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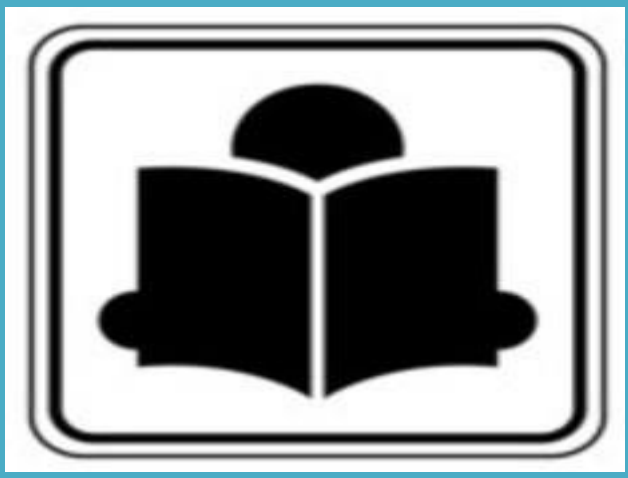
Lecture-3



Lecture – 3: Critical appraisal of various schools of jurisprudence

Introduction

Time and again, jurists have tried to give a clear-cut definition of what law is. They have examined this discipline from vastly different angles since jurists wanted to understand what constitutes law in different ways. However, they were unable to reconcile the difference in the approaches and were thus unable to arrive at a hard-and-fast test to determine what to categorize as 'law'. As a result, as of now, there is no universally accepted definition of the law.

Instead, we study the different definitions of law given by various jurists to arrive at a better understanding of this discipline. Jurists and scholars have been classified into broad heads that comprise the various schools of jurisprudence for our convenience. This helps us understand their diverse approaches better and aids us in understanding the evolution of legal philosophy.

There are five major schools of law- Analytical school, Historical school, Sociological school, Philosophical school and lastly, Realist school. Since the scholars have been put into these heads by other contemporary scholars, there may be some shortcomings. For instance, those who formulated a theory did not put the theory in a particular school themselves so, these departments are not watertight and may overlap.

Analytical school

The Analytical school of law emerged as a reaction against the Natural school of law. It focused on creating a system of law in line with scientific and empirical methods and is also called the 'imperative' or 'positive' school of jurisprudence. It places emphasis on the will of the sovereign or that of the State, which further dictates what the law is. This will is enforced on the people through a system of punishments.

Major scholars of this school are-

John Austin

Austin defined law as the command of the sovereign backed up by sanctions. He claimed that law was an expression of the sovereign's power and it was backed up by coercive methods, especially the threat of sanctions, to keep the political inferiors under its control.

He delinked law from morality, saying that instead of law being based on ideals of morality, it derives its authority from the power of the political superior. He also claimed that law-making by the judiciary is unavoidable and is in the people's interest.

Merits

- The theory given by Austin was definite and had no inconsistencies.
- It separated law from morality, looking at it simply as a coercive tool. Thus, it had the clarity of expression that was absent in many other theories.
- It was a starting pedestal for many other important theories of jurisprudence, as others developed in opposition to it.
- It treated doctrines independently from the specific discussions that were used, which increased their inherent importance. However, some might be of the view that this is a demerit.

Demerits

- The view that it is the threat of sanctions alone that makes people obey laws is not true. Force is just the last resort, however, people often follow laws because of social norms, morality, belief in its object etc.
- International law was not considered law by Austin as it did not have the backing of sanctions. This was not acceptable to many, especially in the modern society where International law plays a major role.
- Customs and social norms had no role to play here, neither did social morality. Only the will of the sovereign prevailed.

- In Austin's theory, the political superior- the sovereign was exempted from following the law. However, in the modern system of the law, laws also apply to those who make them. Thus, the lines between political superior and inferior have become blurred. Austin's watertight categories are not of much use here.
- A large part of the law consists of laws that neither command nor forbid people from doing certain things, eg- making a will, right to vote, etc. This falls out of the scope of Austin's definition.

Jeremy Bentham

According to Bentham, the law is the will of the sovereign. It lays down the conduct that should be observed by a person or a class of persons who are subjected to its power. The law does not have any relation to morals and ethics. Here the sovereign is superior and does not owe obedience to any other. However, it can limit its power through external agencies (like international treaties). Thus, its power is not absolute.

He also made a reference to sanctions and the need for the sovereign to impose them. However, unlike Austin, he also talked about the positive sanctions which reward those who obey the law, along with Austin's punishments to those who don't.

Bentham also gave a 'Principle of Utility, which gave a yardstick for measuring each law. It said that a law was good if it maximized the good for the maximum number of people. This takes only the consequences of the act into consideration, not its intent. This concept led to the foundation of the theory of utilitarianism.

Merits

- It placed limits on the power of the sovereign, which made it more pragmatic and closer to reality.
- He took into account the concept of positive sanctions i.e. rewards, which adds a benevolent touch to the concept of the all-powerful sovereign.
- The concept of utilitarianism, if viewed in terms of a majority opinion being in favour and a proposal being for the good of a majority of people without harming others, is close to the concept of modern-day democracy.
- The 'Principle of Utility' encouraged activities that were beneficial to most of the community.

Demerits

- Like Austin, he did not define the legal system. There was no attempt to relate the concept of sovereignty with the legal system of his contemporary period. Thus, the concept remains mostly on paper.
- His theory of utility tends to legitimize majoritarianism since the views of the majority would always prevail over the rights of minorities. This goes against the modern system of democracy, which protects the rights of all.
- In the democratic system, the lawmakers owe obedience to the will of the people and the people are subject to the laws made by the lawmaker. So, his rigid definition of the sovereign does not apply here.
- It did not take into account the intention of an action, whether it was done with good intent or with malice but took into account only its consequences.

Historical school

This school talks about law being a culmination of years of Historical development and places emphasis on both the commands and customs as being a source of law. Two main proponents of this school are-

Friedrich Carl von Savigny

He was a German philosopher, who is also called the 'founder of modern jurisprudence'. He developed this theory to combat increasing acceptance of the ideas of the French Revolution. His theory laid emphasis on "popular consciousness" (*Volksgeist*, as he called it). He believed that this popular consciousness was the most authentic expression of the will of the people and it evolved with society. The legislation, according to this theory, was valuable only if it respected social norms and customs.

Merits

- It was only after this work, that the tenants of the Historical school were fully understood. This paved the way for a fresh approach to the legal system.
- It recognized an important tenet of the law, that the source of law is in the popular will of the people, even if it may have been exaggerated.
- It gives importance to the will of the people and their views, instead of letting all the authority and power be usurped by a single individual or a group of individuals. This is in line with the modern-day concept of representative democracy.

