

## MEANING, NATURES AND SCOPE OF JURISPRUDENCE

### DEFINITIONS OF JURISPRUDENCE

Different meanings have been assigned to the term 'Jurisprudence' by different writers. The word is derived from the Latin word "Jurisprudentia" which again is made of two words 'Juris' meaning legal and 'Prudentia' means knowledge. In simple words, it can be said that 'Jurisprudence' is the name given to a certain type of investigation into law, an investigation of an abstract, general and theoretical nature, which try to find essential principles of law and legal systems. So it deals with knowledge of 'law' and not 'the law'. The task of jurisprudence' consists of the examination of realm of law and the formulation of valid propositions. In France, jurisprudence is called 'La Philosophie De Droit' that is the philosophy of rights, that is of law-in the abstract sense of the term 'law'. In Germany we have the term 'Rechtsphilosophie' that is the philosophy of rights that is of law in the abstract sense. In India we may well have the term 'Vidhi Shastra' that is the knowledge of law in the abstract sense of the term law.

- **ETYMOLOGICAL MEANING:-** Etymologically 'Jurisprudence' means "knowledge of law".
- **PATTERSON:-** According to Patterson 'Jurisprudence' means a body of ordered knowledge which deals with a particular species of law.
- **JULLIUS STONE:-** According to Jullius Stone 'Jurisprudence' means 'lawyer's extraversion. It is the lawyer's examination of the precepts, ideas and techniques of the law in the light derived from present knowledge in disciplines other than the law.
- **OGDEN AND RICHARD:-** According to Ogden and Richard, 'Jurisprudence' means any thought or writing about law (other than a technical exposition of a branch of law itself).
- **DIAS AND HUGHES:-** According to Dias and Hughes there is no proper meaning of the term 'Jurisprudence'. Any thought or writing about the concept of law, social functions or purposes of law etc are fit subjects for jurisprudence.
- **G. C. LEE:-** For G. C. Lee 'Jurisprudence' is a science which endeavors to ascertain the fundamental principles of which the law is the expression. It rests 'upon the laws as established facts, but at the same time i is a power in bringing the laws into coherent system and in rendering all parts thereof subservient to fixed principles of justice.

- **KELSON:-** For Kelson, study of 'Jurisprudence' is the study of a hierarchy of norms, the validity of each norm depending on that of a superior norm 'Grund Norm'. (For him norm means 'rule of conduct'. Grund norm means the superior norm).
- **LAWELLYN:** According to Lawellyn 'Jurisprudence' means an empirical study of events and factors that influence the judge.
- **KEETONE:-** According to Keeton 'Jurisprudence' is the study and systematic arrangement of the general principles of law.
- **LORD LLOYD:-** According to Lord Lloyd 'Jurisprudence' involves the study of general theoretical questions about the nature of laws and legal system, about the relationship of law to justice and morality and about the social nature of law.
- **ALLEN C. K:** - According to Professor Allen 'Jurisprudence' is the scientific synthesis of the essential principles of law.
- **BUCKLAND:-** To quote Buckland; "the analysis of legal concepts is what jurisprudence meant for the student in the days of my youth.
- **ULPIAN'S DEFINITION:-** The celebrated Roman jurist, Ulpian defined jurisprudence as "the observation of things human and divine, the knowledge of the just and unjust". The definition is too broad and might well apply to religion, ethics or philosophy.
- **PAULMS:-** Another Roman jurist said that "law is not to be deduced from the rule but the rule from the law".
- **GRAY:-** Professor Gray also defined 'Jurisprudence' more or less in the same manner. He opined that jurisprudence is the science of law, the statement and systematic arrangement of the rules followed by the courts and the principles involved in these rules.
- **ROSCOE POND:-** Roscoe Pond defines 'Jurisprudence' as the ' science of law, testing the terms law in the juridical sense as denoting the body of tribunals recognised or enforced by public and regular principles in the administration of justice.'
- **RADDIFFLE:-** According to Raddiffle 'Jurisprudence' is a part of history, a part of economics and sociology, a part of ethics and a philosophy of life. Thus it is an amalgam of a number of other disciplines interwoven together for the common good of the society.
- **ENCYCLOPEDIA BRITANNICA:-** According to Encyclopedia Britannica 'Jurisprudence' is the name given to those studies, researches and speculations which aim at answering the

plain man's question; what is law? It is proposed to define law for the jurists as the sum of the influences that determine decisions in courts of justice.

