

# Schools of Jurisprudence: A Critical Study

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**ABSTRACT:** *Concepts under law are analyzed through jurisprudence. It also seeks to work out the basic concepts of laws. Not only does it analyze the laws that are already documented, but it also evaluates new rules and builds the basis for them. It is the product of the thought of jurists and philosophers. The right to view, evaluate and conclude about the legal system is open to them. In terms of how these questions can be best answered, general jurisprudence can be divided into categories i.e. by the form of inquiry scholars attempt to address and by the hypothesis of jurisprudence or schools of thought, both. Philosophical, analytical, historical, comparative, sociological are the numerous schools of jurisprudence that do not reflect different directions of response to a common aim, but rather different objectives. This paper is an aim towards studying these schools of jurisprudence in depth and to understand the ideologies given by different jurists explaining their own reasoning for the same.*

**KEYWORDS:** *Jurisprudence, Philosophical School, Historical School, Realist School, Sociological School, Analytical School.*

## INTRODUCTION

Since people around the world have various philosophies and notions, there is no standardized or common interpretation of jurisprudence. It is a quite broad domain. When a jurist talks about the political scenarios of his community, it reflects the subsisting rule of law in that specific community at the said time. It is assumed that the Romans were the earliest to begin learning what law means. Jurisprudence combines policy with other areas, such as psychology, politics, economics, etc. Its range is often evolving. It is not extracted from any legislature or Acts passed by state assembly.

It is essential to ascertain the derivation of jurisprudence in order to grasp the context and the concept of jurisprudence. Jurisprudence is the English expression of the Latin expression 'jurisprudentia'. The comprehension of the word implies the study of the law, information or ability. The founder of jurisprudence is Bentham. Austin took his teachings further through his work.

The concept of jurisprudence has existed in many ways within the span of history. In conjunction with the comprehension of the right and unjust, Romans preferred to call it the observation of all things human. It is described by Salmond as the science of the very first civil law principles.

It is sometimes referred to as the science of positive law or its theory. There is no correct concept of jurisprudence, all of which, in their own opinion, are accurate.

During the age of ancient Rome and antiquated India, the notion of law and justice started. And it has developed and expanded over several stages since these prehistoric periods to the present day in the 21st century.

In ancient Indian writings identified as the Dharmashastra texts, some of the first references of the conception of jurisprudence are located. There existed a great belief in the philosophy of dharma and morality in these days.

Then the ideas evolved deeper in ancient Rome. They had, as we perceive today, forms of common law. In addition, residents were still adhering with a framework of oral laws and customs and regulations.

The Roman Empire has contributed to the growth of numerous law schools. Law practice has become more sophisticated and scholarly.

## DISCUSSION

### 1. *Schools of Jurisprudence*

Jurisprudence is the philosophy and examination of legislation. It considers the law's cause and principle. The law has an unforeseeable concept. His interpretation varies from person to person. Everyone has an alternative interpretation of the rules. This piece of research reflects five schools of jurisprudence namely:

#### 1.1. *Philosophical School or Natural Law*

In common understanding, the natural school of law is recognized as the law out of nature, divine law, or the law of nature that is rampant and eternal. At varying points of history, different definitions have been given and while it is made by man, it is found in the essence of a person. It is motivated mainly by faith. The fundamental premise of this approach is that there is a higher morality-based law by which it is possible to check the feasibility of human law. There is an assumption that some moral laws exist that can never be contradicted without losing their moral or legal structure. It's not law if it isn't moral. This school of law establishes an integral partnership around law and morality.

The moral or ethical school is primarily concerned with the connection of law to certain principles that law is intended to attain. It seeks to research the reason for which a specific law has been implemented. Its historical or intellectual substance is not associated with it.

##### 1.1.1. *Hugo Grotius:*

In the Dutch Republic, Hugo Grotius (1583-1645) served as a philosopher and paved the way for natural law-based international laws. Grotius excluded natural law from the authority of moral thinkers. By arguing that natural laws remain sovereign in themselves as per their nature, with or without confidence in God, by their very existence, he rendered natural law as the concern of lawyers and philosophers<sup>1</sup>.