- It recognizes the fact that for the administration and enforcement of a particular law, it should have the endorsement of the people. These laws should not be translated to customs if they do not suit the needs of the given society.
- This view acknowledged the importance of change and accepted that as society grows, customs and traditions need to change too.

Sir Henry Maine

Sir Henry Maine developed the 'Historical comparative' or 'anthropological method' to study the law, claiming that law developed through various stages:

1. Kingly rule- Commands given by the King
2. Customary law- Commands turn into customs
3. Administration of customs goes to a minority group- Like priests
4. Codification- Law gets codified

According to him, static societies stop at this stage, but progressive societies go beyond-

- Fiction- The operation of the law changes, while its letter remains the same.
- Equity- Ethics start playing a role and start governing the law.
- Legislation- It is obligatory (based on obligations) and derives its authority from a body of persons.

After this, in progressive societies, individuals' standing which was determined by status, i.e. caste, gender, etc. now stops playing a role. The free will of all comes in. An individual becomes more important, as evidenced by their ability to contract out of their own free will.

Merits

- This theory showed a clear and definite correlation between law and culture, placing a lot of importance on the evolution of society as a whole instead of simply focusing on law as an isolated subject.
- It plugged in a criticism of Savigny's theory, that customs are not always reflected in the popular consciousness and will of the people.
- It balances the role of the sovereign as well as popular consciousness in his theory.
- This theory inspired the principles of Historical evolution and was a valuable asset to many other researchers and scholars.
- It emphasized that society evolves slowly at its own pace, but that progress is inevitable.

- It claimed that progressive societies treat all the people equally, at least in the law. By characterizing progressive societies as more evolved, it showed equality as a desirable goal. It showed status and differentiation by the law on the basis of the same as something undesirable and marked it as a characteristic of a less evolved society.

Demerits

- His theory of the evolution of society and the stages involved has been criticized for oversimplifications.
- Maine's theory does not hold good in some totalitarian states, where even if there was a movement towards freedom and liberty for all, there was a backward movement towards the growing importance of status. It failed to take into account this negative direction.
- He claims that law and religion were one and same in ancient society. This has drawn criticism for a sweeping generalization as well as over-exaggeration.
- This theory has also been criticized for idealizing Europe, calling it a progressive state. He says it is beyond statutes and laws simply because it has a desire to improve and develop. Dissenters claim that 19th century Europe was deeply conservative, patriarchal and racist, in various stages of colonizing the world and was directly involved in the two world wars thereafter. It is not worth idealizing and this theory represents a colonial view.
- Maine talks about how ancient society was one where the State commanded absolute control over all its people, as parallel to how the patriarch of the family had absolute, despotic control over all its other members. The empirical evidence here has been questioned, with many claiming that the ancient society was matriarchal instead of patriarchal.

Sociological school

This school views laws primarily in terms of their relationship with society and having no independent existence of its own. It places emphasis on studying the law 'in action' instead of in isolation. The main proponents of this school are-

Roscoe Pound

Pound viewed the law as a method of 'social engineering, where the law is used to balance out competing interests. These interests were categorized into individual interest, public interest and social interest. He also laid down five jural postulates, allowing more to be added as and when the need arises. These were:

1. Criminal law- No one should commit intentional aggression upon another.
2. Patent law- A person who has created something has the right to own it.
3. Law of contract- Men shall act in good faith in all transactions.
4. Law of Tort- Men must not act in a way that could cause unjustified risk of harm to another.
5. Strict liability- All harmful things must be kept within their boundaries.

Merits

- The biggest contribution of Pound was perhaps that he drew an important link between society, laws and administration of the laws. He emphasized more fieldwork for a better understanding of the functioning of laws in society.
- He brought to notice and discussed the various competing interests in society and the need to balance all of them.
- This theory took a balanced position, avoiding over-emphasis on any one aspect. It recognized customs as important but also talked about social engineering and how customs can be modified or evolve over time.
- It pointed out the tremendous responsibility of lawmakers like legislators, judges and jurists to make a law suitable for society and highlighted its constructive character.

Demerits

- The various interests given by Pound aren't exhaustive and need to be updated regularly, as society grows more and more complex.
- There isn't a proper criterion given to classify which interest falls under which head and in various cases, the lines may be blurred. Often, it's up to an individual's own perception, whether something is in the interests of individuals, or if it is in social interest. For instance, providing housing to the poor may be looked upon as a social interest by the poor, but as an individual interest (benefiting individual poor people) by onlookers.
- Some critics claim that Pound's assertion of individual interests being the most important makes this theory vulnerable to being politically biased towards libertarian thought.
- Pound's theory has been called fit only for an "idealistic society" since it assumes various conflicting interests can be balanced in a perfect middle ground.
- The word "engineering" has been criticized for being too "mechanical" and suggesting society can be used experimentally.

Leon Duguit

This theory viewed the law as a 'social fact' that is present because people live in a society. The people living in a society are interdependent on each other and often have common needs. The social function of the law was to maintain social solidarity, which Leon regarded as a basic fact of human society.

The theory claims that an individual's rights by themselves do not hold any merit and the only right they do have is to perform their duty. In other words, he accords a low status to the rights of an individual, unless they are for the good of the entire society. No one should do anything to harm social solidarity.

A State is simply a group giving commands backed by force. Its actions are legitimate only if they encourage social solidarity and if not, the people should revolt against it. He judges all activities and institutions using the yardstick of the good they do to social cohesion and how much they help in maintaining social solidarity.

Merits

- He rejects the notion of an all-powerful State, claiming that it is simply an institution to codify what was already a fact of society.
- This theory became a starting point for various other theories and even played a part in formulating the theory of Natural law. It was used by Soviet jurists, who adapted it to their needs and by jurists like Renard and Hauriou for their "institutional theory". Thus, it was supported by Marxists as well as sociologists.
- He defines justice in a primarily social context, trying to rule out all confusions and inconsistencies that may arise.
- His approach and study of the law and society paved the way for the acceptance of a more methodological study of the disciplines.

Demerits

- Even though this theory pretends to reject Natural law, it uses the same idea as the Natural law of 'social solidarity is a natural fact of any society. Some say it merely repackages the same theory.
- This theory holds good mostly on paper, as it is usually not clear what the public opinion endorses and this opinion is often divided.
- It is not clear what criterion there is to and who would decide if a particular action/law would help social solidarity. Answers here tend to be subjective. For instance, one may feel that giving

safeguards to minorities to practice their religion may foster social solidarity. On the other hand, others may feel that trying to suppress these voices in favour of a 'unified' one may help social solidarity.

