



FACULTY OF JURIDICAL SCIENCES

COURSE: LL.M 1 Year

Semester: IInd

GROUP: 1. Constitutional and Administrative Law

2. Corporate and Business Law

3. Criminal and Security Law

SUBJECT: : LAW AND JUSTICE IN A

GLOBALISING WORLD

SUBJECT CODE: LLM 201

NAME OF FACULTY: Ms. Anjali Dixit, Assistant Professor

Lecture-6



LECTURE 6: LAW: MEANING

Law plays different roles in the lives of everyone. A single word cannot define law. There cannot be a word which can equate law. One can draw analogy to understand law. Law is like a *temple* which is designed so that men and women can live in his or her palace of peace. Law is *love*, which is inarticulate in nature. Both have the power to regulate human emotions. Law is as complex as love. An analogy can be drawn between law and *sea*. Both law and sea are vast and as a drop adds to the quantity of water in the ocean, in the same way every judgement adds itself to many precedents. Also, there is no life without water, there is no life without law.

Law is not a mistress, law is a *spouse*. It stays with you, wherever you go. Law is an invisible force that controls every human being. Law connects us like Life and Water (LAW). All these statements gives the idea that law is universal.

- Salmond defined law as, " the law may be defined as body of principles recognised and applied by the state in the administration of justice." Though Salmond did not define justice yet his definition can be considered as the most workable definition.
- According to John Chipman Gray, "the Law of the State or of any organised body of men is composed of the rules which the courts, that is judicial organ of the body lays down for the determination of legal rights and duties." His definition also received criticism that his definition focused neither on nature of law nor on statute laws.

Nature and Scope of Laws

What is the nature of law or what is the essence of law is a long disputed question. Various Greek thinkers have already raised several questions on the topic and the answer is still not clear. That does not mean that there is no clear answer but there is not a complete answer which can be claimed to be absolute. Also, this question has preoccupied Jurisprudence and philosophy of law.

There are two kinds of law. One is based on *justice*, the other one is based on *control*. The latter part is in use today. "Might is right" principle is followed. It is retribution instead of restoration which should be followed.

- Justice is a set of universal principles which guide people to analyse what is right and what is wrong. It disregards the culture and society one lives in. *Fiat justitia ruat caelum* is a Latin phrase which means, "Let justice be done, though the sky falls."
- Social control refers to mechanisms which regulate individual and group behaviour. E.A. Ross, the famous sociologist believed that it is not the laws that guide human behaviour but it is the belief systems that guide what individuals do. Social control mechanisms can be adopted as laws and norms which control and define human behaviour.

Law serves many purposes and functions. It helps to maintain peace. Violence should not be allowed in the society and thus, peace is maintained by the orders or we can say the laws of the government.

Law also helps to establish standards. It also protects rights of the people. Without laws, people will not even get the basic rights which they deserve.

Also, law can be called as a good career option. From Mahatma Gandhi to Barack Obama, all are associated with the career of law. It acted as a stepping stone to their success. There are various career options in law like litigation, civil services, professors or one can go in the corporate sector.

Jurisprudential Schools of Law

Jurisprudence refers to the study of law. It can also be called as a science which deals with creation, exploration and enforcement of laws. The word is derived from *juris prudential* which means knowledge of the law. If one understands the theories and philosophies then one can get a better understanding of law. Legal thoughts can be viewed from the angle of different schools of jurisprudence which are given below.

Positivist School

- According to Positivist school, law is the command of the sovereign. It says that decisions can be made logically from predetermined cases and ignoring the moral aspects. It is also called Analytical school.
- This school says there isn't a connection between law and morality. For example, Judges may not want the landlord to evict the elderly old lady from the land on which the rent is overdue. Though the laws may say that if the rent is not paid, the defaulter has to vacate the land. Positivist law school says that judges should decide cases in accordance to law and keeping aside their morals.
- It believes that integrity of law is maintained through neutral judiciary. Law is what is laid down. What ought to be the law factor should be ignored.
- Also, basis of law should be maximum happiness of maximum people.

