# 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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**Scope of Jurisprudence**

No unanimity of opinion regarding its scope. However it covers moral and religious precepts but that has created confusion. Credit goes to Austin who distinguished law from morality and theology. He also restricted the term to the body of rules set and enforced by the sovereign or supreme law making authority within the realm. In the present view its scope includes all the conduct of human order and human conduct in state and society.

**Nature of Law**

Natural law Aristotle is often said to be the father of natural law. Socrates Plato and Aristotle posted the existence of natural justice or natural right. Natural law theory asserts that there are laws that are imminent in nature, to which enacted laws should correspond as closely as possible. This view is frequently summarized by the maxim an unjust law is not a true law, lex iniusta non est lex, in which â€˜unjust' is defined as contrary to natural law.

Natural law is closely associated with morality and in historically influential versions, with the intentions of God. Natural law theory attempts to identify a

moral compass to guide the lawmaking power of the state and to promote â€˜the good'. Notions of an objective moral order, external to human legal systems, underlie natural law. What is right or wrong can vary according to the interests one is focussed upon. Natural law is sometimes identified with the maxim that an unjust law is no law at all.

Thomas Aquinas was the most important Western medieval legal scholar. He is the foremost classical proponent of natural theology. Aquinas distinguished four kinds of law.

These are:

1. The eternal law
2. Natural law
3. Human law.
4. Divine law.
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1. Eternal law is the decree of God which governs all creation.
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2. Natural law is the human participation in the eternal law and is discovered by reason. Natural law is based on first principles: this is the first precept of the law that good is to be done and promoted, and evil is to be avoided. All other precepts of the natural law are based on this. The desire to live and to procreate are counted by Aquinas among those basic (natural) human values on which all human values are based.
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3. Human law is positive law: The natural law applied by governments to societies.
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4. Divine law is the law as specially revealed in the scriptures and teachings of the apostles.

Thomes Hobbes, He was an English enlightenment scholar. Hobbes expresses a view of natural law as a precept, or general rule, found out by reason, by which a man is forbidden to do that which is destructive of his life, or takes away the means of preserving the same; and to omit that by which he thinks it may best be preserved. Hobbes was a social contrarian and believed that the law gained peoples' tacit consent. He believed that society was formed from a state of nature to protect people from the state of war between mankind that exists otherwise. Life is, without an ordered society, solitary, poor, nasty and short.

**Legal positivists**

Positivism simply means that the law is something that is positive: laws are validly made in accordance with socially accepted rules.

The positivist view are:

Firstly, that laws may seek to enforce justice, morality, or any other normative end, but their success or failure in doing so does not determine their validity. Provided a law is properly formed, in accordance with the rules recognized in the society concerned, it is a valid law, regardless of whether it is just by some other standard.

Secondly, that law is nothing more than a set of rules to provide order and governance of society. No legal positivist, however, argues that it follows that the law is therefore to be obeyed, no matter what. This is seen as a separate question entirely. What the law is - is determined by social facts What obedience the law is owed - is determined by moral considerations.

Hans Kelsen is considered one of the pre-eminent jurists of the 20th century. He is most influential in Europe, where his notion of a Grundnorm or a presupposed ultimate and basic legal norm, still retains some influence. It is a hypothetical norm on which all subsequent levels of a legal system such as constitutional law and simple law are based.

Kelsen's pure theory of law described the law as being a set of social facts, which are normatively binding too. Law's normativity, meaning that we must obey it, derives from a basic rule which sits outside the law we can alter. It is a rule prescribing the validity of all others.

Hart

Hart, who argued that the law should be understood as a system of social rules. Hart rejected Kelsen's views that sanctions were essential to law and that a normative social phenomenon, like law, cannot be grounded in non-normative social facts. Hart divided into primary rules (rules of conduct) and secondary rules (rules addressed to officials to administer primary rules). Secondary rules are divided into rules of adjudication (to resolve legal disputes), rules of change (allowing laws to be varied) and the rule of recognition (allowing laws to be

identified as valid). The rule of recognition, a customary practice of the officials (especially judges) that identifies certain acts and decisions as sources of law. Legal realism Oliver Wendell Holmes was a self-defined legal realist. The law should be understood and determined by the actual practices of courts, law offices, and police stations, rather than as the rules and doctrines set forth in statutes or learned treatises.

Sources Of Law

1. Legislative.
2. Precedents.
3. Customs.
4. Opinion juris (statutory interpretation and preparatory works).
5. Justice equity and good conscience.

Sources of law means the origin from which rules of human conduct come into existence and derive legal force or binding characters. It also refers to the sovereign or the state from which the law derives its force or validity. Several factors of law have contributed to the development of law. These factors are regarded as the sources of law.

**Legislation**

Legislation is that source of law which consist in the declaration of legal rules by a competent authority. Legislature is the direct source of law. Legislature frames new laws, amends the old laws and cancels existing laws in all countries. In modern times this is the most important source of law making. The term

legislature means any form of law making. Its scope has now been restricted so a particular form of law making. It not only creates new rules of law it also sweeps away existing inconvenient rules.