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I

UNIT

Jurisprudence

Nature and Scope of Jurisprudence

The word 'jurisprudence' is made from the Latin word *jurisprudentia* – the knowledge of law. 'Juris' in Latin signifies 'legal', and 'prudentia' means 'skill' or 'knowledge'. The word 'jurisprudence' has meant many different things at different times. It is the name given to a certain type of investigation into law, an investigation of an abstract, general and theoretical nature which seeks to lay bare the essential principles of law and legal systems.

In jurisprudence we are not concerned to derive rules from authority and apply them to problems; we are concerned rather to reflect on the nature of legal rules, on the underlying meaning of legal concepts and on the essential features of legal systems. In this sense jurisprudence comprises philosophy of law, and is a second order subject whose object is not to discover new rules but to reflect on the rules already known. The relation of jurisprudence to law depends not upon what law is treated but how law is treated.

But when discussing the nature of law or the working of authority or the analysis of legal concepts, jurisprudence should not confine itself to logic. Legal theory is concerned with law as it exists and functions in society; and the way in which law is created and formed, the influence of social opinion and law on each other are all points where jurisprudence meets other disciplines such as sociology, psychology and so forth.

Thus, the contents of Jurisprudence include: Sources of law, Legal concepts and Legal theories. 'Systematic jurisprudence' deals with the contents of an actual legal system as existing at any time, whether past or present. It is also known as 'expository jurisprudence.'

Term	Meaning
Latin Word	Jurisprudence
Juris	Law
Prudentia	Knowledge

Father of Jurisprudence

Jeremy Bentham is regarded as the **Father of Jurisprudence** because he made a systematic and scientific study of law and laid the foundation for modern legal philosophy. Bentham strongly criticized the existing legal system of his time, especially the complex and uncertain rules of common law, and he believed that law should be clear, rational, and useful for society. His main contribution to jurisprudence was the development of the **theory of utilitarianism**, which is based on the principle of "the greatest happiness of the greatest number." According to Bentham, the purpose of law should be to promote the welfare and happiness of the people. He believed that laws should be evaluated on the basis of their usefulness and their ability to bring maximum benefit to society. Bentham also emphasized the need for **codification of laws**, meaning that laws should be written and organized in a clear and systematic manner so that people can easily understand them. Another important contribution of Bentham was his classification of legal studies into two approaches: the **Expository Approach** and the **Censorial Approach**. The Expository Approach explains what the law actually is, while the Censorial Approach examines what the law ought

to be and evaluates it based on moral and social standards. Bentham's ideas greatly influenced later jurists, particularly **John Austin**, who took Bentham's work further and developed the **Analytical School of Jurisprudence**. Austin adopted Bentham's emphasis on a scientific and analytical study of law and focused on understanding law as it exists in a legal system. He further developed the concept that **law is the command of the sovereign**, meaning that law consists of commands issued by a political superior to subjects who are obliged to obey. Austin also distinguished between **positive law**, which is law made by the sovereign, and other types of moral or social rules. By refining and systematizing Bentham's ideas, Austin gave jurisprudence a more structured and analytical form, which became the foundation of modern legal positivism.

Division of Law (According to Bentham):

Approach	Meaning
Expository Approach	Command of Sovereign
Censorial Approach	Morality of law

1. **Expository Approach: -** The Expository Approach is a method of studying law that focuses on explaining and describing the law as it actually exists in a legal system. This approach does not concern itself with whether the law is good or bad, moral or immoral; instead, it simply aims to analyze and clarify the existing legal rules and principles. The main objective of the expository approach is to understand the structure, meaning, and operation of law as it is applied by the state. This approach was emphasized by Jeremy Bentham, who believed that before evaluating or criticizing law, it is necessary to first clearly understand what the law actually is. In this method, jurists examine legal rules, institutions, and principles in an objective and systematic way without mixing them with moral judgments. The expository approach studies positive law, which means the law that is created and enforced by the sovereign authority of the state. It deals with the existing legal system at a particular time and explains how legal rules function within society. This approach was further developed by John Austin, who analyzed law scientifically and described it as the command of the sovereign backed by sanctions. According to Austin, the task of jurisprudence under the expository approach is to explain the nature of positive law and the authority from which it originates. Therefore, the expository approach mainly aims at the clear description, analysis, and understanding of law as it is, rather than discussing what the law ought to be.

2. **Censorial Approach: -** The Censorial Approach is a method of studying law that focuses on evaluating and criticizing law on the basis of morality, justice, and social welfare. Unlike the expository approach, which explains law as it exists, the censorial approach examines whether the law is good, just, and beneficial for society. This approach is mainly associated with Jeremy Bentham, who believed that laws should not only be described but also judged according to their usefulness and their ability to promote the welfare of the people. According to this approach, the purpose of legal study is to determine what the law ought to be rather than merely explaining what the law is. The censorial approach uses the principle of utility, which means that laws should be assessed on the basis of the happiness and benefit they bring to the greatest number of people. If a law does not promote social welfare or causes harm or injustice, it should be criticized and reformed. In this approach, jurists analyze laws in the light of ethical values, social needs, and public interest. The censorial method therefore plays an important role in law reform, because it helps identify defects and weaknesses in existing laws and suggests improvements. It encourages lawmakers to create laws that are fair, reasonable, and beneficial for society. Thus, the censorial approach is concerned with the critical evaluation of law and aims to guide the development of better and more just legal systems.
   Moreover, **"Austin"** stuck with the idea that law is command of Sovereign.

Jurist	Theory
John Austin	Law is the command of the Sovereign

Law is the command of the Sovereign

The statement **"Law is the command of the Sovereign"** is the central idea of **John Austin's analytical theory of law**. According to Austin, law is a rule laid down by a political superior for the guidance of those who are subject to his authority. In this theory, the **sovereign** is the person or body of persons who possesses supreme power in a state and whose commands are habitually obeyed by the people. The sovereign himself is not bound to obey any other human authority. Austin explained that law consists of **commands issued by the sovereign and backed by sanctions**. A command is an expression of a wish or desire by the sovereign that certain actions should be performed or avoided. When such a command is supported by a threat of punishment in case of disobedience, it becomes a law. Therefore, the presence of **sanctions** is an essential element of law because it ensures obedience to the command. According to Austin, the subjects of the state are under a duty to follow these commands because failure to do so may lead to penalties imposed by the authority. Austin also distinguished **positive law** from other rules such as moral rules, customs, or social practices. Positive law refers only to those rules that are made and enforced by the sovereign authority of the state. Moral principles or customs may influence behavior, but they do not become law unless they are recognized and enforced by the sovereign. Thus, in Austin's view, law is essentially a system of commands issued by the supreme authority of the state and supported by sanctions to ensure compliance.