Historical School

- "Law is the product of social consciousness." This social consciousness started even before sovereignty. It started from the very beginning of the society. Sir Henry Maine, Edmund Burke are the renowned jurists.
- The Historical school is based on Volksgeist theory. It says law is based on the general will of the people. It grows as the nation grows. Also, a law which is suitable for one set of people may be useless for the other which gives us the point that there is no universal application of law. The laws are based upon the local customs, local behaviour and the current thought processes of the society. All these affect law and makes it a peaceful society.
- The theory focuses a lot on the past. However, it mentions that laws must change with time. Laws must be what the society demands.

Natural School

- Natural law is a philosophy that focuses on the laws of the nature. It says that there are some laws which all humans deserve as they are inherent in society. It opposes the positivist theory. A lot of emphasis is placed on morals and ethics of the society.
- It is based on the reasons they make for deciding between good and evil.
- Immanuel Kant, Hegel and Grotius are eminent jurists. They regarded law neither as command of the sovereign nor a product of consciousness rather based on rationality and reasonableness.
- The main aim of Philosophical school or Natural school is to elevate humans from evil and raise them to do good.
- Even in Declaration of Independence and Bill of Rights of US Constitution, Thomas Jefferson has cited Natural Law theory calling it "the laws of Nature and of Nature's God."

Sociological School

- This school emerged as a synthesis of many jurist's thoughts. This school of thought lay emphasis on functional part of law rather than the abstract part of law.
- They regarded law as a social institution. They believed that laws are not created by state. Laws come from society. The laws are not sanctioned by the state but by the awareness on the part of people.
- These laws establish an interconnection between society and laws. Both Historical and Philosophical schools caused a hindrance to social and legal reforms, as a result Sociological school was formed.
- This school is the only school of jurisprudence which has a definite program which the other schools do not have. They placed a lot of emphasis on the concept of justice.

Realism School

- This school of law emphasises a lot on what courts may do rather than the abstract ideas. Law exists as a matter of reality.
- Allen observed that "fermentation is necessary in legal chemistry for without it the liquor of" the law becomes sour and stale. This takes into account the customary practices and circumstances for providing with a new law. The theory can be understood with descriptive way or prescriptive way or both.
- In this it is believed that law is a body of government for the administration of justice. Like Positivist theory, this also sees law as will of the state but it is done through administration of justice.

Comparative School

- Professor Kerton considers, "the development of Comparative Jurisprudence is the development of two or more systems of law." However, the term has one meaning.
- As historical school is concerned with time, this school is concerned about space. It collects and examines rules that are prevalent and the man who agree and disagree with the system and tries to find a system which is natural. Natural system will be the system what all men wanted to have but due to different laws couldn't.

- Comparative Jurisprudence does a comparative analysis and aids Historical as well as an Analytical School of Law.

Evolution of Law

Christianity and Law

- Many centuries ago, it was believed that according to Christianity, God and Old Testaments created the law. Law was a set of rules written by God. People believed in Divine power. Also, it was believed that only if the laws are considered to be sacred then it will be followed.
- Christians placed a lot of emphasis on morals. They believed that if the foundations of law are weak, then society will easily revise them according to their needs. The laws will become crooked according to man's selfish needs.
- As Christians, it was believed that the omniscient, omnipotent, omnipresent loving God is the world's Lawgiver (Psalm 127:1). He provides Himself as an absolute basis for law. The Christian system of law did not change according to the whims and remained static.
- Christianity did not neglect human rights. It ensured certain human rights that are written in the Bible. The Bible has certain instructions specified and He commands us to follow them. The Bible tells us what God believes to be good and what He wants from us: "to do justice, and to love mercy, and to walk humbly with thy God" (Micah 6:8).
- It was believed that one can hoodwink man's laws but no one can escape from God's punishment.
- This theory led to diverse views. The people who believed in God were questioned by others. People questioned them because there was no evidence of God coming to earth and formulating the laws.
- As a result, the definition changed over time. Later people started believing more in themselves than in the supreme commander. The meaning of law became closer to humans. The definition shifted its emphasis from God to lawmakers.

