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ANALYTICAL APPROACH TO JURISPRUDENCE WITH INDIAN PERSPECTIVE

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I. ABSTRACT:

Jurisprudence is the study and theory of law. The word "Jurisprudence "is derived from the Latin word "jurisprudentia" . Which means science knowledge of law . Jurisprudence is a very vast area of study and it consist of several ideology and theories on how law has been made. It is also includes the relationship of law with individuals and other social institution within the scope of its study. So many of these jurists and knowledgeable persons are have attempted to classify the sources of the. The main and most common sources in all these classifications are legislation, judicial precedent and customs. Essentially, Law refers to the rules or code of conduct and it is sources refer to the materials from which it gets its content. In the words of the UN Vienna declaration of 1993 " human rights are universal, indivisible, interdependent and interrelated and therefore should be protected and promoted in a fair and equitable manner by something as fundamental and all pervasive as the rule of law". So, in essence rule of law means that everyone from the government to it is officials, together with citizens should act according to the law. The doctrine of rule of law has been described as supremacy of the law. This means that where there is a rule of law no person can be said to be above the law, even the functions and actions of the executive organ of the state shall be within the Ambit of the law. Jurisprudence is the science of civil law. A jurist has his own notion of the subject matter of jurisprudence the science of law. There are two extreme to the scope of law, one being it is coercive character and the other social acceptance, the observance of law by the community as a result of the growth of custom and conviction on the part of the observing group that it is just and fair.

II. KEYWORDS - Stare decisis, Precedent, Judges, Judicial system, Analytical jurisprudence, Obitar dicta , Question of law, Question of fact.

III. INTRODUCTION:

Modern analytical jurisprudence can be traced to the 19th century English jurist, John Austin. The concept of law as expounded by jurist in different ages and at different times, there varying approaches to the science of law, viz., Philosophical, political, religious, ethical, social and economic approaches to law; determination of the sources of law and it is purposes and ends, etc., All form the subject matter of legal theory. The difficulty in assigning to legal theory a place of its own is largely due to the historical fact that legal theory has always been inspired by number of factors like, ethics, politics, sociology ; history, economics etc. Of late there has been observed a trend to consider the ends of legal theory through the study and practice of law. Ham legal theory is have based their thinking on philosophy, such as the Neo Kantians. The sociologist and fascists base they thinking on political ideology. Sometimes the philosophical and political basis is inextricably wedded into one uniform hypothesis, like that of Hegel's philosophic system.

All systematic thinking about legal theory is linked at one end with philosophy and,

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at other end, with political theory. Sometimes the starting point is philosophy, and political ideology place a secondary part as in the tears of German classical metaphysicians or the Neo Kantians. Jurisprudence is the science dealing with the rules and principle of law that have been adopted for the Government of an organized society. The word first used in the Justinian code and defined as knowledge of divine and human matters, knowledge of what is just and unjust. Over the years, it has come to mean the study of a law as a whole, the philosophy of law, or legal theory . Jurisprudence seeks to analyze, explain, classify and criticize entire bodies of law. Many academic disciplines have laid climb to their own brands of jurisprudence, and each have tried to elucidate the roots of law, explain the unintended consequences of a law, promote a vision of the social order that are driven society is aimed for, and how the law puts in to that vision into effect. Sociological jurisprudence pics up on the question of why people away law from generation to generation. Any understanding of the" living law" must take into consideration the context of time and place.

IV. EVOLUTION OF JURISPRUDENCE:

Legal science received little recognition in ancient time. There was hardly any division of Social sciences into various branches, and Aristotle, for instance, study matter physics , physics, ethics and politics as forming one universal science of philosophy. The Greek also failed to evolve any coherent science of legal relations. The Romans were the first to study legal science in its true prospective as a distinct branch of learning. A juris consult, who contributed largely to the development of jurisprudence in Rome in the early days, was " skilled in the laws, and in the usages current among private citizens, and I'm giving opinions and bringing actions and guiding his clients alright". The Corpus juris civilis (Body of civil law) what's the great work compiled in the eastern Roman empire under the emperor Justinian between 529 – 534 A.D. the work was three eminently of great importance, in as much as the rules and principles of law were them reduced to the form of system, condensed, digested and complete, in which they were best fitted to influence the mind and mould the institutions of modern Europe. The Romans had attained by this time the idea of science of those legal principles which exist independently of the institutions of any particular country. Even , the word judies prudence is a Latin derivations of the world's juris and prudential, meaning law and the letter knowledge that is knowledge of law or skill in the law.[1]