- **CICERO:** - Cicero defines 'Jurisprudence' as the philosophical aspect of the knowledge of law.
- **OXFORD DICTIONARY:-** Oxford dictionary defines 'Jurisprudence' as the systematic and formulated knowledge or the science of human law.
- **WHARTON'S LAW LEXICON:-** Wharton's law lexicon defines 'Jurisprudence' as the science of law, especially of Roman law.
- **KANT:-** Kant treats 'Jurisprudence' as the science of right. He says the science of right thus designates the philosophical and systematic knowledge of the principles of natural right.
- **SALMOND'S DEFINITION:-** Salmond defines 'Jurisprudence' as the "Science of the first principles of the civil law" Jurisprudence thus deals with a particular species of law, viz., civil law or law of the state. This kind of law consists of rules applied by courts in the administration of justice. It has characteristic features that distinguish it from law of every other kind.
- **AUSTIN'S DEFINITION:-** Austin refers to jurisprudence as the "philosophy of positive law". By positive law or jus positivism he means the law laid down by a political superior for controlling the conduct of those subject to his authority. "Positive law" as used by Austin is thus identical with "civil Law". The term "Philosophy" used by Austin in describing jurisprudence is somewhat misleading. Philosophy deals with the most general theories about things, human and divine, while jurisprudence restricts itself to the general theory of man-made law.
- **HOLLAND'S DEFINITION:-** Sir Thomas Erskine Holland has defined jurisprudence as the "formal science of positive law" A formal science, as distinguished from a material science, is one which deals not with concrete details but with the fundamental principles underlying them. Jurisprudence in this view should concern itself with the general portion of legal doctrine. It should deal with the general conceptions and pervading principles that constitute the basis of any mature system of law.
- **SALMOND'S DEFINITION:-** Salmond defines jurisprudence as the science of the first principles of the civil law. He points out that jurisprudence deals with a particular species

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### **MEANING AND NATURE OF JURISPRUDENCE**

Jurisprudence is the study of fundamental legal principles, that may be a) philosophical b) scientific c) historical. The law civil, criminal, constitutional, administrative, military must have some foundation. What is based on wisdom is profound and lasting; what is based on justice will be respected for ages; what bespeaks of truth will withstand all obstacles. But what is based on no higher than convenience will not endure long; what suits only particular class or section of the citizens will surely breed dissatisfaction, antagonism and lack of peace; what is unjust is bad law and will not be respected though it may have to be obeyed.

In French, jurisprudence is called 'La Philosophie De Droit', that is the philosophy of rights, that is of law-in the abstract sense of the term 'law'; in Germany we have the term "Rechtsphilosophie" that is the philosophy of rights, that is of law in the abstract sense,; in India we may well have the term Vidhi Shastra that is the knowledge of law, in the abstract sense of the term 'law'.

The word jurisprudence is not generally used in other languages in the English sense. In French, it refers to something like 'case law'. The evolution of society is of a dynamic nature and hence the difficulty in accepting a definition by all. New problems and new issues demand new solutions and new interpretations under changed circumstances. However, scientific inventions have brought the people of the world closer to each other which help the universalization of ideas and thoughts and the development of a common terminology. In spite of difficulties, an approach which may enable the reader to have an idea of the subject and to grasp the fundamentals is always possible.

Wurzel has said that jurisprudence was the first of the social sciences to be born. Its province has been determined and re-determined because the nature of the subject is such that no description of its scope can be regarded as final.

The Greeks did not develop any systematic science of legal relations. For the Greeks, jurisprudence, generally speaking, was a branch of theology with natural law as its basis. The Romans also gave a vague and wide meaning to the term 'jurisprudence.' Ulpian termed jurisprudence as observation of things or divine, the knowledge of the just and unjust. Thus, at that time was mixed up with theology. For St. Thomas Aquinas jurisprudence became a branch

of theology. It was as a result of the reformation and renaissance that the process of separation of jurisprudence from theology was initiated. Kant formulated the idea of legal justice and undermined the eighteenth century law of nature school by showing that it was not possible to do by pure reason what that sought to do. Bentham strengthened the trend and free jurisprudence from theology; he did speak of expository and censorial jurisprudence. He said that law is binding on man so far as temporal sanction can make it effective, even if it is contrary to the law of God.

In England, the expression had been in use throughout the early formative period of common law, but as meaning little more than the study of or skill in the law. It was not until the time of Bentham and his followers like Austin in the early part of 19<sup>th</sup> century that the term began to acquire a technical meaning and significant among English lawyers.

By the end of the 19<sup>th</sup> century, changing human affairs had brought about an ever increasing pre-occupation with conflicting ideologies and troubled social conditions which resulted in a decisive shift in outlook. As a result to this change, jurisprudence today is envisaged in an immeasurably broader and more sweeping sense than that in which Austin understood it.

Sometimes terms like medical jurisprudence, architectural engineering jurisprudence and environment jurisprudence etc. are used. When used in this sense, the phrase refers to treatise dealing with that part of knowledge which is useful in applying legal doctrines or principles applicable to or useful for medico-legal cases or architectural or engineering or environment cases.

#### **EVOLUTION**

Legal sciences received little recognition in ancient times. There was hardly any division of social sciences into various branches, and Aristotle for instance, studied metaphysics, physics, ethics and politics as forming one universal science of philosophy. The Greeks also failed to evolve any coherent science of legal relations. Sir Henry Maine observes that the 'Greeks intellect, with all its mobility and elasticity, was quite unable to confine itself within the strait waistcoat of a legal formula; if we may judge them by the popular courts of Athens, for whose working we possess accurate knowledge, the Greek tribunals exhibited the strongest tendency to confound law and fact. The remains of the orators and the forensic common places preserved by Aristotle in his treatise on Rhetoric show that questions of pure law were constantly argued on

every consideration which could possibly influence the mind of the judges. No durable system of jurisprudence could be produced in this way;

The Romans were the first to study legal science in its true perspective as a distinct branch of learning. A *juris consult*, who contributed largely to the development of jurisprudence in Rome in the early days, was “skilled in the laws, and in the usages current among private citizens, and in giving opinions and bringing actions and guiding his clients alright.” The *corpus juris civilis* was the great work of compiled in the eastern Roman empire under the emperor justinian between 529-534 A.D. the work was pre-eminently of great importance, in as much a the rules and principles of law were than reduced to the form of a system, condensed, digested and complete, in which they were best fitted to influence the mind and mould the institutions of modern Europe. The Romans had attained by this time to the idea of science of these legal principles which exist independently of the institutions of any particular country. Even, the word jurisprudence is a Latin derivation of the words *juris* and *prudential*, the former meaning law and the later knowledge i.e. knowledge of law or skill in the law.