Definitions of jurisprudence by different jurists: -

1. **Austin → Science of Jurisprudence**

   John Austin defined jurisprudence as the **science of law**, which means the systematic and scientific study of law. According to Austin, jurisprudence deals with **positive law**, that is, the law that is actually made and enforced by a political authority or sovereign in a state. He described positive law as **"law strictly so called,"** meaning the rules that are formally recognized and enforced by the state. These rules are different from moral rules, customs, or religious principles because they are backed by the authority of the sovereign and can be enforced through legal sanctions.

   Austin further divided jurisprudence into **General Jurisprudence** and **Particular Jurisprudence**. **General Jurisprudence** deals with the principles and concepts of law that are common to all legal systems, such as rights, duties, liabilities, and sovereignty. It studies the general nature and structure of law without focusing on any specific country. On the other hand, **Particular Jurisprudence** studies the legal principles of a **specific legal system or country**, such as the legal system of India or England. Although both general and particular jurisprudence study law and share the same basic ideas, they differ in their **scope**. General jurisprudence is broad and universal, while particular jurisprudence is limited to the laws of a particular state or legal system.

   Positive law that is law
   Strictly so called.
   (a) **General Jurisprudence** → has common for all
   (b) **Particular Jurisprudence** → Basically in essence they are same but in scope they are different.

2. **Holland's Definition → Formal science of positive law.**

   According to Holland, jurisprudence is the formal science of positive law. By positive law he meant the law that is actually made and enforced by the state or sovereign authority. When Holland says that jurisprudence is a formal science, he means that it studies the form, structure, and basic principles of law, rather than the detailed content of particular laws. In other words, jurisprudence does not mainly deal with specific legal rules or cases but focuses on understanding the general concepts and framework of law.

Holland also described jurisprudence as an analytical science rather than a material science. This means that jurisprudence analyzes and examines the fundamental ideas of law such as rights, duties, liabilities, and authority, instead of studying the practical or material aspects of laws themselves. It is concerned with explaining and organizing legal concepts in a systematic way.

Holland further explained law as a general rule of external human action enforced by a sovereign political authority. This means that law consists of rules that regulate the external behaviour of people in society. These rules are not just moral guidelines but are enforced by the state or sovereign authority, which has the power to make people follow them and punish those who break them. Thus, according to Holland, jurisprudence studies the structure and principles of these state-enforced rules that control human conduct in society.
Analytical science rather than material science.
General rule of external human action enforced by a Sovereign political authority.

3. **Salmond → Science of law.**

According to Salmond, jurisprudence is the science of law. By the term "law," Salmond specifically meant the law of the land or civil law, that is, the system of legal rules that are recognized and enforced by the courts of a particular state. In his view, jurisprudence studies these laws in a systematic and scientific manner in order to understand their principles, structure, and functioning.

Salmond divided jurisprudence into two main parts: General Jurisprudence and Specific Jurisprudence. General jurisprudence deals with the entire body of legal doctrines and principles that are common to all legal systems. It studies the general concepts of law such as rights, duties, liabilities, and justice without focusing on any particular branch of law. On the other hand, specific jurisprudence deals with a particular department or specific part of legal doctrine. It studies law in relation to a particular field or aspect of the legal system.

Salmond further divided specific jurisprudence into three parts. The first is Analytical (Expository or Systematic) jurisprudence, which studies the contents and structure of an actual legal system as it exists at a particular time. It analyzes the law in a systematic and logical manner. The second is Historical jurisprudence, which is concerned with the origin, growth, and development of law over time. It examines how legal rules and institutions have evolved throughout history. The third is Ethical jurisprudence, which deals with the idea, purpose, and moral foundation of law. It studies what the law ought to be and the principles of justice and morality that should guide the legal system.

By law he meant law of the land or Civil law.
Divided Jurisprudence into two parts →

1. **General →** includes the entire body of legal doctrines.
2. **Specific →** These deals with the particular department or any portion of the doctrine.

Specific is further divided into three parts →

1. **Analytical / Expository or Systematic →** Contents of an actual legal system.
2. **Historical →** It is concerned with the legal history & its development.
3. **Ethical →** It deals with the idea of the legal system and the purpose for which it exists.

4. **Keeton → Jurisprudence as the study and systematic arrangement of general principle of law.**

According to **Keeton**, jurisprudence is the **study and systematic arrangement of the general principles of law**. This means that jurisprudence examines the basic ideas and concepts on which the legal system is based and organizes them in a logical and orderly manner. Instead of focusing only on specific laws or rules of a particular country, jurisprudence studies the broader principles that form the foundation of law, such as rights, duties, justice, and legal authority. By arranging these principles systematically, jurisprudence helps in better understanding how the legal system works and how different legal rules are connected with each other.

Keeton also explained that jurisprudence helps in understanding the **distinction between Public Law and Private Law**. **Public law** deals with matters that involve the **state and its relationship with individuals**, such as constitutional law, administrative law, and criminal law. On the other hand, **private law** deals with the **relationships between individuals**, such as contract law, property law, and family law. Therefore, according to Keeton, jurisprudence studies the general principles of law and also clarifies the differences and relationships between different branches of law, especially between public and private law.
In short deals with distinction b/w Public & Private law.

5. **Roscoe Pound → Jurisprudence as the science of law.**

According to **Roscoe Pound**, jurisprudence is the **science of law**, which means the systematic study and understanding of legal principles and rules. He explained law in a **judicial sense**, meaning law as it is applied and interpreted by courts in the administration of justice. In this sense, law is not just a collection of written rules but a system of principles that guide courts in resolving disputes and delivering justice.

Roscoe Pound defined law as **the body of principles that are recognized and enforced by public and regular tribunals in the administration of justice**. This means that law consists of those rules and principles that courts officially accept and apply while deciding cases. The term **public and regular tribunals** refers to established courts or judicial bodies created by the state to administer justice. Therefore, according to Pound, law becomes meaningful and effective when it is **recognized, interpreted, and enforced by the courts**, and jurisprudence studies these principles and the functioning of law within the judicial system.

