RMM LAW COLLEGE SAHARSA

JURISPRUDENCE

Part I

Paper -1

Topic- Defination, Nature and Scope

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Theories of law in Jurisprudence

Natural Law

Natural law is a part of Jurisprudence, and frankly, there is not a definite way to define natural law. Natural law can still somehow be stated as laws which originated from sources which are other-worldly or some God-like source, basically, the point is natural law did not originate from some political authority or any legislature.

In Jurisprudence, it is believed that Natural law can be applied anywhere in the world i.e. Natural law has universal applicability. Whenever we talk about the term true law it can be said that laws which are obligatory in nature are said to be true law so by that analysis we can say that natural law is not true law.

The reason natural law is not true law because natural law is not obligatory in its true sense. Natural law acts as a defence for moral relativism. Moral judgement varies from places to religion to culture and this theory was ascended by Greek philosophers. The philosophers drew a distinction between the law of nature and conventional human choices and this distinction acted against natural law.

Natural law hence aims to find a common moral ground for different cultures and different religions. But still, the idea of natural law raises a lot of questions and the biggest and relevant one is whether moral proposition can be derived from the proposal of facts.

A prime example of this question would be people might agree or disagree whether euthanasia is justifiable but then again people would not argue over the justification of punishment over a crime. So it is impossible to affirm the premise and deny the conclusion. Basically, there are still millions of pseudo-theories related to natural law and most of them are not realistic.

So coming to realism and a realistic standpoint at certain cases natural law creates conflict between law and morals. Certain existing laws are inhumane if we consider the theory of natural law. So a law must be analysed on the basis of its efficiency, simplicity and if the law serves a right combination of justice and morality.

Imperative law

Imperative law directly opposes natural law. Imperative law is much more focused on realism when it is compared to natural law. Here in this article, we will discuss Austin’s view on imperative law.

So imperative law is laid down by the sovereign of a country and it is enforced by sanctions, and imperative law is a type of command.

There is a distinct difference between command and law and for a command to qualify as laws that command must be given by a political superior or sovereign. Since this theory defines law in terms of command, sovereign and sanction we can conclude that Imperative theory cannot provide adequate analysis for standard law.

Legal realism

There is a certain similarity between the theories of legal realism and imperative law and that similarity is both the theories sees the law as a type of command.

But in the case of the theory of legal realism, it sees the law as a type of command that must be given by the legislature and for legal realism, the sovereign is the Supreme Court. This approach is used in the United States with Holmes influencing it further. Holmes further states that law, in reality, is judge-made and not made by some supreme power and the actions of courts are not necessarily deduced by statutes and books.

Law of obligation

Law of obligation has been derived from Roman law in its legal sense. Law of obligation can be said to be a relationship of legal necessity in its original sense. All the law of obligation relates to being proprietary rights in its own sense.

In Jurisprudence, a person who gains benefit from the law of obligation is termed as a creditor and the person who is bound by the law of obligation is termed as a debtor.