As observed by Phillimore;

“To develop the science of law, and to weave it into the common affairs of life; to define the different provinces of law, and to assign its different names to each; to distinguish between the relations of the citizen and the magistrate to each other and to distinct communities, was not the task assigned to Greece; but, as the world advanced, became the work of a stern and sagacious people, in whose fate it was to conquer and to civilize the west, and in the character of whom may be seen the impress of the virtues and the vices which belong to increasing years in the species as the individual... in roman empire, an hierarchy of power, skillfully organized, and too often an instrument of oppression...bound together the different members of the state, affording shelter ad protection to the seed and germ from which the refinement and civility hidden under the ruins and ashes of the social fabric were one day to spring forth.”

#### **AUSTIN’S DEFINITION**

Austin refers to jurisprudence as the “philosophy of positive law”. By positive law or *positivism* he means the law laid down by a political superior for controlling the conduct of those subject to his authority. “Positive law” as used by Austin is thus identical with “civil Law”. The term “Philosophy” used by Austin in describing jurisprudence is somewhat misleading.

Philosophy deals with the most general theories about things, human and divine, while jurisprudence restricts itself to the general theory of man-made law.

Austin's most important contribution to legal theory, according to Friedmann was his substitution of the command of the sovereign (i.e the state) for any ideal justice in the definition of law. The first jurist to make jurisprudence as science was John Austin (1790-1859) who is often described as the father of English Jurisprudence. In 1832 John Austin published his monumental work entitled "province of Jurisprudence determined" which treated jurisprudence as a science of law concerned with analysis of the concepts or its underlying principles.

Austin defines 'Jurisprudence' as 'science of law' which deals with analysis of the concepts or its underlying principles. For Austin the appropriate subject of jurisprudence is positive law i.e. law as it is. To him jurisprudence is not a moral philosophy but it is a systematic study of actual law as distinguished from moral, ideal or natural law.

Austin further divides jurisprudence into two classes' viz. general and particular jurisprudence.

1. **General Jurisprudence:** According to Austin general jurisprudence is the philosophy of positive law. it is concerned directly with principles and distinctions which are common to various systems of particular and positive law and which each of those various systems inevitably involves, let it be worthy of praise or blame or let it accord or not with an assured measures or test. Thus, for Austin general jurisprudence means the science concerned with exposition of the principles, notions and distinctions which are common to the different systems of law. The concept of rights and duties, ownership, possession, personality, property etc comes under the province of general jurisprudence. General jurisprudence is an attempt to expound the fundamental principles and broadcast generalization of two or more systems.
2. **Particular Jurisprudence:** Particular jurisprudence according to Austin is the science of any such system of the positive law as now actually obtains or one actually obtained in a specifically determined nation or specifically determined nations. Particular jurisprudence says Austin, is the science of any actual system of law or of any portion of it. The only practical jurisprudence is particular.

General and particular jurisprudence differ from each other not in essence but in their scope. The field of general jurisprudence is a wider one. It takes its data from the systems of more than one

state while particular jurisprudence takes its data from a particular system of law. Its principles are colored and shaped by the concrete details of a particular system. However, in both cases, the subject of jurisprudence is positive law.

Austin's classification of jurisprudence into general and particular has been criticised by Salmond, Holland and other jurists. Salmond points out that the error in Austin's idea of general jurisprudence lies in the fact that he assumes that unless a legal principle is common to many legal systems; it cannot be dealt with in general jurisprudence. There may be many schools of jurisprudence but there are not different kinds of jurisprudence. Jurisprudence is one integral social science. The distinction between general and particular jurisprudence is not proper. It is not correct to use such terms as Hindu jurisprudence, Roman jurisprudence or English jurisprudence. Jurisprudence is a social science which deals with social institutions governed by law. It studies them for the point of view of their legal significance.

Jurists of historical school also denied the existence of general jurisprudence. According to the, law, like language, grows and evolves. In this process of evolution it is conditioned by local factor e.g. political, geographical, religious, historical etc. these local factors differ from country to country. Since such local factors differ from country to country, consequently only particular jurisprudence is possible.

Holland consistent with his definition of jurisprudence as a science rejects the distinction between general and particular jurisprudence. He says if jurisprudence is rightly called a science, like all sciences, it must be general and it is meaningless to call it particular. He further emphasizes and illustrates his view with the examples of geology. Geology is the science of earth's composition and structure; it would be strange use of language to call the study of the composition and structure of England as the science of geology.