Sovereignty and Law

- There was a time when people believed in command of the sovereign. Various Political philosophers have their own controversial statements related to sovereignty. It was regarded as absolute. No power is above superior.
- Another feature is, that it was considered to be permanent. It did not end with the death of the king, rather the eldest son of the king became the next ruler, the principle of primogeniture.
- Now, this poses a question what if the new king is inefficient? No one had the right to remove the king.
- Starting with Austin's theory which meant that sovereignty is the command given by superior to inferior. So, whatever the King proclaimed can be considered as law and should not face any revolt. Divisibility of power was not allowed. The ultimate power rested with the king and he was the one who imposed all the laws on the society.

- If there was only one person who made all the laws, is he competent enough to frame laws for all the sectors of the society? The laws made by King could not be questioned. Whatever the king said, prevailed.
- So, what if a particular sector of society is unhappy with the existing law? They had no right to question the king. Thus, Austin's theory focused on supremacy. A few lines from a poem which can elaborate on his theory-

"Laws are

Framed by us.

We are framed by someone else,

Who is above any law."

- However, Hans Kelsen believed in the idea to end sovereignty. He gave his new definition.
- He believed that there was no need for the word sovereignty to understand the meaning of law and to locate the applications of legal norms. He believed that legal norms are not valid because they are given by sovereign or compatible with moral laws. He discarded the theory that sovereignty is the ultimate source of law.
- It is believed that where there is sovereignty there is no law and where there is law, there is no sovereignty.

Therefore, times changed and people realised that whatever King ordered should not be proclaimed as law. Rather, they should have the freedom to choose their ruler or decide whom they want to be ruled by. So, sovereignty part was disregarded by time.

Modern time and Law

- Law in modern time is dynamic. Law is what the judges say. Law evolved from religious books to Kings proclamation to what it is today.
- Law in the modern times is influenced by time and places. A crime in one place may be an ordinary act of another. Thus, nothing is wrong or right, it is now the law of the state which governs the act. It is customs, practices and habits that become law.
- Different culture punishes different things, which means that different rules guide different laws of the land. The punishment for a crime varies from one country to the other.
- For instance, punishment for negligent driving, witch branding, adultery is different at different places. Though main aim of the present laws is to provide justice to the one in need. Also, no one is condemned unheard which leads to the idea that justice is given after hearing both the sides.
- In present times, it is what the judges say. In one of the beautiful poems, law is described as,

"Law cannot bind me,

Law cannot judge me,

I can change the law

As per my convenience.”

- Law is defined as, “a set of special legal rules, enforceable by the courts, regulating the government of the state, relationship between the organs of the state and relationship or conducts subjects towards each other.” It is a body of rules made by the legislature.
- In fact, laws are the rules that bind human together. Without laws, man can become worse than an animal. Law is a necessity for the nation to prosper. The rules are made by man, enforced by man, on the man.
- Law can only be enforced by the majority. When there is general support, law enforces itself. A body is elected which frames the law for everyone. People have to be governed by law to avoid illegal and immoral acts.
- Even in ancient times there were certain customs which acted as laws. In other words, it can be said that law can be called as the supreme force which acts as a catalyst between society and illegal practices.
- Also, every single person has his own definition for the three-letter word. Even the judges that make law, give judgements according to time.
- For instance, Section 377 which was a crime before was ruled out in September 2018 and was legalised in the nation. Although there are still many nations where gay marriages are criminalised. In other words, we can say that, what is a law today can be criminalised tomorrow. This is what makes the nature of law dynamic.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.			
2.			
3.			
4.			
5.			

Answers: 1-(),2-(), 3-(),4-(),5-()