Law in judicial sense →
The body of principle recognised or enforced by public and regular tribunals in the admin of justice.

6. **Dias & Hughes → Jurisprudence as any thought or writing about law rather than a technical exposition of a branch of law itself.**

According to **Dias and Hughes**, jurisprudence includes **any kind of thought, discussion, or writing about law**, rather than only the technical explanation of a particular branch of law. In simple terms, jurisprudence is not limited to studying the detailed rules of specific subjects like contract law, criminal law, or property law. Instead, it focuses on thinking about the **nature, purpose, meaning, and role of law in society**.

Their definition shows that jurisprudence is a **broad and theoretical study of law**. It involves analyzing legal ideas, principles, and concepts, and discussing how law works and why it exists. Unlike the technical study of a specific branch of law, which deals with detailed legal provisions and cases, jurisprudence looks at law from a **philosophical and analytical perspective**. Therefore, according to Dias and Hughes, jurisprudence covers all kinds of intellectual thinking and writings about law that help us understand the **basic ideas and foundations of the legal system**.

7. **K.C. Allen → Scientific synthesis.**

According to **K.C. Allen**, jurisprudence can be described as a **"scientific synthesis."** By this he meant that jurisprudence brings together different legal ideas, rules, and principles and organizes them in a **systematic and scientific manner**. The term *synthesis* refers to combining various elements into a unified and coherent whole. In the context of law, it means collecting the many legal rules, concepts, and doctrines and arranging them in a way that helps in understanding the overall structure of the legal system.

Allen believed that jurisprudence does not simply study individual laws separately; rather, it **analyzes and combines different legal principles to form a clear and organized body of knowledge about law**. Through this scientific approach, jurisprudence helps to explain how different parts of the legal system are connected with each other and how they work together. Therefore, according to K.C. Allen, jurisprudence is a scientific method of studying and unifying legal principles so that the nature and functioning of law can be better understood.

8. **G.W. Paton → Particular method of study not law of one country.**

According to **G.W. Paton**, jurisprudence is a **particular method of studying law rather than the study of the law of one specific country**. This means that jurisprudence does not focus on the detailed legal rules of a particular legal system, such as the laws of India, England, or any other country. Instead, it is concerned with the **method or approach used to understand and analyze law in general**.

Paton believed that jurisprudence studies the **basic concepts, principles, and theories of law**, which can be applied to any legal system. It examines ideas such as rights, duties, justice, sovereignty, and legal authority to understand the nature and functioning of law. Therefore, according to Paton, jurisprudence is not limited to the laws of one nation; rather, it provides a **general and theoretical framework for studying and understanding law everywhere**. This approach helps scholars and students understand the fundamental nature of law beyond the boundaries of any particular legal system.

9. **Julius Stone → Lawyer's extraversion.**

According to **Julius Stone**, jurisprudence can be described as **"lawyer's extraversion."** By this expression, he meant that jurisprudence encourages lawyers to look **beyond the narrow boundaries of law** and consider other fields of knowledge while studying legal rules and principles. In simple terms, jurisprudence allows lawyers to examine law not only from a technical legal perspective but also by considering insights from other disciplines such as sociology, economics, psychology, politics, and philosophy.

Julius Stone believed that law does not exist in isolation; it is closely connected with society and social conditions. Therefore, lawyers should study the **precepts, ideals, and techniques of law** in the light of knowledge gained from other social sciences. This broader outlook helps in understanding how law operates in society and how it affects people's behaviour. Thus, when Stone described jurisprudence as **lawyer's extraversion**, he meant that jurisprudence pushes lawyers to expand their thinking beyond legal texts and to analyze law in relation to social realities and other fields of study. Lawyers' examination of the precepts, ideals, and techniques of the law.

10. **Gray → Science of law.**

According to **John Chipman Gray**, jurisprudence is the **science of law**. By this, he meant that jurisprudence studies law in a systematic and organized way in order to understand its principles and structure. Gray believed that the real source of law is not merely the written statutes or legal rules but the **decisions given by courts**. In his view, the law becomes clear and meaningful when judges interpret and apply it while deciding cases.

Gray explained that law is the **systematic arrangement of the principles that are followed by courts in deciding disputes**. This means that the rules and principles applied by judges in their judgments form the true body of law. Therefore, jurisprudence studies these judicial principles and organizes them in a scientific manner so that the legal system can be better understood. In simple terms, according to Gray, jurisprudence is the scientific study of law based mainly on the principles developed and applied by courts.

Systematic arrangement followed by the Courts principles involved by in those rules.

11. Ulpian → The knowledge of things divine and human.

According to **Ulpian**, jurisprudence is the **knowledge of things divine and human**. By this definition, he meant that jurisprudence involves the understanding of rules and principles that govern both **human conduct and moral or divine principles**. In ancient times, law was closely connected with religion and morality, so Ulpian believed that a proper understanding of law requires knowledge of what is **just and unjust**, as well as the principles that guide human behaviour in society. In simple terms, Ulpian's definition shows that jurisprudence is not only about studying legal rules but also about understanding **justice, morality, and ethical values** that influence law. A jurist should be able to distinguish between **right and wrong** and apply this understanding while studying and interpreting law. Therefore, according to Ulpian, jurisprudence is the study that helps a person gain knowledge about both **human affairs and higher moral principles**, so that justice can be properly understood and applied.

12. Dr. M.J. Seth → Study of fundamental legal principles.

According to **Dr. M.J. Seth**, jurisprudence is the **study of fundamental legal principles**. This means that jurisprudence focuses on understanding the basic ideas and concepts that form the foundation of the legal system. Instead of studying only specific laws or detailed legal rules, jurisprudence examines the core principles on which those laws are based, such as justice, rights, duties, liability, and legal authority. In simple terms, Dr. Seth believed that jurisprudence helps us understand the **basic structure and philosophy of law**. By studying these fundamental principles, students and scholars can better understand why laws exist, how they operate, and what purpose they serve in society. Therefore, according to Dr. M.J. Seth, jurisprudence is the systematic study of the essential legal principles that form the basis of all legal rules and institutions.