He argued that all existing social and rational creatures, Christians and non-Christians alike, were subject to the moral ethics within natural law. The idea of Just War was also advocated by Grotius as a war that under some conditions was necessary by natural, national and divine law. He established a set of regulations for the proper performance of war, based on the idea that the right should be served by acts in a war.

##### 1.1.2. *Hobbes*

The social contractual assumption of legal positivism was discovered by Thomas Hobbes. He believed that almost all men should accept that what they were looking for (bliss) was subject to disagreement, but that a substantive agreement could be compatible with what they feared like loss of freedom and individual property. Natural law is all about defining how a rational individual will behave, looking to endure and thrive.

It could be discovered by considering the natural rights of humankind, by thinking about natural law, previous understandings had already regulated natural rights. As Hobbes had really preferred to believe, all men sticking to the orders of a ruler was the main way that natural law can be secured. The sovereign who was responsible for establishing and enforcing rules to supervise the actions of his people, has now become a definitive source of rule.

##### 1.1.3. *John Locke*

The opinion of Locke on the existence of nature was entirely distinct unlike Hobbes. In a unique sense, he interpreted natural law. Locke was in favour of individualism and, thus, natural law implied granting citizens more authority than the king. For people, Locke's state of nature was regarded a golden age, but as

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<sup>1</sup> Ibid.

society developed and people began to develop the idea of land, people became insecure regarding their assets.

It was for the reason of asset security that a man engaged into a social agreement. He did not forfeit all his rights under this deal, but only a portion of them. In order to preserve order and to implement the rule of nature, all these privileges were sacrificed. Natural rights were obligated to be maintained by man, such as the right to liberty, land, and life.

Locke supported human rights and advocated that the sovereign's authority should not be unrestricted. According to Locke, if he does not secure the interests of the people, people have the right to demonstrate against the sovereign. People also carry the right to undermine the current government. According to him, the fundamental natural rights are the individual's right to liberty, property, and life, and the sovereign must realise these rights and take a decision, taking into account the rights listed above.

#### 1.1.4. *Jean Rousseau*

Rousseau reached out that, as envisaged by Hobbes and Locke, 'social contract' is not a historical reality, but it is merely a conceptual formulation. Life was peaceful prior to the so-called 'social contract'. There was fairness among men. People united to maintain their independence and equality rights and gave up their rights not to a single person, i.e. sovereign, but to the society as a whole, which Rousseau called 'general will,' for this reason.

It is indeed the responsibility of every person to obey the 'common will,' for he directly obeys his own will in doing so. It is for the security of freedom and equality that the life of the State is. Both the State and the laws enacted by it are liable to 'general will' and they will be overturned if the government and laws did not adhere to 'general will'. Rousseau favoured the autonomy of individuals. His philosophy of 'Natural Law' is limited to the individual's rights and equality. For him, the interchangeable terms are state, statute, sovereignty, general will, etc.

#### 1.1.5. *Immanuel Kant*

In the 18th century, Kant and Fichte further advocated the theory and ideology of social contract in law of nature. They illustrated that 'reason' was the foundation of social contract, and it was not based on fact of history. Kant distinguished between natural rights and acquired rights and accepted only the former as they were important for human freedom. He supported the separation of powers and stressed on that it should be the duty of the state to preserve the law. In his classic work entitled Criticism of Pure Rationality, he advocated his popular Categorical Imperative theory.

The Categorical Imperative theory belonging to Kant was extracted out of General Will theory given by Rousseau. Two values embody it:

- The Categorical Imperative requires a man to behave in the manner that his own morality is driven by commands. It is, therefore, nothing but a human right for self-determination.
- Kant's second concept was the 'autonomy of the will' doctrine, which implies a behavior arising from reason, but it does imply the right to do as one pleases.

In effect, Kant held that "a conduct is correct only if it parallel in accordance with the universal law with the free will of each and every man." He referred to this as "the Innate Right principle." According to him, the sole role of the state is to ensure conformity with legislation.

The law is not seen by these jurists as the arbitrary order of a monarch or the development of historical necessity. The law is the result of human purpose for them, and its goal is to uplift and ennoble human personality.

### 1.2. Historical School

The Historical School of Jurisprudence speaks about the connection between law and society. The rules and practices of society jointly constitute the state's rule. A community has unique needs and desires that are directly linked to the society's behavioral structure<sup>2</sup>.

