

LL.B (hons) Semester IV
PAPER 1 JURISPRUDENCE
UNIT - 2

Q.1 EVERY LAW STRICTLY SO CALLED IS A DIRECT COMMAND OF A MONARCH OR SOVEREIGN IN THE CHARACTER OF A POLITICAL SUPERIOR, THAT IS TO SAY , A DIRECT COMMAND OF MONARCH OR SOVEREIGN TO A PERSON OR PERSON IN A STATE OF SUBJECTION TO ITS AUTHOR . IN THE LIGHT OF ABOVE STATEMENT CRITICALLY EXAMINE THE IMPERATIVE THEORY OF LAW.

Q.1 (a) DISCUSS THE IDEOLOGY OF IMPERATIVE SCHOOL OF LAW.

- i).The imperative school is ‘positive’ in its approach to the legal problems in the society. It concentrates on things as they are, not as they ought to be.
- ii). The main concern of the positivists is ‘law that is actually found\positum, and not the ideal law.
- iii). This school lays down the essential elements that go to make up the whole fabric of law e.g. State sovereignty and the administration of justice.
- iv).The motto of Analytical school is Ubi civitas ibi lex i.e. where there is State, there will not be anarchy; State is a necessary evil. The main proponents of this school are: Bentham, Holland, Austin, Salmond, etc.

Q.1 (b) WHAT ARE THE ELEMENTS OF LAW ACCORDING TO AUSTIN ?

- i). Austin states that the must have three elements of law are command, sanction and sovereign.
- ii). According to him, “law is the command of a sovereign”, requiring his subjects to do or forbear from doing certain acts. There is an implied threat of a sanction if the command is not obeyed.

Q.1 (c) . WHAT IS AUSTIN’S CONCEPT OF SOVEREIGNTY ?

- i).Austin defines sovereignty as the highest and ultimate authority within a legal system.
- ii). According to him, sovereignty resides in the hands of a determinate human superior, or sovereign, who is not subject to the commands of any other human authority.
- iii).Austin emphasises that sovereignty derives from the acceptance and obedience of the governed population.
- iv).The authority of the sovereign is established and maintained through the recognition and compliance of the subjects within the legal system.

Q.1 (d) DISCUSS THE CRITICISM OF AUSTIN’S THEORY.

- i).Austin’s theory disregard the ethical element.
- ii).It ignores the aspect of custom.
- iii). It is not applicable to international law and constitutional law.
- iv).There is no space for judge made law and command theory is unattainable.
- v). Ignores the purpose of law.

Q.I (e) WHAT IS DUGUIT’S VIEW ON AUSTIN’S THEORY OF LAW ?

- i). Duguit asserted that the notion of command is inapplicable to modern social/welfare legislations, which do not command people but confer benefits; and which binds the State itself rather than the individual.
- ii). Law do not always commands, but confers privileges also e.g. right to make a will. Thus, Austin’s concept of law is clearly inapplicable in a modern democratic welfare State.

EXERCISE-1

Q.1 a)DISCUSS THE IDEOLOGY OF IMPERATIVE SCHOOL OF LAW. (2 marks)

.....
.....
.....
.....
.....
.....

Q.1 b) Q.1 (b) WHAT ARE THE ELEMENTS OF LAW ACCORDING TO AUSTIN ? (2marks)

.....
.....
.....
.....
.....
.....

Q.1 (c) . WHAT IS AUSTIN’S CONCEPT OF SOVEREIGNTY ?(2 marks)

.....
.....
.....
.....
.....
.....

Q.1(d) DISCUSS THE CRITICISM OF AUSTIN’S THEORY.

.....
.....
.....
.....
.....
.....

Q.I (e) WHAT IS DUGUIT’S VIEW ON AUSTIN’S THEORY OF LAW ?

.....
.....
.....
.....
.....
.....

LL.B (Hons) Semester IV
PAPER 1 JURISPRUDENCE
Unit 2

Q.2 THE HISTORY OF NATURAL LAW IS A TALE OF SEARCH MANKIND FOR ABSOLUTE JUSTICE AND ITS FAILURE. IN THE LIGHT OF THIS OBSERVATION , DISCUSS DEVELOPMENT OF NATURAL LAW.

Q.2(A) DISCUSS THE IDEOLOGY OF NATURAL LAW SCHOOL ?