13. H.L.A Hart → A science of law in a border perspective by co-relating law and morality.

According to **H.L.A. Hart**, jurisprudence is the **science of law studied in a broader perspective by relating law with morality**. This means that the study of law should not be limited only to legal rules and statutes; it should also consider the relationship between **law and moral values**. Hart believed that law and morality are closely connected in many situations, and understanding this relationship helps in better explaining how law functions in society. In simple terms, Hart suggested that jurisprudence studies law in a **wide and comprehensive way**, by examining legal rules along with the ethical and moral ideas that influence them. This broader perspective helps scholars understand not only what the law is, but also how it should operate in order to promote fairness and justice. Therefore, it can be concluded that **jurisprudence is the study of fundamental legal principles**, which includes analyzing the nature of law, its connection with morality, and its role in maintaining order and justice in society. Thus, we can say that Jurisprudence is the study of fundamental legal principles.

Concept of Law

'Law' defines the political organization and structure of society, provides a scheme of individual relationship within it and contributes to the stability of society by offering an objective mechanism for the resolution of disputes and conflicts within the community. All extensive human societies possess law in some form or other. 'Legal system' is the totality of the laws of a State or community.

Broadly speaking, 'Law' is a notional pattern of conduct to which actions do or ought to conform. However, there is no simple definition of law. Every person defines law according to his own perception of it. Further, law being a social science, it grows and develops with the society. The concept of law depends largely on the social values, accepted norms and behavioural patterns of a particular society at a given time.

There are many who would like to achieve an object through the instrumentality of law and therefore they would like to define law in terms of its purpose. Others might define law in terms of what it does in the form of actual court decisions. Law has been defined from different approaches like: (i) its basis in reason, religion, or ethics (natural law approach), (ii) by its source in custom, precedent or legislation, (iii) by its effects on the life of society, (iv) by the method of its formal expression or authoritative application, and; (v) by the ends that it seeks to achieve.

Thus, failure to provide an authoritative definition of law can be ascribed to the fact that practical application of law does not depend on definition of law.

Requirements of a Definition of Law

According to Lloyd, the requirements of a 'good' definition of law should (a) include what is generally accepted as proper law, and (b) exclude that which is generally regarded as not being 'law' (e.g. the rules of a gang of dacoits), and (c) include only rules governing human conduct.

When Stone attempted a definition of law, he finds that the various definitions of law converge on the following seven steps:

(i) Law is a complex whole often containing many phenomena. The meaning of this whole can only be elaborated and not defined.

(ii) These phenomena include norms regulating human behaviour i.e. prescribing that the behaviour ought to be forbidden or that it ought not to be.

(iii) These norms are social norms i.e. they generally regulate behaviour of a member of a society vis-à-vis others.

(iv) These social norms are systematically arranged; it is in short a 'legal order'.

(v) Law consists of social norms that are coercive i.e. authority of law is supported by acts of external compulsions such as physical force.

(vi) The coercion operates according to established rules for the protection of life, liberty or property.

(vii) This institutionalized coercive order should be effective i.e. people must by and large obey the law.

(A possible eighth step was emphasized by Kantorowicz is that the judiciary must recognize this coercive order.)

Therefore, any definition must take account of all these elements. The elements are reflected in the following definition of law given by Paton: "Law may shortly be described in terms of a legal order tacitly or formally accepted by a community, consisting of the body of rules which are applied by courts, backed by some mechanism which secures compliance with them." The compliance of these rules may be secured by the community by means of which sufficient sanction is available to enable the system or set of rules to continue to operate as binding in nature.

Gray defined law as the rules which the courts lay down for the determination of rights and duties. According to him law consists of the body of principles recognized and applied by the courts in the administration of justice. Gray also emphasized that courts decide what the law is by interpreting statutes and precedents.

Salmond defined law in terms of judicial process. According to him the law may be defined as the body of principles recognized and applied by the courts in the administration of justice. However, Salmond's definition is criticized. It is not easy to determine the body of principles recognized by courts because courts recognize law not because it is law but because it is justice. According to Salmond, the purpose of law is to produce justice. He said: "All law is justice."

The analytical positivists define law in terms of command of sovereign (Austin), basic norm or grundnorm e.g. Constitution (Kelsen), or union of primary and secondary rules (Hart).

Public and Private Law

'Public law' may be divided into – Constitutional law, Administrative law, and Criminal law. 'Private law' may be classified into – Law of persons, law of property, law of obligations, and conflict of laws. The 'law of obligations' includes Contract, Quasi-contract, and, Tort.

Law and Morality

Ever since law has been recognized as an effective instrument of social ordering there has been an ongoing debate on its relationship with morality. According to Paton, morals or ethics is a study of the supreme good. In general, morality has been defined to include "all manner of rules, standards, principles or norms by which men regulate, guide and control their relationships with themselves and with others."

Both, law and morality, have a common origin. In fact, morals gave rise to laws. The State put its own sanction behind moral rules and enforced them. These rules were given the name "law". In the words of Hart: "The law of every modern State shows at a thousand points the influence of both the accepted social morality and wider moral ideal." Both, law and morality have a common object or end in so far as both of them direct the actions of men in such a way as to produce maximum social and individual good. Both, law and morality, are backed by social or external sanction.

Bentham said that legislation has the same center with morals, but it has not the same circumference. Morality is generally the basis of law, i.e. illegal (murder, theft, etc.) is also immoral. But there are many immoral acts such as, sexual relationship between two unmarried adults, or hard-heartedness, ingratitude, etc., which are immoral but are not illegal. Similarly, there may be laws which are not based upon morals and some of them may be even opposed to morals, e.g. laws on technical matters, traffic laws, etc.

Morals as test of law – Several jurists have observed that law must conform to morals, and the law which does not conform to morals must be disobeyed and the government which makes such law should be overthrown. Paton says: If the law lags behind popular standard, it falls into disrepute; if the legal standards are too high, there are great difficulties of enforcement.

Morals as end of law – According to some jurists, the purpose of the law is to do justice. Paton said that justice is the end of law. In its popular sense, the word 'justice' is based on morals. Thus, such morals being part of justice, becomes end of justice. The ends which the preamble of our Constitution tries to achieve are the morals.

SCHOOLS OF JURISPRUDENCE

Different approaches to the treatment of jurisprudence are represented by its various schools of thoughts. Salmond preferred three schools: Analytical (dogmatic), Historical and ethical (legal exposition) School.

(1) Analytical/Imperative School (Positivism)

The analytical 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. The main concern of the positivists is 'law that is actually found', *positum*, and not the ideal law. The most important legal sources are Legislation, Judicial precedents and Customary law.