The rule is the product of the forces and effect of the past, as shown by this theory. The legislation relies on individuals' general knowledge. From the earliest starting point of the general public, the understanding began because there existed nobody in capacity of sovereign to draft the law.

The Historical School's first jurist was Montesquieu. He said in his famous novel, 'Spirit of Law,' that law must keep track with the evolving community. Savigny, is coined as the second Historical School jurist. We need to consider what occurred in Germany during 1800 before understanding Savigny. During that time, Germany was divided into 41 kingdoms and different laws were introduced into each territory and then many things modified, including trade, market, etc.

That time was the period of the French revolution, and the sentiment of patriotism and nationalism towards the nation was created by the people. The rule of Germany was contemplated by Anton Thebo. He decided to create a special law in Germany that would only be valid in Germany. He started producing pamphlets and attempted to provide a single code for the German nation, giving him the idea of making courts.

This hypothesis was criticized and slammed by Savigny. The Roman law expert was also named Savigny. The VOLKGEIST theory was his theory. The concept of the Common Will of the General People was propagated by this philosophy, and that the legislation is the direct product of society and its citizens and their actions. He pointed out that the law has a national significance.

For example, Indians have a distinct national identity and assert a need for a community that cannot be forced on any other country or entity. A nation's law would be developed according to the requirements of the people and the law has a direct connection with a society's culture.

The third Historical School jurist was Henry Maine. Back in his head, he had legal fiction. He said that the laws for their respective society are made in advance by every progressive society and to do so is a sign of a progressive society. He provided Contract Theory with the Status.

The rights and obligations of the people were established in each traditional society according to their class. The poorer and upper caste individuals once had their own distinct rights and duties. The separation of rights and responsibilities was in compliance with the individual's status. The philosophy of the contract deals with law-making in a transformative way, such that free societal contracts can take place.

The Historical School's fourth jurist happened to be Puchta. Neither community nor the state can frame rules, according to his thoughts. He assumes that there are a lot of individuals in a group and they even hold their own consciousness. A general will is created by the state and society in front of them, so if there is a conflict between the common will and self-interest, people have no clue about what they should do. According to him, if the people's general will and desires overlap, then only the state will interfere and control the rule.

### 1.3. Realist School

Decisions of the law are influenced by a lot of individual's feelings. This school is recognized as the Realist School because, when considering at this school, the rule is deemed a fact. This school emphasizes on the decisions of the judges of the jurisdiction including their mentality. This school is focused on the point of view of lawyers and judges and the execution of their reasoning process. This school is an understanding in justice for various individuals and acknowledges the opinion of all sides in a case as to their view on justice is.

<sup>2</sup> Schools Of Jurisprudence (law.uok.edu.in).

The Realist School emerged in the 1880s in America and Scandinavia in Europe. During 1890, there were a multitude of judgments in America and the decisions and the cases and the viewpoints behind the decisions were brought to light.

John Gray and Oliver Wendell Holmes were the founders of American Realism. Jeremy Frank and Levellyn were the other jurists from this school.

The Liberal philosophy was the subject of John Gray and Oliver Wendell Holmes and can be demonstrated by the example of Justice D.Y Chandrachud, an Indian Judge. The seminal judgments on the Right to Privacy, Adultery and the famous Section 377 or NAAZ foundation case were given by Justice Chandrachud. According to them, many factors affect any decisions and it is the obligation of a wise and rational decision of a liberal mind-set to deliver t judgments in order to instill the principle of liberalism in our culture and remain impartial to any kind of Communalism or Biasedness.

Oliver Wendell Holmes' concern was: Why do people accept and follow the law? In order to distinguish between right and wrong, they recognize the statute. He coined the 'Poor Men' phrase. According to him, the Bad Men worry about what the magistrates feel and what will be determined in the courts. The other things do not matter to them, nor to the judgment of the courts. According to him, the law is not just reasoning and evidence, but the experiences gathered to infer a problem statement and offer a wise decision. It also requires the judges' trust and the implementation of their mentality.

