

BA-LL.B Vth Sem.

Jurisprudence-I

(Legal Theory)

(BL-5005)

Introduction: -

Jurisprudence is the very important subject. It is the main base of the Law. jurisprudence is the study of law. jurisprudence has been divided into two part, first part is legal theory and the second part is legal concepts. Jurisprudence is as a philosophy, science, history, and sociology etc. The word jurisprudence has been derived from the Latin word “Jurisprudentia”, which means “Knowledge of law”, jurisprudence made up of two word “juris” and “prudentia”. The Latin word juris means “Law” and Prudentia means “Knowledge”. There for jurisprudence means “knowledge of law”. Jurisprudence is like a mirror whose shows the provision of the law¹.

$$\begin{array}{ccc}
 \text{Jurisprudence} = & \text{Juris} & + \text{Prudentia} \\
 & \downarrow & \downarrow \\
 & \text{Law} & + \text{Knowledge} \\
 \text{Jurisprudence} = & & \text{The Knowledge of Law}
 \end{array}$$

The Latin expression, juris prudentia, means either “knowledge of” or “skill in law”²

Summary: - In this content we discuss the following point:-

- Some important definition.
- Nature of jurisprudence
- Kinds of jurisprudence
- Scope of jurisprudence
- Importance of jurisprudence
- Conclusion

Definition:-

John Austin :- Jurisprudence is the philosophy of positive law.

Ulpian:- Jurisprudence as “the observation of things human and divine ,the knowledge of the just and the unjust.”

Cicero :- Jurisprudence is the philosophical aspect of knowledge of law³.

Dr. Allen :- Jurisprudence as “The scientific synthesis of the essential principles of law”

¹ 1 Paranjape. Dr.N.V, Studies In Jurisprudence & Legal Theory, Central Law Agency Allahabad, 9th Edition, 2019, P.1

² 2 Dias, Jurisprudence, Lexis Nexis, Vth Edition, 2013, P.3

³ 3 Dhyani Prof. S.N., Jurisprudence Indian Legal Theory, Central Law Agency, Allahabad, 5th Edition, 2019, P.9

Holland :-Jurisprudence as “The formal science of positive law”.

Salmond :-Jurisprudence as “The science of the first principles of the civil law.”

Keeton :-Jurisprudence is the study and systematic arrangement of the general principles of law.

Julius stone :- Jurisprudence is the lawyers extraversion.

Dharma under the Hindu Jurisprudence covers the province of religion,ethics and philosophy.

Dharma means which is signified by a command,and lead to man’s material and spiritual salvation.

Gray :- Jurisprudence is the science of law,the statement and systematic arrangement of the rules followed by the courts and the principles involved in those rules .

Roscoe Pound:-Jurisprudence is the science of social engineering.⁴

Nature of jurisprudence:-Jurisprudence is as a subject which differ in kind from other subject .For the typical legal subject, that is contract or tort, consists of a set of rules and principles to be derived from authoritative sources and applied to factual situations in order to solve practical problems. Jurisprudence,on the contrary, does not constitute a set of rules,is not derived from authority and is without practical problems. Jurisprudence is very widely in subject-matter and treatment.⁵ Jurisprudence is the study of different legal concepts,like Rights,Duties Title,Ownership,Possession,Legal Personality,Intention,Negligence etc.So we can say,that it is a substantive law. It is not a codified.Jurisprudence in its nature is entirely a different subject from other social science.Its nature is different from other subject. Some jurist says that jurisprudence is as an art, as a science, as a philosophy and social science.It is a substantive law in nature.In the same way jurisprudence is concerned with the fundamental principles of law and systematic and scientific study of their methods.⁶

Elements of Jurisprudence-

1)Sources of law-It is true that the basic features of a legal system are mainly to be found in its authoritative sources and the nature and working of the legal authority behind these sources. The primary sources of law are Custom,Precedent and Legislation. The other sources are Justice,equity,good conscience,professional and opinions etc.

2)Legal Concepts -Jurisprudence is the analysis of legal concepts such as rights, duties,legalpersonality, ownership, possession, titles, property, obligations,negligence and the related issues.

