

**LL.M IInd Sem**  
**Jurisprudence II (L- 2002)**  
**Law and Justice**

**Law**

Law is known as:-

- In Roman 'Jus'.
- In France 'Droit'.
- In Japan 'Giri'.
- In Islamic System 'Hukum'.
- In Hindu Law 'Dharma'.

**Definition**

- Law is the instrument of justice
- Blackstone: - Law a rule of civil conduct prescribed by the supreme power in a state, commanding what is right, and prohibiting what is wrong.
- Holmes :-The life of the law has not been logic: it has been experience.
- Grotius :-Law is a rule of moral action obliging to that which is right.
- Von Ihering :-Law is the sum of the compulsory rules in force in a state.
- St. Thomas Aquinas :- Law is nothing else than an ordinance of reason for the common good, made by him who has care of the community, and promulgated.
- Austin :-Law is a command from the sovereign person or body in the political society to a member or members of society.
- Coke:-Reason is the life of the law, nay, the common law itself is nothing else but reason. The law is the perfection of reason.
- Cardozo:-When there is such a degree of probability as to lead to a reasonable assurance that a given conclusion ought to be and will be embodied in a judgement, we speak of that conclusion as the law.

**Nature of law**

- Idealistic

- Positivistic
- Sociological
- Realistic

### **Kinds of law**

- **Salmond –**
  1. Imperative
  2. Physical or scientific law
  3. Natural or moral law
  4. Conventional law
  5. Customary law
  6. Practical law
  7. International law
  8. Civil law
- **According to Holland –**
  1. Substantive and procedural law
  2. Personal law, public law and international law
  3. General and specific law
  4. In rem and in personam law
  5. Antecedent law remedial law
- **According to Austin**
  1. Divine law
  2. Human law
  3. Law figuratively so called
- **Chief forms of special law**
  1. Local laws
  2. Conflict of laws
  3. Conventional law
  4. Autonomic law

5. Martial law

6. Prize law

## **Justice**

the quality of being just impartial and fair.

### **Some definition of justice**

- According to Ulpian –‘justice is the constant and perpetual will to render to everyone that to which he is entitled’.
- Cicero -justice is the disposition of human mind to render to everyone his due.
- Aquinas-justice is a habit where by a man renders to each his due by a constant and perpetual will

### **Kinds Of Justice**

- Natural Justice
- Social Justice
- Economic Justice
- Political Justice
- Legal Justice

## **Administration of justice**

### **Introduction**

We all are the part of society. Peace Law and order are maintained in the society by the state. Justice is the soul of every judicial system. Justice is established in the society by the law , So administration of justice is the essential subject matter of the law .The administration of justice is the process by which the legal system of a government is executed. Jeremy Taylor has well remarked –“A herd of wolves is quieter and more at one than so many men unless they all had one reason in them or have one power over them “ the main function of state are to protect the rights of all person and to maintain the law and order in the society.

## **Meaning**

Administration means: - To management.

Justice means: - To protect rights and fair treatment.

## **Definition**

- Salmond said that the Administration of Justice implies maintenance of rights within a political community by means of the physical force of the state. However orderly society may be, the element of force is always present and operative. It becomes latent but it still exists.
- Roscoe Pound– He believed that it is the court who has to administer justice in a state.

## **Origin of Administration of Justice**

It is the social nature of men that inspires him to live in a community. This social nature of men demands that he must reside in a society. However, living in a society leads to conflict of interests and gives rise to the need for Administration of Justice. This is considered to be the historical basis for the growth of administration of justice.

Once the need for Administration of Justice was recognized, the State came into being. Initially, the so called State was not strong enough to regulate crime and impart punishment to the criminals. During that point of time, the law was one of Private Vengeance and Self-Help.

In the next phase of the development of Administration of Justice, the State came into full-fledged existence. With the growth in the power of the state, the state began to act like a judge to assess liability and impose penalty on the individuals. The concept of Public Enquiry and Punishment became a reality. Thus, the modern Administration of Justice is a natural corollary to the growth in the power of the political state.

## **Advantages of Legal Justice**

1. Uniformity and Certainty– Legal Justice made sure that there is no scope of arbitrary action and even the judges had to decide according to the

declared law of the State. As law is certain, people could shape their conduct accordingly.

2. Legal Justice also made sure that the law is not for the convenience of a particular special class. Judges must act according to the law. It is through this that impartiality has been secured in the Administration of Justice. Sir Edward Coke said that the wisdom of law is wiser than any man's wisdom and Justice represents wisdom of the community.

### **Disadvantages of Legal Justice**

1. It is rigid. The rate of change in the society is always more rapid than the rate of change in the Legal Justice.
2. Legal Justice is full of technicalities and formalities.
3. Legal Justice is complex. Our society is complex too. Thus, to meet the needs of the society, we need complex laws.

### **Types of administration of justice**

1. Civil administration of justice
2. Criminal administration of justice

#### **1. Civil administration of justice**

Adjudication of civil disputes by the civil courts is known as administration of civil justice. Those offences which are dealt with by civil courts through civil proceeding are called civil offences. The rights enforced by civil proceeding are two kinds. They are either primary rights or sanctioning rights. A sanctioning rights is that which arises out of the violation of another rights. All other are primary, they are the rights which have their source somewhere else than wrongs. A primary right generally arises out of conduct or *jus in rem*.

#### **2. Criminal administration of justice**

Adjudication of Criminal cases by the criminal court is known as administration of criminal justices, those offence which are dealt with by criminal court through criminal proceeding are called criminal offences

Punishment is one of the chief purpose of administration of criminal justice .it may roughly be defined as the authoritative infliction of suffering for an offence. the notation of punishment involves three major elements. The first of these elements is that punishment is imposed by someone in authority over the person punished. the second element is that punishment involves the infliction of something unpleasant on the victim, whether consisting of positive physical pain or deprivation of something which the victim desires such as his liberty. Thirdly the most important notion of punishment entails the actual or supposed commission of an offence.

For further clarification you may reach us via

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