- 'Social solidarity' can mean different things for different people. It places minimizing conflicts on the highest pedestal and this might mean silencing minority voices.
- Indeed, this theory has been used by fascists to silence all dissent and ensure the rule of the powerful. Further, the denial of individual interests was used by communist regimes to deny individuals rights.
- Many claim that Leon confused what the law is and what it should be according to him since this theory said that if a law does not encourage social solidarity, it isn't a law.
- Further, he also confused the end and means to an end, by defining social solidarity as an end in itself.
- Some critics also claim that he completely divorced morality from law and tried to wipe out all differing opinions from the law. According to them, a law that does not provide options and take into account the will of the people is meaningless.

Philosophical school

According to this theory, the purpose by which a law is made is significant. Law is a means to ensure justice in the society. Morals and ethics have a major role to play in jurisprudence, especially since a sense of right and wrong is intrinsic to the law. This sense of morality helps people decide the course of action which would help maintain law and order in the society and is concerned with a better future.

Most scholars under this school are also of the view that restrictions on people's liberty are justified only if they promote the freedom of others in society. The ostensible purpose of the law here is that it has the function of protecting human liberty. The end game here is human perfection.

Some noteworthy supporters of this theory are:

Immanuel Kant

German philosopher Immanuel Kant, in his essay "Lectures on Ethics" drew a hard line between law and ethics. He viewed both of these as two distinct concepts. The purpose of ethics was to crystallize noble ideals and lay down the model conduct of humans, which relates to the internal aspect of human behaviour. On the

other hand, the law regulates the eternal aspect of human behaviour and tries to instil a sense of ethical behaviour among the people even if it involves the use of force.

He supported the social contract theory which claimed that the State was the result of a pact between men and society. Thus, the people living in the society had a duty to obey their political superior. A Republican Representative State, without heredity, based on birth and one that protects free speech can help achieve a "united will" of everyone in the society. This is to be reflected in the legislation formulated by the political superiors. It also entailed the view that one could speak out against the laws but were also forced to obey them. Hence, no rebellion is ever justified.

Merits

- By emphasizing the importance of a representative government that listens to its citizens, Kant gives a lot of value to the will of the people.
- He defends individual liberty and freedom of self-determination and accords to it, a high position in his theory.
- His views as a philosopher give a refreshing insight into the sphere of morality and what the law should aim to achieve.
- This theory strikes a fine balance between providing powers to the State and then placing limits on it to ensure that it is for the good of the society.

Demerits

- The most prominent critique of this theory is that Kant is confused about what the law is and what it ought to be.
- He completely denied the right to rebel even against unjust and tyrannical governments. This attracted a lot of flak.
- His support for the social contract theory and denying the right to rebel to the people since they formed the institution of a political superior, has drawn the same criticism as the social contract theory. This critique throws light on how the people are denied the right to rebel based on a contract that their forefathers entered into.
- His theory does not work in fascist, totalitarian and communist States or any type of non-representative government. This is because the political superior does not take into account the views of the people and emphasis on individual liberty is little.

- It has also been criticized on the grounds that there is not always an ulterior future objective that society works on. Instead, the growth of society is rather spontaneous.
- His theory is subjective and many believe it is simply an expression of his own opinion.

Hegel

Drawing inspiration from Kant, Hegel too accorded a lot of importance to the value of liberty in his theory. He used the idea of 'evolution', saying that whenever a new idea is put forward, in time, opposition to it comes up too. A battle between the ideas takes place and as a result, a middle ground (that might lean on either side) develops. This middle ground is accorded a higher position. He also asserted that the idea of freedom and liberty has prevailed throughout history. Thus, it is pre-eminent.

He talks of a "collective moral will" which is objective and has universal applicability. His theory endorsed the view that morals and the law are both interlinked and law works towards an 'ideal' future of the legal system.

Merits

- It gave importance to the liberty of an individual and did not support the elimination of individual will in favour of the goals of the state.
- It gave great importance to "ideas" independently and their intrinsic value in social change.
- This theory gave importance to opposing views and the power of debate and discussion. It emphasised finding a common ground to resolve conflicts.
- The object accorded working towards an "ideal future" of the law rectifies a criticism of Kant who mentioned "ideal society". This is a more pragmatic and Realistic approach.

Demerits

- The theory assumes that in the battle of ideas, the ideas are looked at independently from the specific socio-cultural contexts they emerged in. It moves on to assume that views are not imposed by the powerful on others and each view is given a chance. This supports yet another assumption, only the product of the discussion is carried forward, not just the opinion of the powerful. However, as history has shown, this is rarely the case as the strong often impose ideas on the weak.
- He claims that certain objective morals that have universal applicability can be developed. However, this seems unlikely as there are great differences of opinion across a country, let alone the world. This is not a pragmatic approach.

- On one hand, his theory endorsed human liberty. On the other, he spoke of subjective individual morals being eliminated in favour of those of the state. This duality presents a great contraction.
- Like Kant, his theory was subjective and an expression of his personal opinions.
- He seems to have taken opposition to an opinion and differentiation from that view as one and the same thing, to promote his dialectical view. For instance, one may support giving reservations to the oppressed, others may feel that another system of affirmative action would be better to empower the oppressed. These views are not diametrically opposite and are not accommodated in his theory. This has led many to condemn his theory as extreme and critically dangerous.

Realist school

As part of the Sociological approach, the Realist school is among the most recent schools of law to have come up. It gives great importance to the law laid down by judges and concentrates on systematic observation of the process of law-making and working of the law. This school acknowledges that it is more concerned with what law should be, instead of what it actually is. It concentrates upon the social impact of laws, looking at the legal decisions made by jurists. It is divided into two subtypes: American Realism and Scandinavian realism.

Some prominent jurists from this school are-

Jerome Frank

Part of the American school of Realism, Jerome Frank believed that judges should evolve the existing law and not just stick to the letter of the law, rules and precedents. He claimed that law is not certain, that is just a common “legal myth”. We can only be sure of what a law is, after judges interpret it.

He talks of two different types of Realists- the ‘facts sceptics’ who hold the view that legal uncertainty is primarily in the letter of the law and look for consistency in the judiciary’s decisions to mitigate this problem. The other type is “rules sceptic”, who contend that legal uncertainty is because of the different facts of each case. The latter is more probable since usually, cases do not dispute the letter of the law and the contention is the facts of the cases.

Merits

- This theory does not ponder over what the law should be but instead focuses on what it is as it said that only the judges can make it certain. This gets rid of a lot of needless conjecture.
- It emphasizes studying the law within its context and not away from it.

