlich, Dugit, and Rasco

Pound are notable among the prominent jurists of this school. This theory assesses the effect of the law on individuals and emphasizes the creation of methods that are most pleasing to them. Rascoe Pound's theory is also called a functional theory. His idea of social engineering is more important. This theory considers community development as its focus.

5. Realistic School

Strong supporters of this theory are great American judges Oliver Bendel Holmes, Levin, and Cardozo. This theory throws light on the fact that it is the courts that really play an important role in the implementation of law and administration of justice. We can get accurate knowledge of the law and its related matters only from the courts, especially in the early courts, law and judges have a great influence on social customs, circumstances, and other things. We need to see the court to find out the correctness.

NATURE AND CHARACTERISTICS OF JURISPRUDENCE [7]

Many scholars have defined jurisprudence as the science of law. The question to consider is whether jurisprudence can be placed in the category of science. According to the various definitions of jurisprudence, the aspects related to law are studied in a systematic, systematic manner. As Austin and his later jurists have pointed out, practices and social and moral beliefs have no place in jurisprudence because they tarnish the concept of law. That's why positivists defined law as the command of the sovereign so that certainty, rationality, and practicality are maintained in it, which are the main elements of any branch of science. This method adopted for the study of jurisprudence brings it very close to science. August Comte, in the study of jurisprudence, completely rejected the assumptions based on fantasies and orthodox traditions and stressed adopting analytical and exploratory methods towards it, which are the main features of any science. After that, the promoters of the realist ideology of the twentieth century emphasized the study of law under jurisprudence in a social environment, and in the same vein, Rascoe Pound defined law (which is the subject matter of jurisprudence) as social engineering. This ideology was further extended by Ehring, Ehrlich, Marx, Weber, and Holmes, etc., and represented the method as a powerful medium of social change. Due to the positive attitude adopted towards jurisprudence, it would be appropriate to keep it in the category of science. Jurisprudence differs from other disciplines of law because of its following characteristics.

[7] https://strictlylegal.in/jurisprudence-its-nature-and-scope/#:~:text=Jurisprudence%20in%20its%20nature%20is,having%20no%20limitation%20on%20itself.

SIGNIFICANCE OF JURISPRUDENCE [8]

In the modern era, many complex problems keep arising in the field of law. And without finding their original form, it is not possible to solve them, and this work is possible only through jurisprudence. In fact, jurisprudence is a type of legal training. Through this man is bound to think legally about a fact and consider it judicially. The study of jurisprudence makes people related to the legal profession proficient in their work. Because jurisprudence presents a very clear and concise dictionary to any legal expert. With the help of this word angle, misconceptions, beliefs, and assumptions arise related to the law. They can be solved. Jurisprudence is very useful and beneficial for people related to the legal profession. Jurisprudence provides knowledge of the nuances related to the language, behavior, and grammar of law. It shows information about the origin of the method and its chronological nature. Jurisprudence discusses the fundamental principles of all law. and determines them. The principles propounded by jurisprudence become the fundamental basis of laws. Undoubtedly, the law without the law is the soul without the body.

CONCLUSION

In this article, we looked at how jurisprudence differs from the law we normally follow. Jurisprudence helps lawyers and judges to find a real understanding of the law. We have read about various legal theories and how they affected society and law. Jurisprudence is an important part of the law and can never be separated from it.

[8] https://www.studocu.com/my/document/universiti-teknologi-mara/legal-studies/the-importance-of-jurisprudence/19130225