

**RMM LAW COLLEGE SAHARSA**

**JURISPRUDENCE**

**Part I**

**Paper -1**

**TOPIC- PROVISIONS AS TO  
ACCUSED PERSONS OF**

**Topic- Defination, Nature and Scope**

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**Bentham distinguished**

1. Expositorial Jurisprudence.
2. Censorial Jurisprudence.

Austin occupied himself with **expository** Jurisprudence. (His work consisted mainly at a formal analysis of the structure of English law).

Bentham analytical exposition or pioneered and Austin developed. Hence the word Jurisprudence has come to mean in English almost exclusively an analysis of the formal structure of law and its concepts.

**Buckland:** The analysis of legal concepts is what Jurisprudence meant.

**Julius Stone:** The lawyer's extraversion. It is the lawyer examination of the precepts, ideas and techniques of the law in the light derived from present knowledge in discipline other than the law.

**Austin:** He says the science of Jurisprudence is concerned with positive law. It is no matter whether it is good or bad law. Austin divides the law as general

jurisprudence and particular jurisprudence. General Jurisprudence is common to all systems. Particular Jurisprudence confined only to the study of any actual system of law or any portion of it.

General Jurisprudence is science which is concerned with the exposition of the principles notions and distinctions which are common to all system of law.

Particular Jurisprudence is the science of any system of positive law actually obtaining in a specifically determined political society.

General Jurisprudence is a province of pure abstract jurisprudence to analyze and systematize the essential elements underlying the indefinite variety of legal rules without special reference to the institution of any particular country.

Particular Jurisprudence is a science of particular law General and particular jurisprudence differs from each other in this scope but not in its essence.

Generally it takes data from the system of more than one state while particular takes the data from a particular system of law. Both are positive only. Example: Possession is one of the fundamental legal concepts recognised by all system of law.

#### Criticism by Salmond Holland

1. Impracticability.
2. Error in Austin's idea of general jurisprudence.
3. Jurisprudence is the integral social science and the distinction between general and particular jurisprudence is not proper.

4. There may be many schools of jurisprudence but there are not different kinds of Jurisprudence.
5. He says it is not correct to use English Jurisprudence as Hindu jurisprudence.
6. We are dealing with different systems of law and not different kinds of jurisprudence.
7. He says jurisprudence is a social science which deals with social institutions governed by law it studies them from the point of view of their legal significance.

### **Holland**

1. Error on particular Jurisprudence.
2. We can classify a material into general and particular but we can't classify the science hence the study of particular legal system is not a science.
3. Example Geology of England Geology of India etc.

### **Lord Bryce:**

The law of every country is the outcome and result of the economic and social conditions of that country as well as the expression of its intellectual capacity for dealing with these conditions.

### **Savigny:**

Law grows with the growth and strengthens with the strength of people and its standard of excellence will generally be found of any given period to be in complete harmony with the prevailing ideas of the best class of citizens

Progress in the formation of law keep pace with the progress in the knowledge of the people.

**Holland:**

Jurisprudence is the formal science of positive law. It is a formal or analytical science rather than material science. He terms the positive law as the general rule of external human action enforced by a sovereign political authority. He follows the definition of Austin but he adds the term formal which means that which concerns only the form and not its essence. A formal science is one, which describes only the form or the external side of the subject and not its internal contents.

**Salmond:**

Jurisprudence as the science of law means civil law or law of the land.

**Jurisprudence is of 3 kinds**

Expository or systematic jurisprudence deals with the contents of an actual legal system as existing at any time whether past or present. Legal history says about the process of historical development which helps us to set forth law as it ought to be. It deals with the ideas of the legal system and the purpose for which it exists.

Salmond makes distinction as generic Jurisprudence and specific Jurisprudence.

Generic Jurisprudence includes the entire body of legal doctrines and specific jurisprudence deals with a particular department of those doctrines. He defines

Jurisprudence as the science of the first principles of the civil law. Specific Jurisprudence has three branches:

1. Analytical Jurisprudence.
2. Historical Jurisprudence.
3. Ethical Jurisprudence.

**Keeton:**

Jurisprudence the study and systematic arrangement of general principles of law. Jurisprudence deals with the distinction between public and private laws and considers the contents of the principal departments of law.

**Pound:**

Jurisprudence the science of law using the term law in the juridical sense as denoting the body of principles recognized or enforced by public and regular tribunals in the administration of justice.

**Gray:**

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

Jurisprudence is the study of fundamental legal principles it is any thought or writing about law and its relation to other disciplines such as philosophy, psychology, economics etc.