- It promotes objectivity and consistency, saying that law is whatever judges decide it to be. There is little room for others to claim otherwise.
- It brought attention to the attempt to portray judicial decisions as impartial, unbiased and free from political influence to the reality that they often aren't. A judge's personal background and lived experiences may affect their decision making. For instance, a judge living in urban areas may hold stereotypes against those from villages. This will adversely affect the outcomes of cases. Or, judges from conservative families may hold stereotypes that women must listen to their fathers and husbands, which would work against the women in domestic violence cases.

Demerits

- The most prominent critique of this theory is that it promotes that the courts administer the law. In actuality, courts just uphold the law made by the legislature and implemented by the executive. The courts simply help ensure it is not violated.
- It gives up too much control to judges in the court, claiming that they essentially make the law. These judges are not elected officials and are barely accountable to the public in any way. Concentrating powers in their hands violates the theory of separation of power and goes against the basic tenants of a modern government system.
- This theory paves way for judicial overreach and allows arbitrariness in decisions. There is a lack of restrictions on judges. There is also a lack of any obligation on them to maintain any consistency with the letter of the law.
- He considers the letter of the law as a mere guide and encourages judicial discretion in most laws. In a proactive sense, this would lead to great uncertainty in society about which law to follow till the judges give their declarations. It would also be vulnerable to be overruled. This would make it hard for the public to understand which rules to follow.
- This is also a misleading view as the law is not always uncertain and in most cases, there is no room for judicial discretion. Thus, it over exaggerates the role of judges and is mostly on paper, incapable of being reconciled with reality.

Karl Olivecrona

An important proponent of Scandinavian Realism, Karl Olivecrona examined legal theories from a Philosophical point of view. He placed emphasis on the actual working of the law. It says that judges can give any creative interpretation of the law and make the law. He claimed that law was simply a "social fact" that has persuasive value for judges while they're reaching a decision.

There is no "binding force" of the law, as it is of no use in a case where a person commits an offence that goes undetected. He further explains that law has a coercive force, but only on the minds of the people. A newly born baby knows nothing of the law at first but later learns little by little about it by observing the conduct of others. This baby develops a sense of right and wrong, that is informed by the law. The law informs morality, not the other way round and that morality convinces a person to do or refrain from doing certain things.

Merits

- He refrained from explicitly defining what the law is and rather decided to analyze the existing laws and their working. Some claim this to be a positive thing since it has better practical applicability and does not merely stay on paper.
- It recognized an important reality that coercive power is needed to enforce the law. However, at the same time, this theory also claimed that the law could not bind someone to do a particular thing if not for their own psychological pressures. The theory is balanced, rules out loopholes and is Realistic.
- It does not give too much importance to the ends of the law. Rather it focuses on its functioning and on the observation of the law at work.
- He claimed that even an immoral law is enforceable, because of a 'binding force'. This is a pragmatic and Realistic view. At the same time, he emphasized that the law should promote ends that are considered desirable by most, forming a very balanced approach.

Demerits

- Some critics claim that this theory ends up treating law as a set of unconnected judgements, allowing for no consistency. This theory claims law is just a personal fantasy of a judge and there is no objectivity or definiteness.
- It greatly overemphasizes the importance of judges in devising the laws. Their main function is to interpret the law. Even though judges contribute in making the meaning of a law certain, there are various checks and balances to stop them from stretching their power too much, especially in a modern system.
- This theory ignores that some laws do not come to court at all, but are still enforceable.
- Realists have also overstated the role of personal biases in judicial decisions. This is because in many cases judges might not have any prejudices about either party. There are several other factors at play affecting court decisions. So, the decisions cannot be attributed purely to personal opinions and the prejudice of judges in most cases.

- Another major criticism is that realism is not an actual school, it is simply a branch of Sociological school or as some put it, “the left-wing of Functional school”.

Natural school

The Natural school is also called the ‘Divine’ school of law due to its close relationship with theology and the concept of a natural state of affairs created by a superpower. It talks about a higher law that is ‘natural’ or ‘divine’, and this determines the fate of the laws made by people. All laws are measured by the yardstick of conformity to this Natural law and morality is closely linked to laws in this theory. Expression of the will of the law-makers, if it violates this Natural law, will lose its character and not be considered law.

This theory of the law is one of the oldest and has been classified using four time periods- ancient, medieval, renaissance and modern. It re-emerged because of the growing support for positivist theories and was a reaction against them. This school focused on the ends that law means to achieve, rather than its letter.

St. Thomas Aquinas

According to St. Aquinas, laws are the means to achieve certain ends and how to achieve the ends by the given means is decided by the legislator. Humans have flaws and yet, a desire to constantly improve with the goal of achieving perfection. Divine law is laid down by a superhuman legislator and people must try to conform to it for progress and for avoiding doing morally wrong acts.

He divided laws into:

1. Human law/ Positive law
2. Law of scriptures/ Divine law
3. Natural law- Part of divine law
4. Law of God

Aquinas advocates for positive law following the laws of the scriptures. He bestows the church with the authority to decide whether a law is good, based on its conformity with divine law.

Merits

- Aquinas allows the right to rebel, albeit only in cases that would result in a worse situation than before.
- It is clear and lacks inconsistencies.

- It gives humankind an idea of perfection to strive towards. This was especially important in the context, as this theory came up after the dark ages.
- For the religious, it establishes a link between the divine and how to follow his path.

Demerits

- This theory does not conform with the modern ideals of a secular State that is not governed by religion or individual senses of morality.
- Many critics, including G.E. Moore claims that goodness is not defined by nature, it is not analysable.
- Opinions on morality may differ across religions. This defeats the claim of the theory's universally applicable character. Those who do not believe in religion fall completely out of its scope.
- The sense of morality does not conform across different states and societies. Further, opinions on what the religion promotes may differ within the religion. Vesting the Church with the authority to decide promotes absolutism and despotism.
- It assumes that moral choices are based on reasoning. However, that is not often the case.

John Locke

According to Locke, before the conception of a State, humans lived in a peaceful state of nature. In this state of nature, a man possessed all the rights nature could give him. Men were born with the right to life and liberty. Men also had a right to property but lacked the means and organization to protect this right. Thus, they entered into a social contract to form a political society. He laid down various Natural rights of man. These include-

1. Right to health (life)
2. Right to liberty
3. Right to estate

Through a majority vote, inalienable rights may be taken away or limited by the State. The state performs the role of a facilitator and would make laws on the basis of public opinion. If the state fails to perform this function and acts unjustly, the people can replace it by revolt and revolution.

Merits

- This theory emphasizes that there are certain natural, inalienable rights that people possess against any despot. This idea was helpful in encouraging political consciousness among the people of their rights.
- The concept of liberty espoused by Locke discourages authoritarianism and despotic powers.
- It gave importance to individual existence, instead of working towards a higher good. Thus, it emphasized on the intrinsic value of an individual's importance.
- This theory had the effect of discouraging blind faith in authorities like the state and religious leaders. Thus, it decreased the sway of these powers on the masses and encouraged them to think for themselves.