Jeremy Frank states in his book 'Law and the Modern Mind,' that legal precision is a fallacy and there is no assurance about what the result of any wrong done will be, since it includes several variables and restrictions left out for various interpretations. He ponders what judges and attorneys are doing and are going to do. They apply legal evidence and arrive at the decision. What, though, if the facts are incorrect and so is the decision, there is simply no certainty that judges can grasp the evidence word for word and each time there will be a perfect decision. It is indeed the responsibility of lawyers and judges to obey the sense of the law, and the law is a positive job in the possession of lawyers and judges, and they must do it separately and without pressure.

Liberalization was at a height during the 1990s when many laws were modified and the legislation was a medium to a social benefit. The law can be formulated according to the necessity for social improvements. They should operate in parallel, and one feasible approach should be available. Not only in law, but in the comprehension of philosophy and viewpoints, realistic school facilitates.

#### *1.4.Sociological School*

The phrase Sociology was first used by Auguste Comte and he is believed to be the father of the science of sociology by some jurists. Scientific positivism can be called Comte's method. He proposes that the scientific process be extended to the science of sociology. Society is like an organism and when it is driven by scientific principles, it will advance<sup>3</sup>.

A scientific demonstration of the organic theory of society was given by Herbert Spencer.

To sociology, he related this evolutionary pattern in culture. The inter-dependence of species in its sociological aspect implies the reciprocal relationship of all members of civilized society and the diffusion of a sense of obligation much broader than can be found within the Sovereign and Subject formula. The organic theory has been very beautifully outlined by Prof. Allen. It called attention to the need to consider the rule with respect to other social phenomena.

Duguit was influenced by Durkhiem, who had taken inspiration from Comte himself. The key point of Durkhiem, on which Duguit was focused, was that he differentiated between two kinds of human needs in society.

<sup>3</sup> Mohd Aqib Aslam, *Nature And Schools Of Jurisprudence An Overview*

Firstly, there are common person's needs that are addressed through mutual assistance.

Secondly, there are different people's needs that are fulfilled by the interchange of services.

Therefore, the most critical fact of social harmony is the division of labour. He defined it as social solidarity. Social solidarity grows with the creation of free individual practices.

This social solidarity is a reality, and for social life it is important. Lhering: Rudolf Von Lhering was the first great sociological jurist. His studies can be viewed as the starting point for the study of the sociological approach to law. He was a utilitarian social activist. According to him, in order to achieve peace and order, the creation of law like its roots is neither accidental nor peaceful, it is the product of constant struggle or conflict.

#### *1.4.1. Eugen Ehrlich:*

The key argument in Ehrlich's study is that, in social facts and not in formal sources of law, the law of a group is to be found. He says that the centre of gravity of legal growth, at present and at any time, lies not in law, nor in jurisprudence, nor in judicial judgments, but in society itself<sup>4</sup>.

#### *1.4.2. Roscoe Pound:*

In the field of sociological jurisprudence, Roscoe Pound is considered to be the American leader. He's from Harvard Law School, and he has a massive academic advantage. On sociological jurisprudence, he is the most structured researcher. Pound focuses primarily on the practical aspect of the law, which is why some scholars refer to his approach as a practical school.

The key thesis of Pound is that social engineering is the job of the law.

He says, I am satisfied with an image of fulfilling as much of the entire body of human desires as we can with the least sacrificing for the sake of knowing the rule of today. I am satisfied to think of law as a social institution to accomplish social desires, the claims and demands involved in the life of civilized society by giving effect to as much as we can with the least sacrifice, to the degree that such desires can be fulfilled or such claims can be effected by ordering human actions through politically organized society.

I am content to see in legal history, for the present purpose, the record of an ever more full and efficient disposal of waste and avoidance of friction in the human enjoyment of the goods of life. In short, the different interests to be covered by statute are grouped under three heads by an ever more successful social engineering: private interests, public interests, and social interests. The following are the private interests to be covered by legislation:

##### *1.4.2.1. Personality interests of the individual:*

These include his physical integrity, credibility, freedom of volition, and freedom of conscience. They are covered by the Criminal Law, the Law of Tort, Law of Contract and by restraint of the government's ability to intervene in the matter of belief and opinion.