The criticism of Holland is based on the assumption that law has the same characteristic all over the world but that is opposed to human experience. Maitland points out that "race and nations do not travel by the same roads and at the same time". Lord Bryce writes, "The law of every country is the outcome and result of the economic and social conditions of the country as well as the expressions of its intellectual capacity for dealing with these conditions. Buckland observes "law is not a mechanical structure like geological deposits; it is a growth and its true analogy is that of biology". Savigny says, "law grows with the growth and strengthens with the strength of people and its standard of excellence will generally be found at any given period to be in complete

harmony with the prevailing ideas of the best class of citizens". Puchta writes, "The progress in the formation of law accordingly keeps pace with the progress in the knowledge of the people of the facts which they observe and hence it is that law has its provincialisms no less marked than language." Buckland points out that Austin and others who profess "general jurisprudence" do not adhere to it in practice.

Gray accepts Austin's classification of jurisprudence into general and particular jurisprudence, though he prefers the term 'comparative jurisprudence' in place of general jurisprudence. Allen also agrees with Austin. He says there are certain elements inherent in the conception of law as a phenomenon of social life e.g. preservation of order-dispensation of justice, delimitation of rights, ownership, possession, etc. therefore existence of general jurisprudence is possible. Particular jurisprudence is only a method by which it works. The adjectives of general and particular demand an explanation of the substantive view of jurisprudence and are according to Allen 'the scientific synthesis of the essential principles of law. Stone Jullius however objected to Allen's observation and comments that Allen does not explain what these essential principles are and how to designate them. Paton says there may be few rules that may be universal but there may be universal principles of jurisprudence. The task of jurisprudence is to study the religious law, legal institution and life of society. Jurisprudence studies the methods by which social problems are evolved. So, jurisprudence must not concentrate on universal rules of law but merely on relationship between law, its concepts and life of society.

To conclude, we can quote Dias and Hughes who says jurisprudence today is envisaged in an immeasurably broader and more sweeping sense than that as Austin understood. Buckland remarks "the analysis of legal concepts is what jurisprudence meant for students in the days of my youth. In fact, it meant Austin. He was a religion; today he seems to be regarded as a disease. He cannot be replaced on his pedestal; the intensely individualistic habit of mind of his day is out of fashion.'

### **HOLLAND'S DEFINITION**

Sir Thomas Erskine Holland has defined jurisprudence as the "formal science of positive law" A formal science, as distinguished from a material science, is one which deals not with concrete details but with the fundamental principles underlying them. Jurisprudence in this view should concern itself with the general portion of legal doctrine. It should deal with the general conceptions and pervading principles that constitute the basis of any mature system of law.

Jurisprudence thus began to be understood as a scientific study of basic principles underlying many developed Legal systems. Austin's analytical approach of the study of law was carried further by Thomas Erskine Holland-another English jurist. He described jurisprudence as the formal science of those relations of mankind which are generally recognised as having legal consequences-the formal science of positive law."

Holland six-word definition of jurisprudence as "the formal science of positive law" is not free from defects. The question arises what is a formal science? Holland himself explains that by the term 'formal' he means that jurisprudence concerns itself with human relations which are governed by rules of law rather than the material rules which themselves, for the later are the subject of legal exposition, criticism or compilation rather than jurisprudence.

As regards the meaning of the term positive law Holland uses this term in the same sense as Austin. It is actual and existing law as distinguished from hypothetical, ideal and abstract law. Accordingly Holland, like Austin, says, Jurisprudence is invariably a posteriori and not a priori.

Holland consistent with his definition of jurisprudence as a science rejects the distinction between general and particular jurisprudence. He says if jurisprudence is rightly called a science, like all sciences, it must be general and it is meaningless to call it particular. He further emphasizes and illustrates his view with the examples of geology. Geology is the science of earth's composition and structure; it would be strange use of language to call the study of the composition and structure of England as the science of geology.

Many eminent jurists have criticised the view of Holland that jurisprudence is a formal science of positive law. Professor Gray has criticized Holland and says that material rules of law are like clay and relation governed by these rules are like Bricks. As bricks cannot be made within clay, therefore, there can be no relationship if there is no matter rule.

Dias and Hughes while criticizing Holland observes that the Holland's analogy of jurisprudence with geology is erroneous, now the substance and forces became the same everywhere. Law is a social institution and structures of societies differ in their objectives, traditions and environments. Same is the view of Buckland who put a question, 'how the principles of geology, elaborated from the geology of England alone, hold well all over the globe. He further says, 'law is not a mechanical structure like geographical deposits'.

Professor Plato also criticizes the definition of Holland in these words 'without resorting to acts and forbearances and to the state of facts under which they are commended law can not be

differentiated at all; not so much as the bare frame work of its chief departments can be erected. An attempt to construct quite apart from all the matter of law even the most general conception of ownership or contract would be like trying to make bricks not merely without straw but without clay as well".

Salmond, Jethrow Brown and Gray also criticised Holland for his rejection of particular jurisprudence. Salmond supported Austin's particular jurisprudence. He protests against attributing jurisprudence any quality whatever of generality or universality.