Demerits

- This theory is considered to be bad history since there was no evidence of this 'social contract' in history. According to David Hume, consent of the people was not taken for establishing the State.
- Locke's theory emphasized on the rights of man and man only. It did not allow women the same rights. He also justified slavery, claiming slaves forfeited their freedom on becoming captive.
- His theory accords utmost importance to human liberty. However, restraints on liberty are required to ensure the peaceful coexistence of people in the society. For instance, allowing people to hold weapons like guns as an assertion of their liberty has a detrimental effect on the liberty of others.
- A general criticism of the social contract theory is that people must not be forced to abide by the contracts made by their ancestors.
- Locke allows rebellion if the political superior does not follow the terms of the social contract. The criticism here is that this would lead to an unstable political system.
- This theory has also attracted criticism on the grounds that it assumes the concept of 'Natural rights'. As history has shown, the concept of rights developed only with increasing political consciousness in the society. It is a social construct. The people, in the ancient stage were not conscious and did not assert any rights.

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John Austin

Austin defined law as the command of the sovereign backed up by sanctions. He claimed that law was an expression of the sovereign's power and it was backed up by coercive methods, especially the threat of sanctions, to keep the political inferiors under its control.

He delinked law from morality, saying that instead of law being based on ideals of morality, it derives its authority from the power of the political superior. He also claimed that law-making by the judiciary is unavoidable and is in the people's interest.

Merits

- The theory given by Austin was definite and had no inconsistencies.
- It separated law from morality, looking at it simply as a coercive tool. Thus, it had the clarity of expression that was absent in many other theories.
- It was a starting pedestal for many other important theories of jurisprudence, as others developed in opposition to it.
- It treated doctrines independently from the specific discussions that were used, which increased their inherent importance. However, some might be of the view that this is a demerit.

Demerits

- The view that it is the threat of sanctions alone that makes people obey laws is not true. Force is just the last resort, however, people often follow laws because of social norms, morality, belief in its object etc.
- International law was not considered law by Austin as it did not have the backing of sanctions. This was not acceptable to many, especially in the modern society where International law plays a major role.
- Customs and social norms had no role to play here, neither did social morality. Only the will of the sovereign prevailed.
- In Austin's theory, the political superior- the sovereign was exempted from following the law. However, in the modern system of the law, laws also apply to those who make them. Thus, the lines between political superior and inferior have become blurred. Austin's watertight categories are not of much use here.

- A large part of the law consists of laws that neither command nor forbid people from doing certain things, eg- making a will, right to vote, etc. This falls out of the scope of Austin's definition.

Jeremy Bentham

According to Bentham, the law is the will of the sovereign. It lays down the conduct that should be observed by a person or a class of persons who are subjected to its power. The law does not have any relation to morals and ethics. Here the sovereign is superior and does not owe obedience to any other. However, it can limit its power through external agencies (like international treaties). Thus, its power is not absolute.

He also made a reference to sanctions and the need for the sovereign to impose them. However, unlike Austin, he also talked about the positive sanctions which reward those who obey the law, along with Austin's punishments to those who don't.

Bentham also gave a 'Principle of Utility, which gave a yardstick for measuring each law. It said that a law was good if it maximized the good for the maximum number of people. This takes only the consequences of the act into consideration, not its intent. This concept led to the foundation of the theory of utilitarianism.

Merits

- It placed limits on the power of the sovereign, which made it more pragmatic and closer to reality.
- He took into account the concept of positive sanctions i.e. rewards, which adds a benevolent touch to the concept of the all-powerful sovereign.
- The concept of utilitarianism, if viewed in terms of a majority opinion being in favour and a proposal being for the good of a majority of people without harming others, is close to the concept of modern-day democracy.
- The 'Principle of Utility' encouraged activities that were beneficial to most of the community.

Demerits

- Like Austin, he did not define the legal system. There was no attempt to relate the concept of sovereignty with the legal system of his contemporary period. Thus, the concept remains mostly on paper.

- His theory of utility tends to legitimize majoritarianism since the views of the majority would always prevail over the rights of minorities. This goes against the modern system of democracy, which protects the rights of all.
- In the democratic system, the lawmakers owe obedience to the will of the people and the people are subject to the laws made by the lawmaker. So, his rigid definition of the sovereign does not apply here.
- It did not take into account the intention of an action, whether it was done with good intent or with malice but took into account only its consequences.

Historical school

This school talks about law being a culmination of years of Historical development and places emphasis on both the commands and customs as being a source of law. Two main proponents of this school are-

Friedrich Carl von Savigny

He was a German philosopher, who is also called the 'founder of modern jurisprudence'. He developed this theory to combat increasing acceptance of the ideas of the French Revolution. His theory laid emphasis on "popular consciousness" (*Volksgeist*, as he called it). He believed that this popular consciousness was the most authentic expression of the will of the people and it evolved with society. The legislation, according to this theory, was valuable only if it respected social norms and customs.

Merits

- It was only after this work, that the tenants of the Historical school were fully understood. This paved the way for a fresh approach to the legal system.
- It recognized an important tenet of the law, that the source of law is in the popular will of the people, even if it may have been exaggerated.
- It gives importance to the will of the people and their views, instead of letting all the authority and power be usurped by a single individual or a group of individuals. This is in line with the modern-day concept of representative democracy.
- It recognizes the fact that for the administration and enforcement of a particular law, it should have the endorsement of the people. These laws should not be translated to customs if they do not suit the needs of the given society.
- This view acknowledged the importance of change and accepted that as society grows, customs and traditions need to change too.

Sir Henry Maine

Sir Henry Maine developed the 'Historical comparative' or 'anthropological method' to study the law, claiming that law developed through various stages:

1. Kingly rule- Commands given by the King
2. Customary law- Commands turn into customs
3. Administration of customs goes to a minority group- Like priests
4. Codification- Law gets codified

According to him, static societies stop at this stage, but progressive societies go beyond-

- Fiction- The operation of the law changes, while its letter remains the same.
- Equity- Ethics start playing a role and start governing the law.
- Legislation- It is obligatory (based on obligations) and derives its authority from a body of persons.

After this, in progressive societies, individuals' standing which was determined by status, i.e. caste, gender, etc. now stops playing a role. The free will of all comes in. An individual becomes more important, as evidenced by their ability to contract out of their own free will.