This school, dominant in England, lays down the essential elements that go to make up the whole fabric of law e.g. State sovereignty and the administration of justice. 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.

(a) Bentham's Concept of Law

Truly speaking, Bentham (1748-1832), the founder of Positivism, should be considered the "Father of analytical positivism", and not Austin as it is commonly believed (In fact, Austin owes much to Bentham). He was a champion of codified law (legislation). Bentham's work was intended to provide the indispensable introduction of a civil code (Paton).

Bentham distinguished *expositorial jurisprudence* (i.e. what the law is) from *censorial jurisprudence* (i.e. what the law ought to be). His concept of law is imperative one i.e. "law is assemblage of signs, declarations of volition conceived or adopted by sovereign in a State". While supporting the economic principle of *Laissez faire* (minimum interference of State in the economic activities of individuals), he propounded the principle of utilitarianism: "The proper end of every law is the promotion of the greatest happiness of the greatest number." He defined 'utility' as "the property or tendency of a thing to prevent some evil ('pain') or procure some good ('pleasure')."

According to him, the function of law must be to meet these ends i.e. to provide subsistence, to produce abundance, to favour equality, and to maintain security. Bentham's doctrine of hedonism or theory of pain and pleasure has been criticized on the ground that pleasure and pain alone cannot be the final test of the adequacy of law.

(b) Austinian Concept of Law

John Austin (1790-1859) was a lecturer in London University. He applied analytical method – "Law should be carefully studied and analysed and the principle underlying therein should be found out" – and confined his field of study only to the Positive Law – *Jus positivum* ("Law, simply and strictly so called": 'Law set by political superiors to political inferiors'). Therefore, the school founded by him is called by various names – 'analytical', 'positivism', 'analytical positivism'. Austin is considered as the "Father of English Jurisprudence". His lectures were published under the title *The Province of Jurisprudence Determined*.

Austin defined law as "a rule laid down for the guidance of an intelligent being by an intelligent being having power over him". According to him, so-called 'proper law' includes: Law of God, Human laws and Positive laws. The law "improperly" so-called includes: Laws by analogy and Laws by metaphor. According to him, "positive morality" consists of: Law not set by men (as political superior) or in pursuance of a legal right, and, laws by analogy as laws of fashion. The improper laws lacked sanction of the State.

Every law, properly so called, must have three elements of command, sanction and sovereign. 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.

A 'command' is an expression of a wish by a determinate person, or body of persons, that another person shall do or forbear from doing some act subject to an evil in the event of disobedience i.e. 'sanction'. So every law is a command, imposing a duty, enforced by a sanction. According to him, a command may be particular (addressed to one person or group of persons) or general (addressed to the community at large and inform classes of acts and forbearances; they are also 'continuing commands'). A particular command is effective when the commanded person or group obeys; a general command is effective when the bulk of a political society habitually obeys it.

Austin's notion of sovereign is "if a determinate human superior not in a habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinate superior is 'sovereign' in that society". The basis of sovereignty is, thus, the fact of obedience. The sovereign's power is unlimited and indivisible (no division of authority). The sovereign is not bound by any legal limitation or by his own laws.

Austin's definition of law as the "command of the sovereign" suggests that only the legal systems of the civilized societies can become the proper subject-matter of jurisprudence because it is possible only in such societies that the sovereign can enforce his commands with an effective machinery of administration. Austin's definition ignores customs. Austin, however, accepts that there are three kinds of law which, though not commands, may be included within the purview of jurisprudence by way of exception, viz. Declaratory or explanatory laws, Laws of repeal, and, Laws of imperfect obligation (no sanctions attached). According to him, Constitutional law derives its force from the public opinion regarding its expediency and morality.

Austin's theory is criticized as the sanction is not the only means to induce obedience. Austin's insistence on sanctions as a mark of law conceals and distorts the real character and function of law in a community. He treats law as artificial and ignores its character of spontaneous growth. Law is obeyed because of its acceptance by the community. In modern times, law is nothing but the general will of the people. Further, customs and conventions of the Constitution, though not enforceable by law, regulate the conduct of the people and the State. Still further, judicial decisions (i.e. precedents) become binding laws, while no body has commanded these.
According to Justice Holmes, Austin's distinction between positive law and positive morality seeks to exclude the considerations of goodness or badness in the realm of law.

In Austin's positive law, there is no place for ideal or justness in law, for he observed: "Existence of law is one thing, its merit and demerit another…A law which actually exists, is a law, though we happen to dislike it or though it vary from the text by which we regulate our approbation or disapprobation."
Austin's theory ignores laws which are of a permissive character and confer privileges (e.g. the Bonus Act, Law of Wills). Bryce said: "Austin's contribution to juristic science are so scanty and so much entangled in error that his book ought no longer to find a place among those prescribed for students."

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. 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. For instance, in India, it is very difficult to locate a single determinate sovereign who might be regarded as possessing unlimited and absolute power to make law. Austin's theory could be applied to the British Parliament which is supreme (there is no division of power in England into different organs of State i.e. legislature, executive and judiciary). However, Austin's notion that sovereignty is indivisible is falsified by federal Constitutions e.g. India, USA, etc. In a federation, legislative power is divided between the Union and the member States.

Hart said about Austin: "But the demonstration of precisely where and why he is wrong has proved to be constant source of illumination; for his errors are often the mis-statement of truths of central importance for the understanding of law and society." According to him, the Austinian formula does designate one necessary condition i.e. where the laws impose obligations or duties, these should be 'generally obeyed'. But, though essential, this accounts only for the 'end product' of the legal system. The cumulative evidence against Austin should not, however, obscure the fact that law does consist of prescriptions of conduct which are usually phrased in imperative form.

Olivecrona acknowledged Austin as the pioneer of the modern positivist approach to law. Allen said: "For a systematic exposition of the methods of English jurisprudence we would have to turn to Austin." Austin's theory was later improved upon by Holland, Salmond and Gray. Holland defined law as "rules of external human action enforced by a political sovereign." Gray said: "If Austin went too far in considering the law as always proceeding from the State, he conferred a great benefit on jurisprudence by bringing out clearly that the law is at the mercy of the State." Dicey draws a distinction between the legal sovereign and political sovereign.