#### **SALMOND'S DEFINITION**

Salmond defines jurisprudence as the science of the first principles of the civil law. Thus he points out that jurisprudence deals with a particular species of law e.g. civil law or law of the state. The civil law consists of rules applied by courts in the administration of justice. He agree with Gray in upholding that jurisprudence is concerned with only jurists law and is not concerned with the laws of theologians and moralist although they also govern the conduct if man in society.

According to Salmond, jurisprudence in the specific sense includes theoretical jurisprudence; therefore, it deals not with concrete details but with its fundamental principles and conceptions. General jurisprudence as visualized by Salmond deals not with the study of legal system in general but with the general and fundamental elements of a particular legal system. Furthermore Salmond has divided jurisprudence into following categories:-

- A. LEGAL EXPOSITION:** the purpose of which is to set forth the contents of an actual legal system as existing at any time, whether past or present.
- B. LEGAL HISTORY:** The purpose of which is to set forth the historical process whereby any legal system came to be what it is or what it was.
- C. THE SCIENCE OF LEGISLATION:** purpose of which is to set forth the law, not as it is or has been, but as it ought to be. It deals not with the past or present of any legal system but with its ideal future.

He further divides jurisprudence in the specific sense into:-

- I. ANALYTICAL JURISPRUDENCE:** the purpose of which is to analyze, without reference either to their historical origin or development to their ethical significance or validity-the first principles of law.

- II. **HISTORICAL JURISPRUDENCE:** the purpose of which is to deal with the general principles governing the origin and development of law, it is the history of the first principles and conceptions of the legal system.
- III. **ETHICAL JURISPRUDENCE:** the purpose of which is to deal with the law from the point of view of its ethical significance and adequacy. it is concerned not with the intellectual content of the legal system or with its historical development but with the purpose for which it exists and the measures and manner in which that purpose is fulfilled.

According to Salmond, complete scientific treatment of any body of law involves the study of these categories of jurisprudence.

Salmond's definition has been criticised on the ground that he has narrowed down the field of jurisprudence by saying that it is a science of civil law, and hence covers only particular legal system. With the emergence of functional approach, the province or scope of jurisprudence cannot be limited. The study of jurisprudence is not confined to the study of law as administered by courts of justice. It also takes note of the facts of social life of societies.

#### **SCOPE OF JURISPRUDENCE**

There is no unanimity of opinion regarding the scope of jurisprudence. Different authorities attribute different meanings and varying premises to law and that causes differences of opinions with regard to the exact limits of the field covered by jurisprudence. Jurisprudence has been defined as to cover moral and religious precepts also and that has created confusion. Thus, the scope of jurisprudence was limited to the study of the concepts of positive law and ethics and theology fall outside the province of jurisprudence.

There is a tendency to widen the scope of jurisprudence and at present we include what was previously considered to be beyond the province of jurisprudence. The present view is that the scope of jurisprudence cannot be circumscribed or regimented. It includes all concepts of human order and human conduct in state and society. Anything that concerns order in the state and society falls under the domain of jurisprudence.

P.B Mukherji writes that new jurisprudence is both an intellectual and idealistic abstraction as well as behaviouristic study of man in society. it includes political, social, economic and cultural ideas. It covers the study of man in relation to state and society.

Thurman W Arnold defines jurisprudence as the shining but unfulfilled dream of a world governed by reason. For some, it lies buried in a system, the details of which they don't know. For some, familiar with the details of the system, it lies in the depth of an unreal literature. For others, familiar with its literature, it lies in the hope of a future enlightenment. For all, it is just around the corner."

The view of Lord Radcliffe is that jurisprudence is a part of history, a part of economics and sociology, a part of ethics and a philosophy of life.

Karl Llewellyn observes "jurisprudence is as big as law-and bigger".

According to Phillimore;

"...exalted and noble science of jurisprudence, the knowledge of which...sends the student into civil life full of luminous precepts and generous notions, applicable to every exigency of human affairs...the moral world rests on a foundation that is immutable; and the happiness of man of necessity depend on his obedience to those rule of external justice which God has written on his soul, and of which though heaven and earth shall pass away, not a title can be altered."

Jurisprudence is the eye of law giving an insight into the environment of which it is the expression. It relates the law to the spirit of the time and makes it richer.

The modern jurists have reoriented jurisprudence as purposive, functional goal oriented. In India Krishna Iyer J, P.N Bhagwati and Professor Upendra Baxi etc similar to Holmes and Roscoe Pond have used law as an instrument of social change and social justice to suit the needs of the times and of the people. C. J Ranganath Mishra (as then he was) rightly quotes Krishna Iyer, J "Law is a means to an end and justice is the end. But in actually law and justice are distant neighbours sometimes even strange hostiles. If law schools down justice, the people shoot down law and lawlessness paralyzes development, disrupts order and retards progress. This is the current sense; similarly, the Supreme Court has been greatly disturbed in the decline of public morality in public life. The court remarked;

"The court cannot be oblivious that there has been a steady decline of public standards or public morals. It is necessary to cleanse public life in the country along with or even before cleansing the physical atmosphere. The pollution of our values and standards is a grave menace...the courts should not and cannot remain mute and dumb."

