

LL.B. (3 Yrs.) Semester I

Jurisprudence

UNIT-II

LECTURE 1

Syllabus

Schools of Legal Theory ; Natural Law School and Legal Positivism, Historical School, Realist School, Sociological School, Marxist school and Critical Legal School

UNIT II : SCHOOLS OF LEGAL THEORY	TOPIC NAME	YOUTUBE VIDEO LINK
LECTURE 1	NATURAL SCHOOL OF JURISPRUDENCE	https://youtu.be/guzALV2l9SQ
LECTURE 2	POSITIVE SCHOOL OF JURISPRUDENCE	https://youtu.be/xmjtEOxkH7s https://youtu.be/vlijnl2VKTY
LECTURE 3	HISTORICAL SCHOOL OF JURISPRUDENCE	https://youtu.be/xmjtEOxkH7s https://youtu.be/zGpyi1fgo2s
LECTURE 4	REALIST SCHOOL OF JURISPRUDENCE	https://youtu.be/ezCzMxhQ4_k
LECTURE 5	SOCIOLOGICAL SCHOOL OF JURISPRUDENCE	https://youtu.be/mzz933TjQH4

LECTURE 1-

Topic- NATURAL LAW SCHOOL

PREVIOUSLY ASKED QUESTION

Q1- explain the concept of natural law school with the help of definition of different jurists.

Notes

-Founder of natural school were Greece

-Natural law thinking has played a wide role in the fields of ethics, politics and law since ancient times.

As seen by many jurists, it is essentially a claim to believe in a standard of values.

Jurists of different ages gave different meanings to the term natural law.

According to Stoics, this is the divine law (Jus divindum) —the command of God imposed on men.

According to Cicero, natural law is the rule of reason, because it is established by the reason by which the world is controlled and addressed and perceived by the rational nature of men.

According to Aristotle and Thomasius it is also in a sense of expression the unwritten law (jus non scriptum), It is also universal or common law (jus commune, jus gentium) .

According to Hookes, this is the Eternal Law, as has existed since the beginning of the world, uncreated and unchanging, while for modern-day jurists natural law consists primarily of the principles of morality.

Theories of Natural law:-

Natural law can be broadly divided into four class-

1- Ancient theory

2- Medieval theory

3- Doctrine of renaissance

4- Modern theory

Assignment

Q1- name the four theories of natural law.

Q2- who are known as the founder of natural law school?

Q3-who said natural law is 'jus commune and jus genitum'.

Q4- who said natural law is command of god imposed on men ?

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UNIT II

LECTURE 2 –

TOPIC- ANALYTICAL SCHOOL OF JURISPRUDENCE

Previously asked questions

Q1- how did HLA Hart improve Austin's understanding of law?(2019)

Q2- who was the main propounder of analytical or positive school of jurisprudence?

Explain the features of analytical school.(2015,2016)

Q3- law is the command of sovereign . explain it.(2016),

NOTES

Analytical school of jurisprudence deals with law as it exists in the present form. It seeks to analyse the first principles of law as they actually exist in a given legal system.

This school considers that the most important aspect of law is its relation to the state.

They treat law as a command emanating from the Sovereign, namely, the State. So, this school is called the Imperative school.

This school is neither concerned with the past of the law nor the future of it, but this school studies law as it actually exists i. e. positus.

This school has started during the 19th century.

The main jurists of this school are -

Jeremy Bentham (1748 -1832)

John Austin (1790-1859)

Erskine Holland (1835 -1928)

Sir John Salmond (1862 – 1924)

H.L.A, Hart

Hans Kelsen (1881 -1973)

Analytical or Positive school of jurisprudence - Legal positivism is one of the most influential schools of thought in jurisprudence. The start of the nineteenth century might be taken as marking the beginning of the positivist movement.

it was developed by Bentham and Austin.

Bentham's Analytical Positivism:-Bentham came in England the advent of positivism, sovereignty ,command ,duty and sanction , this is the basic elements of Analytical jurisprudence .

Bentham 's Utilitarianism- Bentham has given a theory , called utilitarianism or hedonism which means maximum happiness to the greatest number of people. According to this theory - the main object of legislation is the carrying out of the principle of utility. In other words the proper end of every law is the promotion of the greatest happiness of the greatest number.

ASSIGNMENT

Q1- During which century, analytical school of jurisprudence developed?

Q2- write down the name of any two jurists of this school?

Q3- who is known as the propounder of analytical or positive school ?

Q4- who has given the theory of utilitarianism ?

Q5- what is the meaning of utilitarianism ?

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LECTURE 3

TOPIC - HISTORICAL SCHOOL

Previously asked question –

Q1- discuss the volksgeist theory of savigny (2016)

Q2- what is the difference between analytical and historical school? (2016)

Q3- Critically examine the pure theory of kelson.(2017)

NOTES

The followers of this school argued that law is found not made. The historical school doesn't believe and support the idea of the natural school of law which believe that the origin of law is from superior authority and have some divine relevance.