Merits

- This theory showed a clear and definite correlation between law and culture, placing a lot of importance on the evolution of society as a whole instead of simply focusing on law as an isolated subject.
- It plugged in a criticism of Savigny's theory, that customs are not always reflected in the popular consciousness and will of the people.
- It balances the role of the sovereign as well as popular consciousness in his theory.
- This theory inspired the principles of Historical evolution and was a valuable asset to many other researchers and scholars.
- It emphasized that society evolves slowly at its own pace, but that progress is inevitable.
- It claimed that progressive societies treat all the people equally, at least in the law. By characterizing progressive societies as more evolved, it showed equality as a desirable goal. It showed status and differentiation by the law on the basis of the same as something undesirable and marked it as a characteristic of a less evolved society.

Demerits

- His theory of the evolution of society and the stages involved has been criticized for oversimplifications.
- Maine's theory does not hold good in some totalitarian states, where even if there was a movement towards freedom and liberty for all, there was a backward movement towards the growing importance of status. It failed to take into account this negative direction.
- He claims that law and religion were one and same in ancient society. This has drawn criticism for a sweeping generalization as well as over-exaggeration.
- This theory has also been criticized for idealizing Europe, calling it a progressive state. He says it is beyond statutes and laws simply because it has a desire to improve and develop. Dissenters claim that 19th century Europe was deeply conservative, patriarchal and racist, in various stages of colonizing the world and was directly involved in the two world wars thereafter. It is not worth idealizing and this theory represents a colonial view.
- Maine talks about how ancient society was one where the State commanded absolute control over all its people, as parallel to how the patriarch of the family had absolute, despotic control over all its other members. The empirical evidence here has been questioned, with many claiming that the ancient society was matriarchal instead of patriarchal.

Sociological school

This school views laws primarily in terms of their relationship with society and having no independent existence of its own. It places emphasis on studying the law 'in action' instead of in isolation. The main proponents of this school are-

Roscoe Pound

Pound viewed the law as a method of 'social engineering, where the law is used to balance out competing interests. These interests were categorized into individual interest, public interest and social interest. He also laid down five jural postulates, allowing more to be added as and when the need arises. These were:

1. Criminal law- No one should commit intentional aggression upon another.
2. Patent law- A person who has created something has the right to own it.
3. Law of contract- Men shall act in good faith in all transactions.
4. Law of Tort- Men must not act in a way that could cause unjustified risk of harm to another.
5. Strict liability- All harmful things must be kept within their boundaries.

Merits

- The biggest contribution of Pound was perhaps that he drew an important link between society, laws and administration of the laws. He emphasized more fieldwork for a better understanding of the functioning of laws in society.
- He brought to notice and discussed the various competing interests in society and the need to balance all of them.
- This theory took a balanced position, avoiding over-emphasis on any one aspect. It recognized customs as important but also talked about social engineering and how customs can be modified or evolve over time.
- It pointed out the tremendous responsibility of lawmakers like legislators, judges and jurists to make a law suitable for society and highlighted its constructive character.

Demerits

- The various interests given by Pound aren't exhaustive and need to be updated regularly, as society grows more and more complex.
- There isn't a proper criterion given to classify which interest falls under which head and in various cases, the lines may be blurred. Often, it's up to an individual's own perception, whether something is in the interests of individuals, or if it is in social interest. For instance, providing housing to the poor may be looked upon as a social interest by the poor, but as an individual interest (benefiting individual poor people) by onlookers.
- Some critics claim that Pound's assertion of individual interests being the most important makes this theory vulnerable to being politically biased towards libertarian thought.

- Pound's theory has been called fit only for an "idealistic society" since it assumes various conflicting interests can be balanced in a perfect middle ground.
- The word "engineering" has been criticized for being too "mechanical" and suggesting society can be used experimentally.

Leon Duguit

This theory viewed the law as a 'social fact' that is present because people live in a society. The people living in a society are interdependent on each other and often have common needs. The social function of the law was to maintain social solidarity, which Leon regarded as a basic fact of human society.

The theory claims that an individual's rights by themselves do not hold any merit and the only right they do have is to perform their duty. In other words, he accords a low status to the rights of an individual, unless they are for the good of the entire society. No one should do anything to harm social solidarity.

A State is simply a group giving commands backed by force. Its actions are legitimate only if they encourage social solidarity and if not, the people should revolt against it. He judges all activities and institutions using the yardstick of the good they do to social cohesion and how much they help in maintaining social solidarity.

Merits

- He rejects the notion of an all-powerful State, claiming that it is simply an institution to codify what was already a fact of society.
- This theory became a starting point for various other theories and even played a part in formulating the theory of Natural law. It was used by Soviet jurists, who adapted it to their needs and by jurists like Renard and Hauriou for their "institutional theory". Thus, it was supported by Marxists as well as sociologists.
- He defines justice in a primarily social context, trying to rule out all confusions and inconsistencies that may arise.
- His approach and study of the law and society paved the way for the acceptance of a more methodological study of the disciplines.

Demerits

- Even though this theory pretends to reject Natural law, it uses the same idea as the Natural law of 'social solidarity is a natural fact of any society. Some say it merely repackages the same theory.
- This theory holds good mostly on paper, as it is usually not clear what the public opinion endorses and this opinion is often divided.
- It is not clear what criterion there is to and who would decide if a particular action/law would help social solidarity. Answers here tend to be subjective. For instance, one may feel that giving safeguards to minorities to practice their religion may foster social solidarity. On the other hand, others may feel that trying to suppress these voices in favour of a 'unified' one may help social solidarity.
- 'Social solidarity' can mean different things for different people. It places minimizing conflicts on the highest pedestal and this might mean silencing minority voices.
- Indeed, this theory has been used by fascists to silence all dissent and ensure the rule of the powerful. Further, the denial of individual interests was used by communist regimes to deny individuals rights.
- Many claim that Leon confused what the law is and what it should be according to him since this theory said that if a law does not encourage social solidarity, it isn't a law.
- Further, he also confused the end and means to an end, by defining social solidarity as an end in itself.
- Some critics also claim that he completely divorced morality from law and tried to wipe out all differing opinions from the law. According to them, a law that does not provide options and take into account the will of the people is meaningless.

Philosophical school

According to this theory, the purpose by which a law is made is significant. Law is a means to ensure justice in the society. Morals and ethics have a major role to play in jurisprudence, especially since a sense of right and wrong is intrinsic to the law. This sense of morality helps people decide the course of action which would help maintain law and order in the society and is concerned with a better future.

Most scholars under this school are also of the view that restrictions on people's liberty are justified only if they promote the freedom of others in society. The ostensible purpose of the law here is that it has the function of protecting human liberty. The end game here is human perfection.