As such in contemporary Indian law without social justice, right to life and liberty etc. would be what justice K. Ramaswamy described 'a teasing illusion and a promise of unreality'. These are

merely illustrations to indicate the trend of judicial process to achieve functional and goal oriented justice. To quote again the learned Judge Mr. Justice K. Ramaswamy in this context observes;

“The solidarity of political freedom hinges upon socioeconomic democracy. The right to development is one of the most important facets of basic human rights. The right to basic interest is inherent in the right to life. Mahatma Gandhi, the father of the Indian Nation said that ‘every human being has a right to live and therefore to find the wherewithal to lead himself and of his family, including food, clothing, housing and medical care. Right to life includes the right to live with basic human dignity.....Article 21 of the Indian constitution protects right to life and derive there from the minimum of the needs of existence including better tomorrow.’”

In jurisprudence we mainly study the nature of law, its sources and purpose, and the nature of rights and duties and other questions related to it. Following are some of the uses of the study of jurisprudence;

- a) It gives an understanding of the nature of law. it helps in the study of the actual rules of law and in tracing out principles underlying therein.
- b) It helps in making scientific developments of law.
- c) It develops the critical faculties of mind and gives the proper understanding of legal expressions and terminologies.
- d) It throws light on the basic ideas and the fundamental principles of law in a given society.
- e) It helps judges and lawyers in ascertaining the meaning of words and expressions in statutes.
- f) Jurisprudence supplies an epistemology of law, a theory as to the possibility of genuine knowledge in the legal sphere.

It is rightly said that jurisprudence is a house of many mansions, which are distinct but not separate. The catalogue of these thoughts, ideals and schools in different and separate category serves both academic as well as practical understanding in regard to their methodology, thought, content and contribution.

#### **CONTENTS OF JURISPRUDENCE**

There are divergent views regarding the exact contents of jurisprudence. But it has been generally accepted that sources, legal concepts and legal theory constitute the main premises of the study of jurisprudence.

- I. SOURCES:** It is well known that the basic feature of a legal system is mainly to be found in its authoritative sources and the nature and working of the legal authority behind these sources. Therefore, they obviously form the content of jurisprudence.
- II. LEGAL CONCEPTS:** Another area which concern jurisprudence is the analysis of legal concepts such as rights, property, ownership etc and the related uses. The study of these abstract legal concepts furnishes a background for better understanding of law in its various forms.
- III. LEGAL THEORY:** Legal theory is concerned with law as it exists and functions in the society and manner in which law is created and enforced as also the influence of social opinion and law on each other. Thus, legal theory seeks to correlate law with other disciplines such as religion, philosophy, ethics, politics etc and pursue its study in wider socio-legal perspective.

#### **RELATION OF JURISPRUDENCE WITH OTHER SOCIAL SCIENCES**

Jurisprudence is closely inter-related with other social sciences since all of them are concerned with human behavior in society. Pointing out the relationship of jurisprudence with other branches of knowledge, G. W Paton observed that “modern jurisprudence trenches on the fields of the social science 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.” Jullius stone also explained the functioning of jurisprudence in terms of knowledge of other social disciplines and stated that jurisprudence is the lawyers extraversion. Justice McCredie emphasises the indispensability of the study of other social sciences in these words-“there never was a time when the barrister had greater need of a wide culture and of a full acquaintance with history, with economics and with sociological science.”

Dean Roscoe Pond of the Harvard law school writes; “Jurisprudence, ethics, economics, politics and sociology are distinct enough at the core, but shade out into each other. When we look at the core or chiefly at the core, the analytical distinctions are sound enough. But we shall not understand even that core, and much less the debatable ground beyond, unless we are prepared to make continual deep incursions from each into each of others. All the social sciences must be co-workers and emphatically all must be co-workers with jurisprudence.

## **JURISPRUDENCE AND ETHICS**

Ethics is a branch of knowledge deals with human conduct and lays down the ideas of human behavior. It is closely related to morality and public opinion which are dynamic concepts varying from place to place, from time to time and from people to people. Jurisprudence is concerned with positive morality since law is considered as an instrument to regulate human conduct in society. Positive morality does not require a coercive force for maintaining public conscience. There is a separate branch of jurisprudence called ethical jurisprudence, which seeks to punish. For example the law does not take notice of trifles. So also, to tell a lie is unethical but it is not punishable as an offence. Ethics lays down the rules of human conduct based upon higher and noble values of life. Laws are meant for regulating human conduct in the present and subordinating the requirements of the individual to that of societies at large. A jurist must be adept at the science of ethics because he cannot criticize a law unless he examines that law through the instrumentality of ethics.

Ethics has been defines as the science of human conduct. It deals with how man behaves and what should be the ideal human behavior. There is the ideal moral code and the positive moral code. The ideal moral code belongs to the province of natural law and the later positive moral code deals with the rules of positive morality of actual conduct. Ethics is concerned with good and proper human conduct in the light of public opinion, varies from place to place, from time to time and from people to people.

Ethics depends on law for enforcement of some of its rules through the instrumentality of the law courts, the police and decrees of courts and punishment. So also good legislation must be based on ethical or Nomo-logical principles. Just as there are values in ethics, there should be a complete recognition of values in law also.

Dr. Sethna writes “it changes in the finance and social evaluation, social culture and social development, what may be a rule of good quality at one-time may be a bad moral today”

He further says-“in the mirror of a community’s laws are reflected its culture, its ideology and its Miranda. On the high level of its laws is perceived the glory of a country’s civilization-the depth of its positive ethics. Hence, the relationship between ethics and jurisprudence.

