

JURISPRUDENCE: PHILOSOPHY ABOUT STUDY OF LAW

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Abstract

*Jurisprudence has had controversial definitions since classical times. The history of evolution of jurisprudence is based upon two main sources of jurisprudential thought and experience emerge from antiquity, that are the philosophical speculation of the Greeks and the legal and administrative practice of the Romans. The word 'jurisprudence' is derived from the Latin phrase *juris prudential* which means "knowledge of the law". "Philosophy" is a study that seeks to understand the mysteries of existence and reality. Law in its most general and comprehensive sense signifies a rule of action and is applied indiscriminately to all kinds of actions, whether animate or inanimate, rational or irrational. The phrase "philosophy of law" is inevitably tied up in the relationship between the two academic disciplines—philosophy and law. Since, law is the body of official rules and regulations, generally found in constitutions, legislation, judicial opinions, and the like, that is used to govern a society and to control the behavior of the members of a society ; philosophy examines the relationships between humanity and nature and between the individual and society and jurisprudence is the study of law. Hence, it can very well be said that "Jurisprudence is philosophy about study of law".*

Keywords: Contribution, Jurisprudence, Law, Law school, Philosophy, Utility.

Introduction

Jurisprudence has had controversial definitions since classical times. In civil law countries "jurisprudence" is a technical term referring to a settled course of judicial decision. Civil law countries ex- France and Italy use the term "jurisprudence" is a general honorific designation for the more ordinary term "law". For common law countries jurisprudence constitutes that stream wherein body of law purely means judge made laws which derives its authority from common judicial practice and received traditions[1]. These countries are those that have been a colony under British rule, ex- India, Australia, Canada. jurisprudence, which prevails in England and most former members of the British Empire. Jurisprudence as a separate stream has great utility and also contributed immensely to Indian Judicial Decisions, in which traces of thoughts of different law schools can be seen.

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Jurisprudence: Historical Overview

The history of evolution of jurisprudence is based upon two main sources of jurisprudential thought and experience emerge from antiquity. These are the philosophical speculation of the Greeks and the legal and administrative practice of the Romans.

Greek speculation on the nature of law centered on the question of whether law exists by nature or by convention. The Greek philosophers examined this fundamental question so thoroughly that it is hard to find instances of contemporary speculation that escape the bounds set by the Greek thinkers. Roman law, on the other hand, had an autonomous development based on a millennium of judicial experience and administrative practice. Greek philosophical theories permeated the essence of Roman law, but the slow, steady accumulation of legal experience and its crystallization into general principles of law and finally into codification gave Roman law its enduring character. For the Romans, jurisprudence always remained an eminently practical study.

These two sources, namely, Greek theories of the nature of justice and Roman experience in political administration, became, after religion, the most dominant aspect of medieval culture. The idea of the Holy Roman Empire with the Corpus Juris Civilis as a statute binding all Christendom and the Roman Catholic church with its manifold forms of law as spiritual authority for all Christians formed a coherent theoretical structure.

St. Thomas Aquinas divided law into the eternal, the divine, the natural, and the human. It will be noted that two of these, the eternal law and the natural law, are theories of the nature of justice. The divine law and the human law are ordained or posited. We thus see the divisions of antiquity continued in the form of notions of law that exists by nature and law that is ordained, whether by God or by man.

This distinction survived the Renaissance revolutions in science and government. Indeed, the great political revolutions were waged in the name of a secularized law of nature abstracted from the mind of man and considered the true mark of his humanity. Reason, as higher law, was held to legitimize revolt against the dictates of sovereign will.

This fundamental divergence of opinion on the nature of law came down to the twentieth century, the English-speaking common law countries heavily committed to the view that law is the ordainment of a lawfully constituted sovereign.

During the 16th and 17th centuries England was consumed by religious, political, and social upheaval that included a civil war and the beheading of a king. It was a period of extreme violence, fear and lawlessness. The theory of natural law– that law is based on divine revelation and that it was put in place for moral improvement did not seem to accord with the contemporary reality of life. Out of this chaos developed a new theory about justice and the law. Philosophers such as Thomas Hobbes and John Locke recognized that in order for stability and order to return to England there must be a new definition of law. This theory eventually become known as positive law.

Positive law is the belief that law is established by the state, for the benefit of the state as a whole. Positive law has no moral purpose other than to ensure the survival of the state and its citizens. Obedience to the law is no longer a matter of conscience, as it had been for Socrates or Aquinas. To disobey the law was a crime and anyone who broke the law was subject to punishment. In positive law there is no distinction between law and justice- justice means conformity to the law. Law and justice are one in the same. The condition that human laws conform to certain standards of morality and justice in order to be valid is abandoned. The only real morality is in human obedience to state law. There was no longer a debate over who had authority over the law, the church or the state. From this point forward the church would always be subservient to the laws put forward by the state.