The historical school follows the concept of man-made laws. 'Law is formulated for the people and by the people' means that the law should be according to the changing needs of the people. It is also called the continental school of Jurisprudence.

In the words of Salmond, "That branch of legal philosophy which is termed historical jurisprudence is the general portion of legal history.

JURIST OF HISTORICAL SCHOOL

Montesquieu

According to Sir Henry Maine, the 1st Jurist to adopt the historical method of understanding the legal institution was Montesquieu.

One of the best-known works of Montesquieu was his book 'The Spirit of laws'

Savigny

Savigny is regarded as a father of the Historical school

Basic Concept of Savigny's Volksgeist

Volksgeist means "national character". According to Savigny- the law is the product of general consciousness of the people or will.

Sir Henry Maine

Sir Henry Maine was the founder of the English Historical School of Law. Savigny's views of Historical school was carried forward in England by Sir Henry Maine.

Georg Friedrich Puchta

Puchta was a German Jurist. He was a great jurist of Historical school of Jurisprudence.

ASSIGNMENT

Q1- Who is known as the founder of historical school?

Q2- Who carried forward the savigny's view in England?

Q3- Who has written the book ' the spirit of laws'?

Q4- What is the view of Montesquieu about the historical school?

Q5- historical school follows the concept of -

- a- Man made laws
- b- Divine law

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LECTURE 4

TOPIC- REALIST SCHOOL

PREVIOUSLY ASKED QUESTION

NOTES

The realist approach in the field of jurisprudence is a relatively modern one.

It is the modern concept of the US, the Realist school was evolved and given accreditation in the American Jurisprudence.

In America, we have the Realist School of jurisprudence. This school strengthens sociological jurisprudence and perceives law as the consequence of social impacts and conditions, and sees it as judicial decisions.

The thesis of realists is based on the notion: “Law is what the psychology of courts determines – the aggregate of the item of judicial and official actions”. “Law is what the judges decide”.

The realist approach to law is a part of the sociological approach.

Meaning of realism:-

The Realist movement concentrates on scientific observation of law in its meaning and working. This movement is named as a ‘realist’ because this approach studies law as it is in actual working and its effect.

According to **Llewellyn** “Realism is not a school but it can be called as a branch of sociological School. It concentrates on the actual working and effect of law and is, therefore, called the realist school.

Reasons for the establishment of realist schools:-

There are mainly three reasons for the establishment of the Realist School of law, as follows;

1. The first reason is that it was established as a reaction against the sociological jurists who were emphasizing the social effect of law.
2. The second reason is that this school was established to point out the importance of Courts and the importance of judges- the human factor is the judges and the lawyers.

ASSIGNMENT

Q1- write down two reasons for the establishment of realist school.

Q2- what was the view of Llewellyn about the realism school.

Q3- What is the meaning of realism?

Q4- Realist school strengthens.....school of jurisprudence.

LECTURE -5

TOPIC- SOCIOLOGICAL SCHOOL OF JURISPRUDENCE

NOTES

In sociological school, law is considered as instrument of social welfare. The main idea of Sociological school is to establish a relation between the law and society. Sociological jurists see society as one single unit. Law is the only source, which controls the behavior of the individual in a society. In such a society, they found that there was a certain conflict of interest. For this purpose, the notion of law was linked with sociology and it becomes sociological Jurisprudence. The use of the word 'sociological jurisprudence' means that the law should be made in society, and its needs should be given more attention

According to Ehrlich,

At the present as well as at any other time the centre of gravity of legal development lies not in legislation, nor in the juristic decision, but in society itself."

The main focuses of the sociological school is on balancing the welfare of state and individual was realized.

August Comte -

The honor of the founder of the word 'sociology' belongs to the French philosopher August Comte. The legitimate object of scientific study, according to Comte, is society itself and not any particular institution of government

Eugen Ehrlich -

Ehrlich another eminent jurist of the sociological school primarily expounded the social basis of law.

According to Ehrlich, the institution of marriage, domestic life, heritage, possession, contract, etc. governs society through living law which dominates human life.

Inhering -

He was a German jurist and described as '**the father of modern sociological jurisprudence**'. His main work is 'The spirit of law'.

Leon Duguit - Leon Duguit was a French Jurist and leading scholar of sociological school.

He gave the theory of **SOCIAL SOLIDARITY** .

ASSIGNMENT

Q1- who has given the theory of social solidarity ?

Q2- who is known as the father of modern sociological school of jurisprudence.

Q3- who is known as the founder of word sociology ?

Q4-The main idea of Sociological school is to establish a relation between the and society.

Q5- The main focuses of the sociological school is on balancing the and individual was realized .