## **JURISPRUDENCE AND HISTORY**

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. History furnishes the background in which a correct idea of jurisprudence can be realized.

## **JURISPRUDENCE AND SOCIOLOGY**

According to Salmond, jurisprudence is the knowledge of law and in that sense all law books can be considered as books on jurisprudence. Among the phenomenon studies by sociologists is law also and that makes sociology intimately connected with jurisprudence. Sociology has helped jurisprudence in its approach to the problem of prison reforms and has suggested ways and means of preventing social wrongs. Previously, judges and legislators came to their conclusions regarding the effect of punishment by depending upon popular opinion and personal impressions, but now they have at their disposal precise data through the efforts of criminologists. Their decisions are no more conjectural but are based on solid facts. There is a general indignation against hanging as the extreme form of punishment and hence its abolition in many countries of the world.

The view of Paton is that the relationship between law and social science be usefully studied by jurisprudence for three reasons-

- a. It enables better understanding of the evolution and development of law.
- b. It provides greater substantiation for identity of law commensurate with human needs and social interests;
- c. It provides objectivity to legal interpretation which is the need of hour. Without social inaction law should remain a mere theoretical perception devoid of any practical utility.

The lag between law and social science can be abridged and the attainment of socio-economic justice can be rendered easy, if jurisprudence secures the cooperation of all social sciences and law is moulded and takes shape as a result of such cooperation.

## **JURISPRUDENCE AND ECONOMICS**

The intimate relation between economics and jurisprudence was first noticed by Karl Marx (1818-1883) and the interpretation of jural relations in the light of economic factors is receiving the serious attention of jurists.

Economics studies man's efforts in satisfying his wants and producing and distributing wealth. Economics is the science of wealth and jurisprudence is the science of law. There is a close

relationship between the two. Economic problems arise from day-to-day and it is the duty of the law given to tackle those problems. The aim of economist is to improve the standard of life and the people and also to develop their personality. Jurisprudence teaches legislators how to make laws which will promote social and economic welfare. Both jurisprudence and economics aims at the betterment of the lives of the people. Economics being a science of money and wealth and jurisprudence a science of law both are intimately correlated. Economics deals with production and distribution of wealth for satisfying the want of the people. There are many laws which seek to regulate economic activities of mankind. The laws relating to banking companies, negotiable instruments, consumer protection, payments of wages, bonus, insurance, debts etc. ceiling of land and wealth are intended to regulate one or the other economic activity of man in society.

#### **SOCIO-ECONOMIC GOAL OF THE CONSTITUTION**

The independence of India heralds a new era. The constitution laid down the goals which the nation was committed to achieve. The socio-economic goal and the founding faiths of our nation were incorporated in the constitution. It enjoined the law the function to make environmental adaptations of the existing legal system, feeling the needs and the mores of the people, evolving principles of law and legislative formulations and statutory institutions which will harmonies with the urgencies of our times, and translating into action the mission of constitution. Thus, the goals set by the constitution made it imperative to bring about socio-economic changes.

“The driving forces of social change in the Indian context, is the re-discovery of the goals of our freedom struggle, the realization of our national identity, the reflection on our founding faiths and fighting creeds, the strengthening of our resolves and launching on our future with a flaming spirit, at once authentic, impatient and adventurous. a militant awareness that we are a free people with a commitment to social justice still running our affairs on a legal system, self-divided and caught in a spiritual crises, is the beginning of the mission. The political declaration of the independence is our incarnation to a nation; the economic declaration of independence is battling for self-expression, marching from the constitution towards law-in-action. Frankly, the establishment is conflicted with the pathology of split personality and loss of identity and amnesia of our tryst with destiny. A powerful, planned comprehensive legal Protestantism, radical enough to abandon the spell of five-star prosperity and to wage war on mass property and social disability is the demand on the Indian jurists.

### **JURISPRUDENCE AND POLITICS**

Politics is the science of government. Good government depends upon good laws; so here we have the tracing of the close relation between politics and jurisprudence. As Edmund Burke has well expressed, a good government is not a partnership in a tea-house or a coffee-house, but a partnership in every art, a sharing in all sciences, a participation in all virtue. Jurisprudence, certainly, deals with virtues and values. Just as in ethics we have values, so also, in jurisprudence we have values. Ethical and sociological jurisprudence play a prominent part.

Friedmann rightly points out that jurisprudence is linked at one end with philosophy and at the other end with political theory. Politics deals with the principles governing governmental organisation. In a politically organized society, there exist regulation which may be called laws and they lay down authoritatively what men may do and what they may not do.

It is evident that the subject matter of jurisprudence comprises a synthetic study of various disciplines and social sciences, each playing their role for the proper understanding of the fundamental principles of law. It is primarily for this reason that some jurists have advocated the necessity of synthetic jurisprudence in recent years.