Jurisprudence as philosophy of law

Jurisprudence can be defined as is the study of law. It is a type of science that explores the creation, application, and enforcement of laws. Jurisprudence is the study of theories and philosophies regarding law. If we understand the theories and philosophies behind law, then we can better understand our laws. The word 'jurisprudence' is derived from the Latin phrase juris prudential. This means "knowledge of the law"[2]. It can also be defined as Jurisprudence is the science or philosophy of law . Salmond has defined Jurisprudence as "Science of the first principles of civil law"[3] .

Philosophy is a study that seeks to understand the mysteries of existence and reality. It tries to discover the nature of truth and knowledge and to find what is of basic value and importance in life. It also examines the relationships between humanity and nature and between the individual and society[4]. Philosophy arises out of wonder, curiosity, and the desire to know and understand. Philosophy is thus a form of inquiry- a process of analysis, criticism, interpretation, and speculation. The term philosophy cannot be defined precisely because the subject is so complex and so controversial. Different philosophers have different views of the nature, methods, and range of philosophy. The term philosophy itself comes from the Greek philosophia, which means love of wisdom. In that sense, wisdom is the active use of intelligence, not something passive that a person simply possesses. The first known Western philosophers lived in the ancient Greek world during the early 500's B.C. These early philosophers tried to discover the basic make up of things and the nature of the world and of reality. For answers to questions about such subjects, people had largely relied on magic, superstition, religion, tradition, or authority. But the Greek philosophers considered those sources of knowledge unreliable. Instead, they sought answers by thinking and studying nature.

Law can be defined as the body of official rules and regulations, generally found in constitutions, legislation, judicial opinions, and the like, that is used to govern a society and to control the behavior of its members, so Law is a formal mechanism of social control. Legal systems are particular ways of establishing and maintaining social order[5]. Blackstone says "Law in its most general and comprehensive sense signifies a rule of action and is applied indiscriminately to all kinds of actions,

whether animate or inanimate, rational or irrational[6]. " By the positivists for example Austin , law has been defined as "A rule laid down for the guidance of an intelligent being by an intelligent being having power over him" or " "A body of rules fixed and enforced by a sovereign political authority." whereas, Hart defined law as " system of rules, a union of primary and secondary rules"[7].

The meaning of the phrase "Philosophy of Law" is inevitably tied up in the relationship between the two academic disciplines—philosophy and law. In the United States and the rest of the Anglophone world, "philosophy of law" is a sub-discipline of philosophy, a special branch of what is nowadays frequently called "normative theory" and closely related to political philosophy[8]. Of course, there are many different tendencies within academic philosophy generally and the philosophy of law in particular. Still, the dominant approach to philosophy of law in the Anglophone world is represented by "analytic jurisprudence," which might be defined by the Hart-Dworkin-Raz tradition on the one hand and by the larger Austin-Wittgenstein-Quine-Davidson-Kripke tradition on the other.

The philosophy of law covers a lot of ground. An important line of development focuses on the "what is law?" question, but much contemporary legal philosophy is focused on normative questions in specific doctrinal fields. The application of moral and political philosophy to questions in tort and criminal law is an example of this branch of contemporary legal philosophy[9].

Utility and significance of jurisprudence

Jurisprudence is basically a theoretical subject but it also has a practical and educational value. The practical value or purposes of jurisprudence has been enumerated as under[10]:

- Remove the complexities of law: One of the task of jurisprudence is to construct concepts and make law more manageable and rational.
- Answers the new problems: Jurisprudence can teach people to look around them and realize that answers to new legal problems must be found by a consideration of the present social needs and not in the wisdom of the past.
- Grammar of law: Jurisprudence is the grammar of law. It throws light on the basic ideas and the fundamental principles of law e.g. negligence, liability etc.
- Training of Mind: Jurisprudence trains the mind to solve the difficult legal provisions in legal way.
- Grasp on the subject: It helps in knowing and grasping the language, grammar, the basis of treatment and assumption upon which subject rests.

- Useful in Art of pleading and legislation: It helps legislators and the lawyer the proper use of legal terminology. It relieves them to the botheration creation of defining again and again certain expressions e.g. right, duty etc.
- To Interpret law: It helps the judges and the lawyers in ascertaining the true meanings of the law passed by the legislatures by providing the rules of interpretation.
- To study foreign law: It enable a lawyer to study foreign law because the fundamental principles are generally common to all systems of law.
- To understand other dimensions of society: It helps in understanding other areas of knowledge on a better manner like political office, public administration or teaching[11].
- To provide more than practical justification: It provides more than just practical justification of different things to a person. One, gets to connect in a better manner with the universe and understand the universal law. Thus providing greater happiness of understanding the universal rules to people.

Contribution of Jurisprudence to Indian Judicial Decisions

Jurisprudence has highly contributed to the decision making process of several landmark judgments of Indian Judiciary. The research work has been divided into two parts. Firstly, Positive Law School and its impact on judicial decisions is dealt and secondly, the impact of Natural Law School on Indian judicial decision is observed.