⁴ Pranjape Dr. N.V. , Studies in Jurisprudence & Legal Theory, Central Law Agency Allahabad, 9th Edition 2019, P.6-7

⁵ Dwivedi Dr. S.P. ,Jurisprudence & Legal Theory, Central Law Publications, 6th Edition 2012,P.1

⁶ Gupta Dr. Radha, Juridprudence & Legal Theory, university Book House Pvt. Ltd., 4th Edition 2017, P.8

3)Legal Theory -Legal Theory deals with law as it exists and functions in the society and the methods by which it is made and enforced. It deals with the influence of law and social opinion on each other.thus,legal theory seeks to link law with other disciplines and pursue its study in a wider social perspective. So we can say thatlegal theory is a very important part of jurisprudence.⁷

Classification of jurisprudence :-

1) According to Austin :-

- i)General Jurisprudence
- ii) Particular Jurisprudence

2) According to Salmond :-

- i)Analytical jurisprudence
- ii)Historical jurisprudence
- iii)Ethical jurisprudence

3)According to Bentham :-

- i)Expository jurisprudence
- ii)Censorial evaluative jurisprudence

4)Sociological jurisprudence

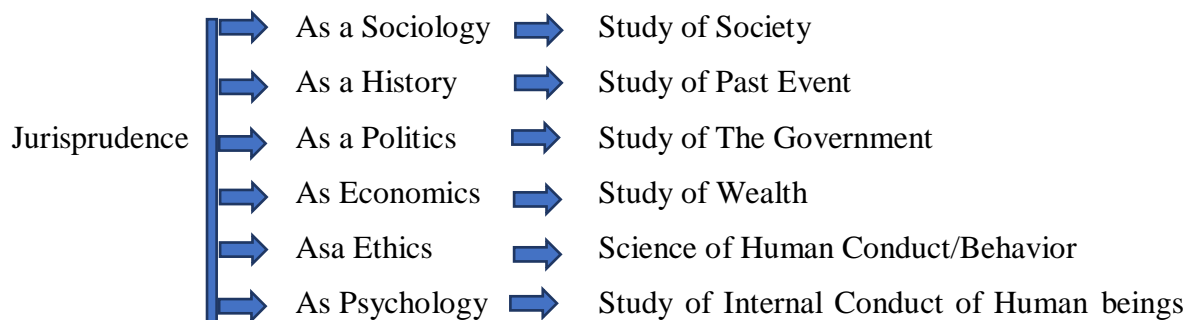
5) English jurisprudence and Continental jurisprudence

6)Comparative jurisprudence

7) Philosophical jurisprudence⁸

Scope ofjurisprudence: -It is study of political, social, economic and cultural ideas.

It is the study of man in relation to State and Society. we mainly study the nature of law, definition, classification and other thing. It is the study of its source, purpose and the nature of rights and duties,and how is developed the law, how origin the law, what are the legal system.



Importance of jurisprudence :-According to Harold.J.Laski jurisprudence is the eye of law, Jurisprudence is like a eye.

⁷ Pranjape Dr. N.V. , Studies in Jurisprudence & Legal Theory, Central Law Agency Allahabad, 9th Edition,P.11

⁸ Tripathi B.H. Mani, Jurisprudence The Legal Theory, Allahabad Law Agency,19th Edition, P.6

Its comparison with the eye. The eyes are one of the most important parts of human body, without eyes we can neither see nor do something. This is the reason, that jurisprudence is the eye of law. Jurisprudence is the functions for law in the same manner as the eyes do in human body.⁹

Jurisprudence is very important for every person, Judges, law student, Advocate, teacher, society, scholar, etc. Paton is says "jurisprudence is a particular method of study not of the law one particular country but of the general notions of law itself".

- 1) It helps us in understanding the basic ideas and fundamental principles of law in any given society.
- 2) It helps in the study of actual rules of law and in tracing out principles underlying them.
- 3) It may also helpful to legislators.
- 4) It helps to the Judges and lawyers.
- 5) It helps us in proper understanding of legal terms and expressions
- 6) It helps judges, lawyers, student in ascertaining the meaning of words and expressions used in statutes.
- 7) It helps in understanding the meaning of law.
- 8) It is Inspired to us, to developed the society.
- 9) It helps interpretation of the law.
- 10) The study of jurisprudence is equally beneficial for the sociologists and moralists.¹⁰

Conclusion: - Law is a social institution. A society may be described as an association of people with a measure of permanence.¹¹ Jurisprudence is the bundle of different legal provision. It is the study of the law, and law is the controlling machine for the society. Law is the instrument of justice for the society, because law is the basic requirement of the society. If we will not study the jurisprudence, we will never understand the meaning of law. We study the basic principles of law in jurisprudence, so we can say that jurisprudence has great educational value.

Exercise: -

- Q1.** What is the meaning of jurisprudence?
- Q2.** Give some important definition of jurisprudence?
- Q3.** Define the jurisprudence? what are the kind of jurisprudence?
- Q4.** Explain the scope and importance of jurisprudence?

⁹ Prasad Anirudh, Principles of Jurisprudence, Eastern Book Company, Lucknow, 3rd Edition 2004, P.7

¹⁰ Tripathi B.H. Mani, Jurisprudence The Legal Theory, Allahabad Law Agency, 19th Edition, P.11

¹¹ Dias, Jurisprudence, Lexis Nexis, 5th Edition, P.15

Q5. Jurisprudence is the Eye of law Discuss?

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