### **JURISPRUDENCE AND PSYCHOLOGY**

Jurisprudence is concerned with mans external conduct and not his thoughts and mental processes, but penology has benefitted from the knowledge made available by psychological researches. Psychology as a branch of knowledge is concerned with the working of brain or mental facility. Since jurisprudence and law are necessarily concerned with human action and it is the human mind which control human action, the inter-relation between psychology and jurisprudence need not be over-emphasised. The psychology of the offender is also one of the crucial factors in deciding the nature of punishment of the convicted person. The modern reformative techniques of punishment such as probation, parole, indeterminate sentence, admonition, pardon etc. are essentially devised for the treatment of offenders according to their psychological traits.

### **JURISPRUDENCE AND PHILOSOPHY**

As a philosophy of the law, jurisprudence deals not merely analytically or historically, but critically. History examines the past and the present; we learn from the experiments of the past, and in the light of those experiences we should abstain from error and act wisely. As a philosophy, Jurisprudentia examines whether the law is as it out ought to be.

There are three types of philosophical schools viz. the law of nature school, the metaphysical school and the socio-philosophical school. The law of nature school seeks to deduce principles of universal validity and applicability, from the law of nature and the social and rational nature of man. These principles are applied or sought to be applied to law.

The metaphysical school seeks to deduce from some fundamental concept a system of universally applicable principles to form the basis of law making.

Socio-philosophical jurisprudence takes socio-philosophical principles as its bases and on a critical examination of the actual legal principles, suggests improvements towards the ideal.

#### **JURISPRUDENCE AND ENVIRONMENT LAW**

The effort to save the environment derives much of its popularity from the impact of immediate personal inconvenience; a sewage polluted river, the smog that leaves one's eyes watering, the black granules of soot that drift in through an open window, traffic congestion, noise, the smoking vehicles and industries. But the significance of the current concern for the environment goes much, much deeper than nuisance abatement. It is a belated recognition that as we "succeed" in terms of production, speed or growth, the quality of life may deteriorate catastrophically. It is a belated recognition of our oneness with nature, a concern for man himself and his natural environment.

Environment law is based on the realization of mankind of the dire physical necessity to preserve invaluable and none too easily replenishable nature's gifts to man and his progeny from the reckless wastage and appropriation that common law permits. Environment law is an instrument to protect and improve the environment and to control or prevent any act or omission polluting or likely to pollute the environment. Evolution of environmental jurisprudence in India is marked by numerous Public Interest Litigations filed and decided by courts in last three decades.

The seeds of the concept of PIL was initially sown in India by Krishna Iyer, J. in 1976 in *Mumbai Kamgar Sabha versus Abdulbhai*. After the germination of the seeds of the concept of PIL in the soil of our judicial system, it was nourished, nurtured and developed by the Apex Court by a series of outstanding decisions. In *Fertilizer Corporation Kamgar Union versus Union of India* the terminology "Public Interest Litigation" was used.

### POINTS TO REMEMBER

- Different meanings have been assigned to the term 'Jurisprudence' by different writers.
- The word jurisprudence is derived from a Latin word 'Jurisprudentia' which means knowledge of law.
- The word is derived from the Latin word "Jurisprudentia" which again is made of two words 'Juris' meaning legal and 'Prudentia' means knowledge.
- Jurisprudence is not mere knowledge of law, it is something more than that.
- Jurisprudence in France, is called 'La Philosophie De Droit'
- In Germany we have the term 'Rechtsphilosophie'.
- In India we have the term 'Vidhi Shastra'.
- Etymologically 'Jurisprudence' means "knowledge of law".
- Jurisprudence is a science which ascertains the fundamental principles of which the law is the expression.
- Sometimes the terms like "Medical Jurisprudence", "Architectural Jurisprudence", "Engineering Jurisprudence" and "Environmental Jurisprudence" etc. are used.
- Jurists of different ages have tried to give a definition of the term 'Jurisprudence'.
- No definition can be said to be correct in its absolute sense.
- The nature of the subject is such that it is not possible to give an exact definition.
- Jurisprudence is the name given to a type of investigation into law, an investigation of an abstract, general and theoretical nature, which seeks to lay the essential principles of law and legal system.
- The scope of jurisprudence is very wide.
- The changes in social, political, and economic outlook and the changes in the conditions of individual and national life have widened the province and the scope of law viz., jurisprudence.
- The task of jurisprudence' consists of the examination of realm of law and the formulation of valid propositions
- The Romans were the first to study legal science in its true perspective as a distinct branch of learning.
- Austin refers to jurisprudence as the "philosophy of positive law".
- General jurisprudence is the philosophy of positive law.

- Particular jurisprudence is the science of any actual system of law or of any portion of it.
- Jurists of historical school also denied the existence of general jurisprudence.
- Maitland points out that “race and nations do not travel by the same roads and at the same time”.
- Lord Bryce writes, “The law of every country is the outcome and result of the economic and social conditions of the country as well as the expressions of its intellectual capacity for dealing with these conditions.
- It gives an understanding of the nature of law. it helps in the study of the actual rules of law and in tracing out principles underlying therein.
- It helps in making scientific developments of law.
- It develops the critical faculties of mind and gives the proper understanding of legal expressions and terminologies.
- It throws light on the basic ideas and the fundamental principles of law in a given society.
- It helps judges and lawyers in ascertaining the meaning of words and expressions in statutes.
- Jurisprudence supplies an epistemology of law, a theory as to the possibility of genuine knowledge in the legal sphere.