



# RAMA UNIVERSITY

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## **FACULTY OF JURIDICAL SCIENCES**

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**LECTURE: 3**

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# Lecture-11



## Lecture –11:- Historical School of Jurisprudence

### **Historical School of Jurisprudence**

With the changing needs and nature of persons, the law should be changed. The historical school follows the concept of man-made laws. ‘Law is formulated for the people and by the people’ means that the law should be according to the changing needs of the people. And everyone understand their own need better than anyone else. The basic source of the Historical School of Jurisprudence is the habits and custom of people which changes according to their needs and requirement. It is also called the continental school of Jurisprudence.

This school rejects the ideas of formation of law by judges and the origin from some divine relevance. In the words of Salmond, “That branch of legal philosophy which is termed historical jurisprudence is the general portion of legal history. It bears the same relation of to legal history at large as analytical jurisprudence bears the systematic exposition of the legal system. It deals, in the first place, with the general principles governing the origin and development of law, and with the influences that affect the law. It deals, in the second place, with the origin and development of those legal conceptions and principles which are so essential in their nature as to deserve a place in the philosophy of law- the same conceptions and principles, that is to say, which are dealt with in another manner and from another point of view by analytical jurisprudence. Historical jurisprudence is the history of the first principles and conceptions of the legal system.”

### **Reasons for the Origin of Historical School of Jurisprudence**

The Historical School believe that law is made from people according to their changing needs. Habits and customs are the main sources of the Historical School of Jurisprudence. According to Dias, Historical school arose as a reaction against the natural law theories.

The reasons for the emergence of this school are:

- It came as a reaction to the natural school of law.
- Natural school of law believes that the law is originated from some divine power.
- Natural law is also called the Eternal law. It exists since the beginning of the world.

- It is closely associated with the morality and intention of God. Indian constitution has some relevance of the natural law in its articles.
- Historical school of Jurisprudence focuses on the formation of law by people not by some divine origin.
- It opposes the ideology of the analytical school of jurisprudence.
- Analytical school of jurisprudence is also called Austinian School. It is established by John Austin.
- The subject matter of Analytical school of Jurisprudence is positive law.
- It focuses on the origin of law the judges, state and legislators.
- Historical School laid emphasis on the formation of law by people through customs and habits, not by the judges and superior authority.

Holds worth attributed the origin of the historical school of jurisprudence to two primary factors:

1. The French Revolution and the subsequent upheavals, and
2. Darwin's theory of evolution.

The S.C of India, in **Byram Pestonji Gariwala v. Union of India**, agreed with this viewpoint, quoting Justice Thommen: "The Indian legal system is a historical product. It is embedded in our land, nurtured and nourished by our culture, languages, and customs, cultivated and sharpened by our genius and pursuit of social justice, and reinforced by history and culture."

## **HISTORICAL SCHOOL: IMPORTANCE AND MEANING**

The Historical School of Jurisprudence is based on the idea that the law, like men, evolves. This school places a greater emphasis on the social institutions in which law arises rather than the relationship between law and the state. The analytical school, on the other hand, assumes the existence of a well-developed legal system. The historical school focuses on the evolution of law from ancient communities' basic legal structures. The historical school's mission is to study the general principles that govern the formation and development of law, as well as the influence that has as an impact on it.

Historical scholars denied all creative participation of judges and jurists or lawgivers in the formulation of law and banned ethical considerations from jurisprudence. They saw the law as standards of customary action rather than moral precepts. The historical school arose in response to the legal ideas of analytical positivists and natural law thinkers. They began a new era in the development of legal theory by seeing law as a legacy of the past and a product of conventions, traditions, and beliefs common in many communities. They felt that the law grew organically.