- i).** Natural law' is also known as: Moral law, Divine law, Law of God, and, Law of reason.
- ii). The natural law philosophy found an expression in the Roman legal system through vision of Roman law into three distinct divisions - jus civile, jus gentium and jus naturale- Natural law is basically a priori method (no need of enquiry or observation), different from a posteriori or empirical method.

Q.2 (B) DISCUSS THE EVALUATION OF NATURAL LAW SCHOOL.

- i).** Natural law approach, however, is not a realistic and practical approach. Naturalists bid to introduce 'moral element' into the criterion of identification of laws has the effect of founding law on value judgments. If each individual is permitted to determine law according to his own conscience, it will invite chaos and disorder in the society.
- ii). Bentham regards natural law as only a phrase of the English language, and natural rights as "nonsense on stilts". According to him, the "natural law reasoning" resulted from confusing laws with moral or legal laws.

Q. 2 (c) DISCUSS THE APPLICATION OF NATURAL LAW SCHOOL IN THE INDIAN LEGAL SYSTEM.

- i).** Indian legal system and its laws are based on the legal positivists' tradition, and law is seen in terms of formal criterion of validity. However, recently the courts have started looking beyond that.
- ii). For example, in the area of constitutional amendments, they have developed a concept of "basic structure" to which all constitutional amendments must conform. Right to life under Article 21 of the Constitution has been very liberally interpreted to include right to basic amenities, clean environment, privacy, dignity, etc.
- iii). The courts are insisting upon the administration to be just, fair and reasonable in their dealings with the citizens.

Q.2(D)EXPLAIN LON FULLER CONCEPT OF INNER MORALITY.

- i). Fuller is one of the leading supporters of the modern natural law philosophy. He distinguished morality as it is' ('morality of duty') from 'morality as it ought to be' ('morality of aspiration').
- ii). He believed that law is a purposive system, the purpose being to subject human conduct to the control and guidance of legal rules.
- iii). Fuller maintained that law is a product of sustained purpose and efforts which contains its own implicit morality - "inner morality". He believes that "Law represents order simplicity." Thus "good order is law that corresponds to demand of justice or morality or men's notion of what ought to be."
- iv). Eight conditions which constitutes the "inner morality" of law are: (i) there must be rules, (ii) the rules must be published, (iii) rules are to be prospective and retroactive legislation must not be used abusively, (iv) the rules must be understandable/intelligible, (v) the rules must not be contradictory, (vi) the rules must not require the conduct beyond the power of the affected parties, (vii) the rules must not be changed so frequently that the subjects cannot guide their actions by them, and (viii) there should be congruence between the rules as announced and their actual enforcement.

Q.3 CRITICALLY EXAMINE THE HISTORICAL SCHOOL OF JURISPRUDENCE.

Q.3 (a) DISCUSS THE IDEOLOGY OF HISTORICAL SCHOOL.

- i). The historical school emphasise that the historical factors influenced the origin, formation and development of laws.
- ii). Law is found, not made. Laws are not of universal application, as traditions and customs determine the law.
- iii). Laws are rules consisting partly of social habits and partly of experience. Germany was the cradle of this school and Savigny (1779-1861) its main exponent.

Q. 3 (b) DISCUSS SAVIGNY'S VOLKSGEIST CONCEPT UNDER THE HISTORICAL SCHOOL OF JURISPRUDENCE.

- i). According to Savigny, law is based upon the general will or free will of common people.
- ii). He says that law grows with the growth of nations increases with it and dies with the dissolution of the nations. In this way law is national character i.e., Consciousness of people. In other words, according to this theory law is based on will or free will of common people.
- iii). He says that law grows with the growth of nation. A law which is suitable to one society may not be suitable to other society. In this way law has no universal application because it based upon the local conditions local situations, local circumstances, local customs, elements etc.

Q.3 (c) . DISCUSS THE CRITICISM OF SAVIGNY'S THEORY.

- i). He talks about national character but gave importance to the roman law.
- ii). He overlooked the importance of divine and moral laws.
- iii). He did not favoured codification of laws.
- iv). His view that customs are always based on the popular consciousness i.s also not acceptable.

Q.3 (d) DISCUSS HENRY MAINE'S CONCEPT OF PROGRESS FROM STATUS TO CONTRACT IN PROGRESSIVE SOCIETIES.

