



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

Course : B.A LL.B/BB.A LL.B

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SUBJECT: Jurisprudence

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LECTURE: 3

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Lecture-13



Lecture –11:- Historical School Jurist

● SIR HENRY MAINE (1882-1888)

The English Historical School of Law was founded by him. Sir Henry Maine disseminated Savigny's thoughts and ideology in England in this way. Maine used Savigny's best concepts while avoiding the abstracts of false Romanticism. He, unlike Savigny, believed that law and legislation should be codified.

Major Works by Sir Henry Maine

- The first work of Maine 'Ancient Law' was published in 1861.
- He also wrote Village Communities (1871),
- Early History of Institutions (1875)
- Dissertations of Early Law and Custom (1883).

Maine studied the Indian legal system deeply as he was law member in the Council of the Governor-General of India b/w 1861 to 1869. Maine's ideas were incorporated by the best things in the theories of Savigny and Montesquieu and he avoided what was abstract and unreal Romanticism.

Maine's ideology described the evolution of law in 4 states:

▪ The Initial Stage

Rulers and kings functioned with divine inspiration, and their decisions were regarded as divine. However, the king was only an executor of God's judgments, not a lawmaker.

▪ The Second Phase

The directives of the kings were transformed into customary laws that were followed by the dominant class.

▪ The Third Stage

The customary practice falls into the hands of a small group of people who have little knowledge of it. As a result, the king is supplanted by a majority with legal authority.

- **Stage Four**

In the last stage, the law is codified and promulgated

Static and Progressive Society

Static societies

Societies which does not progress and develop their legal structure after the fourth stage of development of law are Static society. Static societies don't progress beyond the era of codes.

Progressive Society

Societies which go on progressing after the fourth stage of development of law are Progressive Societies. They develop their laws with the help of these instruments:

Legal Fiction

Legal Fiction changes the law according to the needs of the society without making any change in the letters of the law. Legal fiction harmonizes the legal order but made the law difficult to understand.

Equity

According to Maine, "Equity is a body of rules existing by the side of the original civil law & founded on distinct principles". Equity helps to remove rigidity and injustice.

Legislation

The legislation is the most effective and desirable method of legal change. Laws will be enacted and became operative officially.

Conclusion

Historical School of Jurisprudence describes the origin of law. This school argues that the law was found not made. The main source of law is Kings Judgment, Customs and habits. Jurists like Montesquieu, Savigny, Sir Henry Maine, and Georg Friedrich Puchta are the supporter of the Historical School of Jurisprudence. According to Sir Henry Maine, Montesquieu was the first jurist of Historical school. Sir Henry Maine was the jurist of English Historical School. He was more logical and accept the concept of Codification and legislation.

Savigny was the father of Historical school. He argued that Law is like language and have a national character. Law is not universal. While Puchta improved the ideas of Savigny and argued that both state and people are equally important and source of law.