Some noteworthy supporters of this theory are:

Immanuel Kant

German philosopher Immanuel Kant, in his essay "Lectures on Ethics" drew a hard line between law and ethics. He viewed both of these as two distinct concepts. The purpose of ethics was to crystallize noble ideals and lay down the model conduct of humans, which relates to the internal aspect of human behaviour. On the other hand, the law regulates the eternal aspect of human behaviour and tries to instil a sense of ethical behaviour among the people even if it involves the use of force.

He supported the social contract theory which claimed that the State was the result of a pact between men and society. Thus, the people living in the society had a duty to obey their political superior. A Republican Representative State, without heredity, based on birth and one that protects free speech can help achieve a "united will" of everyone in the society. This is to be reflected in the legislation formulated by the political superiors. It also entailed the view that one could speak out against the laws but were also forced to obey them. Hence, no rebellion is ever justified.

Merits

- By emphasizing the importance of a representative government that listens to its citizens, Kant gives a lot of value to the will of the people.
- He defends individual liberty and freedom of self-determination and accords to it, a high position in his theory.
- His views as a philosopher give a refreshing insight into the sphere of morality and what the law should aim to achieve.
- This theory strikes a fine balance between providing powers to the State and then placing limits on it to ensure that it is for the good of the society.

Demerits

- The most prominent critique of this theory is that Kant is confused about what the law is and what it ought to be.
- He completely denied the right to rebel even against unjust and tyrannical governments. This attracted a lot of flak.
- His support for the social contract theory and denying the right to rebel to the people since they formed the institution of a political superior, has drawn the same criticism as the social contract

theory. This critique throws light on how the people are denied the right to rebel based on a contract that their forefathers entered into.

- His theory does not work in fascist, totalitarian and communist States or any type of non-representative government. This is because the political superior does not take into account the views of the people and emphasis on individual liberty is little.
- It has also been criticized on the grounds that there is not always an ulterior future objective that society works on. Instead, the growth of society is rather spontaneous.
- His theory is subjective and many believe it is simply an expression of his own opinion.

Hegel

Drawing inspiration from Kant, Hegel too accorded a lot of importance to the value of liberty in his theory. He used the idea of 'evolution', saying that whenever a new idea is put forward, in time, opposition to it comes up too. A battle between the ideas takes place and as a result, a middle ground (that might lean on either side) develops. This middle ground is accorded a higher position. He also asserted that the idea of freedom and liberty has prevailed throughout history. Thus, it is pre-eminent.

He talks of a "collective moral will" which is objective and has universal applicability. His theory endorsed the view that morals and the law are both interlinked and law works towards an 'ideal' future of the legal system.

Merits

- It gave importance to the liberty of an individual and did not support the elimination of individual will in favour of the goals of the state.
- It gave great importance to "ideas" independently and their intrinsic value in social change.
- This theory gave importance to opposing views and the power of debate and discussion. It emphasised finding a common ground to resolve conflicts.
- The object accorded working towards an "ideal future" of the law rectifies a criticism of Kant who mentioned "ideal society". This is a more pragmatic and Realistic approach.

Demerits

- The theory assumes that in the battle of ideas, the ideas are looked at independently from the specific socio-cultural contexts they emerged in. It moves on to assume that views are not imposed by the powerful on others and each view is given a chance. This supports yet another assumption,

only the product of the discussion is carried forward, not just the opinion of the powerful. However, as history has shown, this is rarely the case as the strong often impose ideas on the weak.

- He claims that certain objective morals that have universal applicability can be developed. However, this seems unlikely as there are great differences of opinion across a country, let alone the world. This is not a pragmatic approach.
- On one hand, his theory endorsed human liberty. On the other, he spoke of subjective individual morals being eliminated in favour of those of the state. This duality presents a great contraction.
- Like Kant, his theory was subjective and an expression of his personal opinions.
- He seems to have taken opposition to an opinion and differentiation from that view as one and the same thing, to promote his dialectical view. For instance, one may support giving reservations to the oppressed, others may feel that another system of affirmative action would be better to empower the oppressed. These views are not diametrically opposite and are not accommodated in his theory. This has led many to condemn his theory as extreme and critically dangerous.

Realist school

As part of the Sociological approach, the Realist school is among the most recent schools of law to have come up. It gives great importance to the law laid down by judges and concentrates on systematic observation of the process of law-making and working of the law. This school acknowledges that it is more concerned with what law should be, instead of what it actually is. It concentrates upon the social impact of laws, looking at the legal decisions made by jurists. It is divided into two subtypes: American Realism and Scandinavian realism.

Some prominent jurists from this school are-

Jerome Frank

Part of the American school of Realism, Jerome Frank believed that judges should evolve the existing law and not just stick to the letter of the law, rules and precedents. He claimed that law is not certain, that is just a common “legal myth”. We can only be sure of what a law is, after judges interpret it.

He talks of two different types of Realists- the ‘facts sceptics’ who hold the view that legal uncertainty is primarily in the letter of the law and look for consistency in the judiciary’s decisions to mitigate this problem. The other type is “rules sceptic”, who contend that legal uncertainty is because of the different facts of each case. The latter is more probable since usually, cases do not dispute the letter of the law and the contention is the facts of the cases.

Merits

- This theory does not ponder over what the law should be but instead focuses on what it is as it said that only the judges can make it certain. This gets rid of a lot of needless conjecture.
- It emphasizes studying the law within its context and not away from it.
- It promotes objectivity and consistency, saying that law is whatever judges decide it to be. There is little room for others to claim otherwise.
- It brought attention to the attempt to portray judicial decisions as impartial, unbiased and free from political influence to the reality that they often aren't. A judge's personal background and lived experiences may affect their decision making. For instance, a judge living in urban areas may hold stereotypes against those from villages. This will adversely affect the outcomes of cases. Or, judges from conservative families may hold stereotypes that women must listen to their fathers and husbands, which would work against the women in domestic violence cases.

Demerits

- The most prominent critique of this theory is that it promotes that the courts administer the law. In actuality, courts just uphold the law made by the legislature and implemented by the executive. The courts simply help ensure it is not violated.
- It gives up too much control to judges in the court, claiming that they essentially make the law. These judges are not elected officials and are barely accountable to the public in any way. Concentrating powers in their hands violates the theory of separation of power and goes against the basic tenants of a modern government system.
- This theory paves way for judicial overreach and allows arbitrariness in decisions. There is a lack of restrictions on judges. There is also a lack of any obligation on them to maintain any consistency with the letter of the law.
- He considers the letter of the law as a mere guide and encourages judicial discretion in most laws. In a proactive sense, this would lead to great uncertainty in society about which law to follow till the judges give their declarations. It would also be vulnerable to be overruled. This would make it hard for the public to understand which rules to follow.
- This is also a misleading view as the law is not always uncertain and in most cases, there is no room for judicial discretion. Thus, it over exaggerates the role of judges and is mostly on paper, incapable of being reconciled with reality.