- i). According to Maine, most of the ancient communities are founded on patriarchal pattern wherein the eldest male parent called the pater familias dominated the entire family.
- ii). With the march of time the institution of pater familias withered away and now rights and obligations were dependent on individual contracts and free negotiation between persons. The freedom of individual in economic field (laissez faire) struck a blow to the Option of status as the basis of law.
- iii). Thus, Maine said that 'movement of progressive societies has hitherto been from status to contract'. The word 'hitherto' signifies 'until then'; thus, he left options open for a change in future time to come (viz. individuals might have to fight for their rights and liberties collectively in groups).

LL.B (Hons) Semester IV
PAPER 1 JURISPRUDENCE
Unit 2

Q.4 DISCUSS THE REALIST SCHOOL AND MARXISTS SCHOOL IN DETAIL.

Q.4 (A) WHAT IS THE IDEOLOGY OF REALIST SCHOOL ?

- i). Realist school, or Realism, is that school of jurisprudence which is more concerned with the scientific observation of lawmaking and its functioning, rather than the ends of law.
- ii). The Realist School of Jurisprudence combines Analytical Positivism and sociological ideologies.
- iii). According to the Realist school of jurisprudence:
 - Law is defined in terms of judicial decisions, not as a set of rules.
 - Law originates from judges, so the law is determined by what the courts do, not what they say.

Q.4 (B) WRITE A NOTE ON MODERN AMERICAN REALISM ?

- i). They are concerned with the study of law as it works and functions which means investigating the social factors that makes a law on the hand and the social results on the other.
- ii). The emphasise more upon what the courts may do rather than abstract logical deductions from general rules and on the inarticulate ideological premises underlying a legal system.
- iii) Gray stresses the fact that the statutes together with precedents, equity and custom are sources of law but the law itself is what the persons acting as judicial organs of the state laid down as rules of conduct.

Q.4 (C) WRITE A NOTE ON SCANDINAVIAN REALISM.

- i). Under this law can be explained purely in terms of observable facts and the study of such facts, which is the science of law, is, therefore, a true science like any other concerned with facts and events in the realm of causality.
- ii). Thus all such notions as the binding force or validity of law, the existence of legal rights and duties, the notion of property and so forth are dismissed as mere fantasies of the mind no actual existence other than in an imaginary metaphysical world of their own.

Q.4 (D). DISCUSS THE MARXISTS THEORY OF LAW.

- i). Marx's view of state and law was co-terminus with the understanding of society and social process.
- ii). The sociological understanding of the society led Marx to pronounce that the desired system would be a Communist Society based on rational planning, co-operative production and equality of distribution and most importantly, liberated from all forms of political and bureaucratic hierarchy.
- iii). Marx condemned and rejected the state and money as Bourgeois concept and the proletariat has a historical mission of emancipating the society as a whole. Law seems to be nothing than a function of economy without any independent existence. His classification of society into various classes -
 - a). The Capitalists
 - b). The Wage Labourers
 - c). The Land Lords

Q.4 . (E) DISCUSS KARL RENNER IDEOLOGY UNDER THE MARXIST THEORY OF LAW.

- i). The institutions of private law and their social functions utilised the Marxist theory of sociology to develop a theory of law. Socialists and Marxists have failed to understand that new society has always pre-formed in the womb of the old and that is equally true for law.
- ii). The process of change from one given order to another is automatic.
- iii). Renner confesses that the concept of property in terms of Marx has not remained the same but the property whether in socialism and capitalism has not remained an instrument of exploitation rather the natural forces of change have put property into various restrictions be it tenants, employees or consumers. However, the power of property remains whatsoever the political character of the state .

EXERCISE-4

Q.4 (A) WHAT ARE THE MAIN CAUSES OF ORIGIN OF REALIST SCHOOL ?

.....
.....
.....
.....
.....
.....
.....

Q.4 (B) DISCUSS THE EVALUATION OF NATURAL LAW SCHOOL.

.....
.....
.....
.....
.....
.....
.....

Q.4 (C) WRITE A NOTE ON SCANDINAVIAN REALISM.

.....
.....
.....
.....
.....
.....
.....

Q.4 (D). DISCUSS THE MARXISTS THEORY OF LAW.

.....
.....
.....
.....
.....
.....
.....

Q.4 . (E) DISCUSS KARL RENNER IDEOLOGY UNDER THE MARXIST THEORY OF LAW.

.....
.....
.....
.....
.....
.....
.....