(c) Hart's Concept of Law

Professor Hart (1907-) may be regarded as the leading contemporary representative of British positivism. He wrote an influential book *The Concept of Law*, criticizing Austin's theory. According to Hart, "Law consists of rules which are of broad application and non-optional character, but which are at the same time amenable to formalization, legislation and adjudication." He said that law is a system of social rules (rules sprung from social pressure) which acquire the character of legal rules. Law is a body of "publicly ascertainable rules". Law, according to Hart, is equivalent to a legal system.

A 'legal rule' can be defined as one which prescribes a code of conduct, which is done with the feeling that such conduct is obligatory. Law prescribes, not a command, but a standard of conduct. This standard is adhered to, not only because there is a sense of obligation to adhere to it, but also because there is an expectation that others have same obligation to adhere to it. Therefore, even a person who cannot be compelled to obey the law is still reckoned as having an obligation to obey. Thus, law is concerned with obligation rather than coercion. An obligation is similar to a 'duty'.

The idea of obligation, according to Hart, means that a rule is accepted by the people (i.e. a rule is internalized) and not (habitually) obeyed (as conceived by Austin). There is a difference between internal and external aspects of rules; the former implies 'Having an obligation' (no compulsion involved), while the latter implies 'Being obliged' (under a compulsion). According to Hart, the predictive theory of Austin excluded internal aspects of rules and dealt only with external aspects of rules.

According to Hart, there are two types of rules. Primary rule lays down standards of behaviour or impose duties (viz. international law) while the secondary rule are those by which the primary rules may be ascertained, introduced, eliminated or varied. The secondary rules are power-conferring rules – public or private (e.g. Statutes, Constitution). From these are derived the 'rules of recognition' which provide authoritative criteria for identifying primary rules of obligation. The 'Ultimate rule of recognition' is the ultimate criterion of validity of a legal order.

The union of the primary and secondary rules constitutes the core of a legal system. A society governed by primary rules only (viz. a simple primitive society) is static, uncertain and inefficient. The legal order must be an effective legal order i.e. people generally must obey primary rules, and the officials must observe secondary rules. These two conditions are necessary and sufficient for the existence of a legal system. Hart views "laws as a one-way projection of authority, from the officials down and constructs a theory of law which gives the central role to official behaviour."

According to Hart, some of the "puzzles" connected with the idea of legal validity are said to concern the relation between the validity and efficacy of law. A rule is said to be 'valid' when it satisfies all the criteria provided by the rule of recognition. A rule is said to be 'effective' when it is being obeyed by the people. An Ultimate rule of recognition need not be valid, but it should not be disregarded i.e. it must be efficacious (officials must obey it).

Friedmann said: "Hart's theory bridges the age-old conflict between the theories of law (Savigny, Ehrlich) emphasizing recognition and social obedience as the essential characteristics of a legal norm, and those (Austin, Kelsen) that emphasize law as a coercive order having elements of authority, command and sanction." Hart's approach is important for its emphasis on the socially constructive function of law. However, union of primary and secondary rules cannot explain many aspects of law.

Hart's concept of law has been vehemently criticized by some jurists notably, Ronald Dworkin and Lon Fuller. Dworkin drew a distinction between 'rules' and 'principles' and remarked that a legal system cannot be conceived merely as an aggregate of rules but it has to be based on certain solid principles and policies. He observed: "A principle is a standard, that is to be observed because it is a requirement of justice or fairness or some other dimension of morality. For example, 'no one can take advantage of his own wrong' is a well established principle of law." Fuller believed that legal system being an instrument to regulate human conduct must concern itself with both law as "it is" and "as it ought to be". Thus, law cannot be completely divorced from the concept of morality.

(d) Kelsen's Concept of Law

Hans Kelsen (1881-1973), belonging to 'Vienna School' of legal thought, proposed a "pure theory of law" i.e. a theory which is free from social, historical, political, psychological, etc., influences (thus, excluding everything which is strictly not law) and is logically self-supporting. The law is a normative ("law as a coercive order") and not a natural science; there are sanctions attached to the law itself. The test of lawness is to be found within the system of legal norms itself. He defined law as "an order of human behaviour".

According to Kelsen, laws are *ought propositions* i.e. 'norms': "If X happens, then Y ought to happen". Thus, if a person commits theft, he ought to be punished. Law does not attempt to describe what actually occurs ('is') but only prescribe certain rules. Norm is a legal meaning attached to an act of will. It is the meaning of an act by which certain behaviour is commanded, permitted or authorized.

A norm is valid only because it has been derived from or is ordained by another (superior) norm. This presupposes a 'hierarchy of norms', each norm being valid on the presupposed validity of some other norm. Further, there are 'dependent' norms or facilitative norms which do not coerce people (e.g. right to make a will, powers of President, judges, use of force in self-defence). The 'independent' norms are coercive norms. The dependent norms are dependent for their validity on the independent norms (viz. Sec. 299 of IPC derives its validity from Sec. 302). Thus, law does not have exclusively a commanding or imperative character.

The law is a system of behavioural norms which can be traced back to some *grundnorm* or basic norm from which they derive their existence. The *grundnorm* must be efficacious i.e. people must believe in it, otherwise there will be a revolution. In every legal system, *grundnorm* of some kind there will always be, whether in the form of a Constitution or the will of a dictator. Where there is a written Constitution (India, USA) the *grundnorm* will be that the 'Constitution ought to be obeyed'. Where there is no written Constitution (UK) one must look to social behaviour for the *grundnorm*. Under international law, the *grundnorm* is the principle *pacta sunt servanda* (Treaty obligations are binding on parties).

While, *grundnorm* accounts for validity of norms emanating from it, one cannot account for its own validity by pointing to other norm. Its validity cannot be objectively tested, instead, it has got to be presumed or pre-supposed (he, however, considers *grundnorm* as a fiction rather than a hypothesis). It looks for its own validity in factors outside law. However, it imparts validity so long as legal order remains 'by and large effective'. It should secure for itself a 'minimum of effectiveness' and when it ceases to derive minimum of support of people it is replaced by some other *grundnorm*.