Karl Olivecrona

An important proponent of Scandinavian Realism, Karl Olivecrona examined legal theories from a Philosophical point of view. He placed emphasis on the actual working of the law. It says that judges can give any creative interpretation of the law and make the law. He claimed that law was simply a "social fact" that has persuasive value for judges while they're reaching a decision.

There is no "binding force" of the law, as it is of no use in a case where a person commits an offence that goes undetected. He further explains that law has a coercive force, but only on the minds of the people. A newly born baby knows nothing of the law at first but later learns little by little about it by observing the conduct of others. This baby develops a sense of right and wrong, that is informed by the law. The law informs morality, not the other way round and that morality convinces a person to do or refrain from doing certain things.

Merits

- He refrained from explicitly defining what the law is and rather decided to analyze the existing laws and their working. Some claim this to be a positive thing since it has better practical applicability and does not merely stay on paper.
- It recognized an important reality that coercive power is needed to enforce the law. However, at the same time, this theory also claimed that the law could not bind someone to do a particular thing if not for their own psychological pressures. The theory is balanced, rules out loopholes and is Realistic.
- It does not give too much importance to the ends of the law. Rather it focuses on its functioning and on the observation of the law at work.
- He claimed that even an immoral law is enforceable, because of a 'binding force'. This is a pragmatic and Realistic view. At the same time, he emphasized that the law should promote ends that are considered desirable by most, forming a very balanced approach.

Demerits

- Some critics claim that this theory ends up treating law as a set of unconnected judgements, allowing for no consistency. This theory claims law is just a personal fantasy of a judge and there is no objectivity or definiteness.
- It greatly overemphasizes the importance of judges in devising the laws. Their main function is to interpret the law. Even though judges contribute in making the meaning of a law certain, there are various checks and balances to stop them from stretching their power too much, especially in a modern system.

- This theory ignores that some laws do not come to court at all, but are still enforceable.
- Realists have also overstated the role of personal biases in judicial decisions. This is because in many cases judges might not have any prejudices about either party. There are several other factors at play affecting court decisions. So, the decisions cannot be attributed purely to personal opinions and the prejudice of judges in most cases.
- Another major criticism is that realism is not an actual school, it is simply a branch of Sociological school or as some put it, "the left-wing of Functional school".

Natural school

The Natural school is also called the 'Divine' school of law due to its close relationship with theology and the concept of a natural state of affairs created by a superpower. It talks about a higher law that is 'natural' or 'divine', and this determines the fate of the laws made by people. All laws are measured by the yardstick of conformity to this Natural law and morality is closely linked to laws in this theory. Expression of the will of the law-makers, if it violates this Natural law, will lose its character and not be considered law.

This theory of the law is one of the oldest and has been classified using four time periods- ancient, medieval, renaissance and modern. It re-emerged because of the growing support for positivist theories and was a reaction against them. This school focused on the ends that law means to achieve, rather than its letter.

St. Thomas Aquinas

According to St. Aquinas, laws are the means to achieve certain ends and how to achieve the ends by the given means is decided by the legislator. Humans have flaws and yet, a desire to constantly improve with the goal of achieving perfection. Divine law is laid down by a superhuman legislator and people must try to conform to it for progress and for avoiding doing morally wrong acts.

He divided laws into:

1. Human law/ Positive law
2. Law of scriptures/ Divine law
3. Natural law- Part of divine law
4. Law of God

Aquinas advocates for positive law following the laws of the scriptures. He bestows the church with the authority to decide whether a law is good, based on its conformity with divine law.

Merits

- Aquinas allows the right to rebel, albeit only in cases that would result in a worse situation than before.
- It is clear and lacks inconsistencies.
- It gives humankind an idea of perfection to strive towards. This was especially important in the context, as this theory came up after the dark ages.
- For the religious, it establishes a link between the divine and how to follow his path.

Demerits

- This theory does not conform with the modern ideals of a secular State that is not governed by religion or individual senses of morality.
- Many critics, including G.E. Moore claims that goodness is not defined by nature, it is not analysable.
- Opinions on morality may differ across religions. This defeats the claim of the theory's universally applicable character. Those who do not believe in religion fall completely out of its scope.
- The sense of morality does not conform across different states and societies. Further, opinions on what the religion promotes may differ within the religion. Vesting the Church with the authority to decide promotes absolutism and despotism.
- It assumes that moral choices are based on reasoning. However, that is not often the case.

John Locke

According to Locke, before the conception of a State, humans lived in a peaceful state of nature. In this state of nature, a man possessed all the rights nature could give him. Men were born with the right to life and liberty. Men also had a right to property but lacked the means and organization to protect this right. Thus, they entered into a social contract to form a political society. He laid down various Natural rights of man. These include-

1. Right to health (life)
2. Right to liberty
3. Right to estate

Through a majority vote, inalienable rights may be taken away or limited by the State. The state performs the role of a facilitator and would make laws on the basis of public opinion. If the state fails to perform this function and acts unjustly, the people can replace it by revolt and revolution.

Merits

- This theory emphasizes that there are certain natural, inalienable rights that people possess against any despot. This idea was helpful in encouraging political consciousness among the people of their rights.
- The concept of liberty espoused by Locke discourages authoritarianism and despotic powers.
- It gave importance to individual existence, instead of working towards a higher good. Thus, it emphasized on the intrinsic value of an individual's importance.
- This theory had the effect of discouraging blind faith in authorities like the state and religious leaders. Thus, it decreased the sway of these powers on the masses and encouraged them to think for themselves.

Demerits

- This theory is considered to be bad history since there was no evidence of this 'social contract' in history. According to David Hume, consent of the people was not taken for establishing the State.
- Locke's theory emphasized on the rights of man and man only. It did not allow women the same rights. He also justified slavery, claiming slaves forfeited their freedom on becoming captive.
- His theory accords utmost importance to human liberty. However, restraints on liberty are required to ensure the peaceful coexistence of people in the society. For instance, allowing people to hold weapons like guns as an assertion of their liberty has a detrimental effect on the liberty of others.
- A general criticism of the social contract theory is that people must not be forced to abide by the contracts made by their ancestors.
- Locke allows rebellion if the political superior does not follow the terms of the social contract. The criticism here is that this would lead to an unstable political system.
- This theory has also attracted criticism on the grounds that it assumes the concept of 'Natural rights'. As history has shown, the concept of rights developed only with increasing political consciousness in the society. It is a social construct. The people, in the ancient stage were not conscious and did not assert any rights.