- Positive Law School

Positive law is the belief that law is established by the state, for the benefit of the state as a whole. Positive law has no moral purpose other than to ensure the survival of the state and its citizens. Obedience to the law is no longer a matter of conscience, as it was in natural law. To disobey the law was a crime and anyone who broke the law was subject to punishment. In positive law there is no distinction between law and justice – justice means conformity to the law. Law and justice are one in the same. The condition that human laws conform to certain standards of morality and justice in order to be valid is abandoned. The only real morality is in human obedience to state law.

Case Study: *A.K. Gopalan v. State Of Madras*

Jurisprudentially speaking Gopalan reflected the sway of positivism the superior authority of law - as per the thoughts of Austin. The question of interpretation of this paltry worded provision Art 21

which says "No person shall be deprived of his life or personal liberty except according to procedure established by law" possessing immense importance came before the Supreme Court as early as in 1953 in the case of A.K. Gopalan v. State of Madras[12]. The court restricted itself to the literal interpretation of the article and exhibited judicial positivism. The connotation of life was restricted to the existence of the individual and liberty meant freedom from physical restraints. The procedure established by law was interpreted to mean law as enacted by the legislature or through ordinance and does not include the concept of due process. Also, a joint reading of Art.14, 19 and 21 was not called for and thus the law that abridges the right under Art.21 need not be reasonable. It however, put restraints on unguided executive discretion.

The case held the field for almost three decades. It gave legislature a carte blanche to enact a law to provide for arrest of a person without much procedural safeguards. It gave the ultimate power to the legislature to decide what was going to be the procedure to curb the liberty of a person under article 21. This was an absolute right given to the legislature. It held that the term "law" in article 21 could not be understood as principles of natural justice. In its normal connotation it should mean procedure established by law means law enacted or State made law and not the American concept of due process which simply means vague and uncertain principles of natural justice[13]. It was held by the majority that procedure established is in the nature of "Lex" and not "Jus". And in this way it displayed the positivist approach taken in deciding this case.

- Natural Law School:

Natural law is known as higher law or the law of nature which has been continually dominating the entire basis of politics, law, religion and social philosophy. Natural law is said to be those sets of unwritten laws which contain the principles of ought as revealed by the nature of man or reason or derived from god. It is the understanding of a moral law that is either given with nature and known through reason or given with moral reason independently of nature[14]. Natural law is universal and common to all humanity. It goes beyond the differences in culture, religion, and various formulations of moral law. It is often understood as the fundamental source of norms from which positively formulated moral norms must be derived if morally justifiable.

Case Study: *Maneka Gandhi v. Union Of India*

In order to surmount the uncertainty, which would arise because of broadening of scope of rights like in America, Indian constitution makers restricted it to procedure established by law. The phrase "procedure established by law" seems to be borrowed from article 31 of the Japanese Constitution, which gives the legislature the final word. In the case of *Maneka Gandhi v. Union*[15] of India the meaning and content of life and personal liberty under article 21 of Indian constitution came up for consideration and the supreme court held that the law established by the state should be just fair and reasonable .

If one analyses the judgment one would find reference of Locke's theory whereby the natural rights of man such as right to life, liberty and property remained with him and there should not be any law contravening the above rights.

So in Maneka Gandhi case also the natural law theory principles could be evolved.

Methodology

The researcher has used doctrinal method of research and has used both primary sources and secondary sources for the research.

Observations

On the basis of research work, it can be observed that the stream of jurisprudence is closely connected to the streams of philosophy and law, and has a high utility and contributed immensely to Indian Judicial Decisions.

Conclusion

Jurisprudence can be defined as is the study of law. It is a type of science that explores the creation, application, and enforcement of laws. Jurisprudence is the study of theories and philosophies regarding law. It has different definitions in civil law(codified laws) and common law(judge made laws) countries. Evolution of jurisprudence can be traced back to philosophical speculation of the Greeks and the legal and administrative practice of the Romans and when their theory of natural law– that law is based on divine revelation did not seem to accord with the contemporary reality of life chaos developed which lead to a new theory about justice and the law. Philosophers had recognized that in order for stability and order to return there must be a new definition of law. This theory eventually become known as positive law. Jurisprudence has a great utility in different dimensions of life whereby on one hand it makes the person sufficient to use his mind to solve legal problems easily, it also acts as the grammar of law. Jurisprudence has also greatly contributed to the Indian judicial pronouncements whereby the preference of judges to different law schools can be noticed.

To summarize the topic it can be said that since, law is the body of official rules and regulations, generally found in constitutions, legislation, judicial opinions, and the like, that is used to govern a society and to control the behavior of the members of a society ; philosophy examines the relationships between humanity and nature and between the individual and society and jurisprudence is the study of law. Hence, it can very well be said that "Jurisprudence is philosophy about study of law".

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