Kelsen's theory is criticized, as according to Kelsen a legal order is valid when it is effective, it does not matter whether it is an illegitimate rule brought about by unconstitutional means. This means law is a system of external compulsion i.e. people are forced to comply with laws. Validity of a law does not necessarily derive from an effective *grundnorm*. Kelsen does not give any criterion by which the minimum effectiveness of *grundnorm* is to be measured. The *grundnorm* simply creates or validates a legal order, but do not provide the content to a legal order. It is for the courts to determine the criterion of *grundnorm*, and to decide the validity and efficacy of a legal order (*Madzimbamuto v Lardner-Burke; State v Dosso; Asma Jilani v Govt. of Punjab*). The effectiveness of *grundnorm* depends on sociological factors.

Julius Stone criticized Kelsen on the latter's assertion that all the norms excepting the *grundnorm* are pure. He asserted that other norms which derive their authority from *grundnorm* cannot remain pure when the *grundnorm* itself is a combination of various social and political factors. He remarked, "We are invited to forget the illegitimacy of the ancestor in admiration of the pure blood of the progeny."
No theory of justice can form part of pure theory of law. However, Kelsen presented a formal, scientific and dynamic picture of the legal structure. He has considerably influenced the modern legal thought. The great jurists like Stone and Friedmann have strongly defended Kelsen's theory.

The coercive elements dominate the theories of Austin, Kelsen and Hart. Thus, if certain formal criteria are satisfied, any social norm is law irrespective of its intrinsic worth or quality. Essence of law lies not in its form but its function. All three excludes morality from law, though they admit that morals play an important role in the formation of law, but once a law is made morals play no more role.
Kelsen's pure theory of law owes to Austin's theory. However, the two differ in many respects:

(i) For Austin law is a command of the sovereign. For Kelsen, law is not the command of a person sovereign but a hypothetical judgement, which visits with a sanction for the non-observance of the conduct prescribed. Kelsen denies also the existence of State as an entity distinct from law.
(ii) In the Austinian sense, a sanction has a moral or psychological basis; the motivation by fear makes people to submit to law. Kelsen rejected the idea of command, because it introduces a psychological element into a theory of law which should, in his view, be 'pure'. In the Kelsenian sense, coercive act means forcible deprivation of liberty. There is no idea of fear involved, because the norms prescribe.
(iii) Although sanction is an essential element of his law, validity of a rule has nothing to do with its sanction. In the Austinian sense, the sanction was something outside a law imparting validity to it. While, according to Kelsen, a sanction is in-built in every legal norm.
(iv) Austin's theory denies to 'custom' the character of law as it has not been created by the sovereign. Kelsen, however, is able to accommodate custom within his concept of law viz. popular practice may generate legal norms.
(v) Austin didn't regarded international law as a positive law. Kelsen, on the other hand, accepted the primacy of international law over national law.

(II) Natural Law School

"Natural law" is also known as: Moral law, Divine law, Law of God, and, Law of reason. The natural law philosophy found an expression in the Roman legal system through division 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.

Natural law appeals to the reason of man and there is no element of compulsion in it. It embodies the principles of morality and natural justice and as such it differs from positive law and legal justice. It is law in an ideal state and it differs from man-made law. Its principles are common to all States (*jus gentium*) and, thus, it differs from *jus civile*, the civil law or the law of the land.

The naturalists insist that no social norm can be called law unless it satisfies a criterion of intrinsic worth, which may be either religion or ethics or morals or social good. Otherwise there will be no difference between the kind of social norms which a tyrant like Hitler may lay down any the rest. Therefore, satisfaction of a criterion which goes to the quality of law is inherent in the idea of law ("Unjust law is no law").

According to Salmond, "natural or moral law means the principles of natural rights and wrongs." Blackstone observed: "The natural law being co-existing with mankind and emanating from God Himself, is superior to all other laws. It is binding over all the countries at all times and no man-made law will be valid if it is contrary to the law of nature."

Natural law theories may be broadly divided into: Ancient theories, Medieval theories, Renaissance theories, and, Modern theories. Some of the leading naturalists and their contribution to the natural law philosophy is as follows:

- **Aristotle:** According to Aristotle, law is either universal or special (written); and, 'perfect law' is inherent in the nature of man and is immutable, universal and capable of growth. He defined natural law as 'reason unaffected by desires.' It was Aristotle, and not Plato, who founded natural law on reason.
- Later, **Stoics** identified natural law with reason which governs the entire universe and man being a part of universe, is also governed by reason. **Cicero** said: "True law is right reason in agreement with nature." **St. Thomas Aquinas** defined law as "an ordinance of reason for the common good made by him who has the care of the community and promulgated through reason."
- **Grotius:** Hugo Grotius held that natural law was not merely based on 'reason' but on 'right reason' i.e. 'self-supporting reason' of man. He treated "natural law as immutable which cannot be changed by God himself." He said that natural law is based on the nature of man and his urge to live in peaceful society. He considered divine law as the grandmother, natural law the parent and positive law as the child.
- **Hobbes:** Hobbes theory of natural law was based on the natural right of self-preservation of person and property. In order to secure self-protection in a state of nature, men voluntarily entered into a 'social contract' and surrendered their freedom to the 'ruler'. He wrote *Leviathan*. Austin's imperative theory of law is essentially an outcome of Hobbe's doctrine of absolutism of the sovereign.
- **Locke:** According to John Locke, man entered into a social contract by which he yielded only a part of his rights but still retained the right to preserve order and enforce law. The individual in a civil society will enable right to life, liberty and estate. In the moment sovereign lose their validity and the government may be overthrown.

- **Rousseau:** Rousseau propounded that 'social contract' is not a historical fact as contemplated by Hobbes but is merely a hypothetical conception. According to him, people entered the contract to preserve their rights of freedom and equality and for that they surrendered their rights to the community as a whole. 'General Will' represented the will of the people and the sovereignty. His theory is considered to be the forerunner of the modern jurisprudential thought.
- **Kant:** Kant propounded his famous theory of 'Categorical Imperative' in his classic work *Critique of Pure Reason*. His theory was derived from Rousseau's theory of General Will, and embodies two principles:
  (1) A man is expected to act in such a way that he is guided by dictates of his own conscience (human reason), and
  (2) an action is right only if it could be applied by everyone in similar circumstances. In essence, an action is right if it could be called as the principle of 'Innate Right'.

Kant's philosophy destroyed the foundation of natural law theories towards the end of 18th century which suffered a death blow at the hands of Bentham in the early 19th century because of his theory of hedonistic individualism. Bentham called natural law a "simple non-sense." David Hume destroyed the theoretical basis of natural law by his analytical positivism. Auguste Comte denounced natural law theory as false, non-scientific and based on super-natural beliefs.