##### *1.4.2.2. The involvement of individuals in domestic relationships:*

These include marriage, husband and wife relationships, parents and kids, and maintenance claims.

##### *1.4.2.3. Substantive interests:*

These include property rights, inheritance and testamentary succession, and freedom of work.

<sup>4</sup> *Ibid.*

### 1.5. Analytical School

While made evident by Thomas Hobbes, the Analytical School is primarily recognised with Jeremy Bentham and John Austin. It was built systematically by Hans Kelsen John Chipman, Grey Oliver Wendell, Houses etc. in U.S.A. The philosophy of this school was against the theories introduced under natural law school<sup>5</sup>.

#### 1.5.1. Jeremy Bentham

As regards the concept of law, it observed that a law may be interpreted as an assortment of signs, a declaration of volition, conceived or adopted by the sovereign in a State, relating to the conduct which, in a particular case, must be observed by an individual or class of persons who, in the case at issue, are supported by his authority. He contrasted sharply between the prevailing law as it is and the law that actually should exist. To measure every rule as other measurable stuff, he set up the principles of utility, the hedonistic equation of enjoyment and pain<sup>6</sup>.

#### 1.5.2. John Austin

John Austin served on the chief support of Bentham's way of positivism for his English School of jurisprudence. "The province of jurisprudence determined" is his key work. Austin described law as a regulation laid down by an intelligent being having the authority over another an intelligent being in order to issue guidance to him. The definition of law, i.e. law properly so established, which is distinct from morals and other laws that are defined as laws improperly as such, is decided and characterized. His concept of law is positive law which he separates from positive ethics or other sorts of law the latter lacking power, approval and intimidation of the state. Instead on other hand, about positive law he defines as the collection of regulations set by men as political dominant upon men who are political inferior. Austin stated that a law is a code of ethics instituted by the sovereign and also implemented by it.

#### 1.5.3. H.L.A Hart

Hart explains the philosophy of law in Austin as a trilogy of order, punishment and sovereignty. His theory was criticised for creating a gunman scenario with his command theory: law is obeyed out of intent, idleness, fear and reason as well. There has been no definition of the word sovereign. The law and morals cannot be fully segregated: the minimal substance of natural law must remain in the implemented law. He is the creator of the theoretical school as far as involvement goes. He was the founder of the modern positivist philosophy to rule. His principle of command just cannot be overlooked.

## CONCLUSION

The Schools of Jurisprudence gives us the sense of how social structure, law, and the need for law arose and how the law was progressively changed as per the demands of society and individuals. These Schools of Jurisprudence also help us to recognize our meaning of life, since we participate in our own forms to community and for centuries we all kept maintaining that. The contributing variables for the development of a stable and functioning community include the consent of individuals to the legislation they are adopting. The rule of law follows only when the mindset of human nature and culture is deciphered.

One element that the idea of natural law has modified from time-to-time is shown by an exclusive analysis of the philosophies of natural law. Whether it is absolute or being individual, it has been used to spread almost any philosophy. It has also sparked numerous revolutions, and the establishment of positive law has also been profoundly impacted by natural law. If it fails to satisfy the purposes of it, natural law philosophies based on fulfilling the intentions of the law, a law review will be insufficient. Consequently, it may be assumed that the ideals of natural law are reflected in nearly every country's legal framework.

<sup>5</sup> Shubhi\_3014, *Schools of Jurisprudence*, November 27, 2016

<sup>6</sup> *Ibid.*

The nature of the Volksgeist theory of Savigny was that the legal structure of a country is profoundly influenced by the person's historical culture and customs, and their popular approval is to be found in the production of law.

The constitution furnishes various basic rights within India, such as the right to life, the right to equality, etc. All such rights are also founded on the philosophy of natural law, not just that the concept of natural justice is also grounded on the norms of natural law. It may eventually be claimed that the school of natural law has made a major improvement to the world's legal jurisprudence, even in India.

One of the most important laws of our era is Sociological School of Jurisprudence. Furthermore, one of the most main determining traits of today's culture is symbolized by the statute. The fact that labour law is nobler than its conceptual substance also puts vital focus on it. In simple terms, this school's jurists firmly support the idea that it is best to research the law in motion. Therefore, it is undoubtedly easier to understand it than to review the law in books.

