



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

Course : LL.B. 1st Semester

SUBJECT: Jurisprudence

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LECTURE: 2

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Lecture-2



Meaning and definition of Jurisprudence

Lecture 2: Meaning and definition of Jurisprudence

Definition of Jurisprudence

It is very difficult to define term 'jurisprudence', However, several attempts were made in this context to define the term. Some of the definitions of the term "jurisprudence" given by various eminent jurists as under -

I) Austin :

Austin was the first jurist to make jurisprudence as a science. He defines 'jurisprudence' as "the philosophy of positive law." He opines that the appropriate subject to jurisprudence is a positive law i.e. law as it is (existing law). In other words, jurisprudence is not a moral philosophy but it is a scientific and systematic study of the existing, actual and positive law has distinguished from natural, ideal or moral law.

Austin divides jurisprudence into two classes. Viz 'general Jurisprudence and Particular Jurisprudence. According to him 'General Jurisprudence is the philosophy of positive law. On the other hand 'particular jurisprudence is the science of any such system of positive law as now actually obtains or once actually obtained in a specifically determined nation or specifically determined nations.

Criticism:

Austin's definition criticised by Salmond and Holland and other Jurists on the ground that it is not proper and appropriate to classify as the general Jurisprudence and Particular Jurisprudence.

II) Holland:

An English Jurist Sir Thomas Erskine Holland defines, Jurisprudence as, " Jurisprudence is the formal science of positive law" According to him jurisprudence should only concern itself with the basic principles of concepts underlying in any natural system of law.

Criticism:

Many eminent jurists have criticised the definition of Holland that jurisprudence is the formal science of positive law. It 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 the rules of law rather than the material rules themselves, for the latter are the subject of legal exposition, criticism or compilation rather than jurisprudence.

III) Salmond:

Salmond defines Jurisprudence as, " Jurisprudence is the science of the first principle of the civil law."

According to Salmond Jurisprudence can be defined in two senses (1) in the 'Generic Sense' jurisprudence can be defined as Science of Civil Law' and (2) in the 'Specific sense' Jurisprudence can be defined as the science of the first principle of civil law.

The Civil law consists of rules applied by Courts in the administration of Justice. Salmond agrees with both Austin and Holland only to the extent that jurisprudence is 'a science, a systematic study of basic principles of legal systems.

Criticism :

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.

IV) Keeton:

Keeton Defines jurisprudence as " the study and systematic arrangement of the general principles of law.

V) Roscoe Pound:

Dean Roscoe Pound defines jurisprudence as " the science of law, using the term law in the juridical sense, as denoting the body of principles recognised or enforced by public and regular tribunals in the administration of justice".

VI) Dr K. C. Allen:

Jurisprudence is the scientific synthesis of all the essential principles of law.

VII) G.W. Paton:

Jurisprudence is a particular method of study, not the law of one country, but of the general notion of law itself.

VIII) Julius Stone:

"Jurisprudence is the lawyer's extraversion. It is the lawyer's examination of the precepts, ideals and techniques of the law in the light derived from present knowledge in disciplines other than the law.

IX) Gray :

According to John Chipman Gray " jurisprudence is the science of law, the statement and systematic arrangement of the rules followed by the Court and the principles involved in those rules."

Criticism:

Stone has Criticised Gray's Definition and said that Gray has failed to determine any province of jurisprudence rather he has reduced jurisprudence to merely a matter of arrangement of rules.

X) Ulpian:

Ulpian a Roman Jurist defines jurisprudence as " Jurisprudence is the knowledge of things divine and human, the science of just and unjust."

XI) Dr M.J. Sethna:

Jurisprudence is a study of fundamental legal principles including their philosophical, Historical and sociological bases and analysis of legal concepts.

XII) H.L.A Hart:

A legal system consists of primary and secondary rules. These rules explain the nature of law and provides key to the science of jurisprudence. He viewed Jurisprudence as a science of law in a border perspective by co-relating law and morality.

From the above definitions of Jurisprudence, it could be seen that there is no commonly agreed definition of Jurisprudence. Each Jurist guided by his own consciences but since the conception of the term law till the beginning of the 20th century, a new approach to the study of law in relation to society is given. Some jurist, therefore, treats law as "social engineering" an instrument to bring social change. Thus the function of law is the supplement to social sciences.

SELF-TEST QUESTIONS

S.N O	Question	Option (a)	Option (b)	Option (c)	Option (d)
1	Who said that Laws are commands	Prof. HLA Hart	John Austin	Roscoe Pound	John William Salmond
2	Word 'Juris ' means	Law	Knowled ge	command	order
3	Word 'Prudentia 'means	Law	Knowled ge	command	order
4	Who said that 'jurisprudence' as the lawyer's extraversion	Prof. HLA Hart	John Austin	Roscoe Pound	Prof. Julius Stone
5	Who said that jurisprudence means the science of law	Salmond	Prof. HLA Hart	John Austin	Roscoe Pound

Answers: 1-(b), 2-(a),3-(b), 4-(d), 5-(a)