Natural Law in the 20th Century

The impact of materialism on the society and the changed socio-political conditions compelled the 20th century legal thinkers to look for some value-oriented ideology which could prevent general moral degradation of the people. This led to the revival of natural law theory but in a modified form. The new approach was concerned with the practical problems of society and with abstract ideas.

Dr. Allen pointed out: "The new natural law is value-loaded and is relativistic and not absolute, change and vary according to changing conditions." It represents a revolt against the domination of historical school on the one hand and artificial finality of the analytical school on the other hand. The main exponents of the new revived natural law were: R. Stammler, Prof. Rawls, Kohler and others.

Stammler: R. Stammler defined law as "Species of will, others-regarding, self-authoritative and inviolable." According to him, law of nature means 'just law' which harmonizes the purposes in the society. The purpose of law is not to protect the will of one but to unify the purposes of all. Principle of respect and principle of community participation are the fundamental principles of a just law. With a view to distinguishing the 'new' natural law from the old one, he called the former as "natural law with variable content".

Prof. Rawls: Rawls propounded the two basic principles of justice, namely (i) equality of right to securing generalized wants including basic liberties, opportunities, power and minimum means of subsistence, and (ii) social and economic inequalities should be arranged so as to ensure maximum benefit to the community as a whole.

Lon Fuller: Fuller is one of the leading supporters of the modern natural law philosophy. He wrote *The Law in Quest of Itself* and *The Morality of Law*. He distinguished morality as it is ("morality of duty") from "morality as it ought to be" ("morality of aspiration"). He believed that law is a purposive system, the purpose being to subject human conduct to the control and guidance of legal rules.
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 simpliciter." Thus "good order is law that corresponds to demand of justice or morality or men's notion of what ought to be."

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.

Evaluation of natural law – 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. 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.

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. 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. The courts are insisting upon the administration to be just, fair and reasonable in their dealings with the citizens.

There are two ideals of a theory of natural law: A universal order governing all men, and, the inalienable rights of the individuals. Natural law principles have inspired the positive law, Constitutions, and international law (Charter of UN and Universal Declaration of Human Rights). The natural law theory reflects a perpetual quest for absolute justice. It has found expression in modern legal systems in the form of socio-economic justice. The natural law theory acts as a catalyst to social transformation thus saving the society from stagnation.

Hart does not denounce the role of natural law in his positivism. Unlike Austin and Kelsen, Hart contends that it is necessary for law and morality to have certain element of natural law as a logical necessity. He asserts that law and morality are complementary and supplementary to each other. In his view, there are four attributes of morality: (i) Importance (ii) Immunity from deliberate change (iii) Voluntary character of moral offences, and (iv) Forms of moral pressure, which separate it from etiquette, custom, etc. The rules of sexual behaviour provide the best example of morality.

According to Cohen, natural law is in fact a way of looking at things and a humanistic approach of judges and jurists. According to Dias, the greatest attribute of the natural law theory is its adaptability to meet new challenges of the transient society. According to Lloyd, natural law has been devised as a mere law of self-preservation or a law restraining people to certain behaviour. Even the modern sociological jurists and realists have taken recourse to natural law to support their ideology.

(III) Philosophical or Ethical School

The legal positivism of Austin which propagated a view that coercive power of the State is the sole basis of law and Savigny's over-emphasis on past values and traditions had virtually brought the development of legal reforms to a complete halt. Therefore, jurists from Germany and France looked for a new legal philosophy to prevent stagnation of law and create conditions favourable for its steady growth so as to meet the complexities of the contemporary society. It was realized that law, in order to command respect from the society, must have an element of ethical value so that it may achieve the ideals for which it was meant.

The ethical or philosophical school considers law, as the means by which individual will is harmonized with the general will of the community. The proximate object of jurisprudence is to secure 'liberty' to the individual for the attainment of human perfection. It is in this sense that philosophical jurisprudence became the common ground of moral and legal philosophy, and of ethics and jurisprudence. "Philosophical jurisprudence is the common ground of moral and legal philosophy of ethics and jurisprudence" (Salmond). Friedmann called philosophical school as "philosophical historism".

This school seeks to investigate the purpose for which a particular law has been enacted. In this approach, the purpose and end of law is the maintenance of peace and order with the help of the physical force of the State i.e. with the "theory of justice in its relation to law". Ethical jurisprudence points to the reasonableness and soundness of law, and through law, of justice.

This school, prevalent in Europe, is not concerned with the detailed criticism of the actual legal system, or the detailed construction of an ideal legal system, or with the science of legislation. It seeks to answer such questions as "What are the principles on which the existing law is based?" "Are these principles in keeping with the rules of natural justice?" This school is concerned with the future of law as it ought to be.

The metaphysical methods are employed in this school. The greatest contributors to the philosophical school were: Bacon, Grotius, Fichte, Hegel, Stammler, and, Kant.

Grotius is regarded as the "Father of Philosophical Jurisprudence". He said that the rules of human conduct emerge from right reason and, therefore, they receive public support of man. Kant (1724-1804) held that ethics and law is not one and the same thing. Ethics deals with the inner life of the individual, law, on the other hand, regulates his external conduct. In his view, "law is the sum total of the conditions under which personal wishes of man can be reconciled with the personal wishes of another man in accordance with the universal principle of freedom." He emphasised that legislation could be general law only when it represents the united will of the people. He wrote *Lectures on Ethics*.

His concept of 'categorical imperative' is the basis of his moral and legal theory. He stated that "a man should act in such a way that his actions could be made the maximum of a general action." His theory is basically modelled on "what the law is" and "what the law ought to be". He considered morality an element of law and a right is nothing but a power to compel. However, he upheld "freedom of speech" as a prerequisite of a good government.

Fichte deduced the legal theory from the inherent self-consciousness of a reasonable man. It is the moral duty of every person to respect the liberty of others. The State should protect only those rights of individuals which protect the liberty of others. The State should exist to protect the justified State's right to punish as a retaliatory conditions of his personal freedom.

Hegel (1770-1831) carried further Kant's doctrine of freedom of will. He opined that the purpose of law is to reconcile the conflicting egos in society. State is an expression of the individual's will. He recognized three kinds of functions of the State, namely (i) the form of universal self, (ii) the particular, and (iii) the individual aspect. He wrote: *Philosophy of Right and Law*.