V. JURISPRUDENCE IN GENERAL:

The word jurisprudence is derived from it is Latin equivalent, jurisprudentia meaning either" knowledge of law "or "skill in law"- juris denoting law or right law and prudetia knowledge for seeing knowledge of a matter. According to encyclopedia Britannica, " jurisprudence is the name given to those studies, researches and speculations which aim primarily at answering the plain man's question : what is law? It is proposed to define law for the jurist as the sum of influences that determine decisions in courts of justice".[2]

A. SCOPE OF STUDY:

The present study is mainly confined to the analytical aspect of jurisprudence, Although in consonance with the modern development it will not all together be divorced from ethical and historical aspects of jurisprudence. If the letter to aspects is together exploded, the science of jurisprudence will again be opened to the objection of lying in" the formalistic vacuum of the sanctury after state barring the road to all contract with the life of society". In the absence of physical implications of law, analytical jurisprudence would be reduced to" a system of rather arid formalism", while" the total disregard of historical origins and development would be inconsistent with the adequate explanation of those principles and conceptions

[1] Dr. M.P. Tandon , Jurisprudence legal theory, 19th edition 2016, Allahabad Law Agency, page number 8.

[2] Dr. M.P. Tandon , Jurisprudence legal theory, 19th edition 2016, Allahabad Law Agency, page number 11.

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with which it is the business is of the science to deal".

III. POST – MARXIST JURISPRUDENCE:

Post-Marxists, like Habermas, pointed out that not only is there a tension between these two missions, but that judges, in order to sound sincere and genuine in their interpretations must engage in a type of rationality that is completely instrumental in attempting to dominate the decision-making of others. Law is therefore a system mechanism for money and power justified on the basis of abstract principles of subjective moral-practical concerns. In other words, the more the judges justify their decision on grounds that it is good for society, the less grounded they are in their personal life world and the more divorced they are from any ethical decision-making. Other post-Marxists, such as Niklas Luhmann, say that law is an auto-optic system which no longer needs any justification in terms of normative points of view.[3]

IV. KINDS OF JURISPRUDENCE:

Jurisprudence, in its specific since as the theory or philosophy of law. Jurisprudence tries to build up a channel and more comprehensive picture of each concept as a whole. It also examine such concepts against the background ordinary language in order to see the relation between ordinary and legal usage, and the extent to which legal problems may be generated by language itself.

A. ANALYTICAL JURISPRUDENCE:

The purpose of this branch of study is to analyze and dissect the law of the land as it exist today. This analysis has to the principal of the law is done without reference to their historical origin are there ethical significance. Under this head it examines the relations of civil law with other forms of law; analysis the various constituent ideas of which the complex idea of the law is made up that is those of the state, sovereignty and administration of justice; investigates the theory of legislation, judicial presidents and customary law; inquiry into the scientific arrangement of the law; deals with the concept of legal rights and legal liability; and examines such legal concepts as property, possession, obligation, contracts, trust, personality etc. which by reason of their theoretical interest result special attention.

B. HISTORICAL JURISPRUDENCE:

It constitutes the general portion of legal history and, salomond observes , dear the same relation to legal history at large has analytical jurisprudence beards to the systematic exploitation of legal system.. it deals with the general principles governing origin and development of law has also the origin and development of legal conception and principals found in the philosophy of law.

C. ETHICAL JURISPRUDENCE:

Ethical jurisprudence is deals with the law not as it is or has been, but as it ought to be . It is concerned with the purpose of which the law exist and the manner in which such purpose is full filled. Ethical jurisprudence has for it is object the conception of justice, the relationship between law and justice, the manner in which the law full films its purpose of maintaining justice, and the ethical significance and validity of those legal conceptions and principles which are fundamental in their nature has to the proper subject matter of analytical jurisprudence.

D. SOCIOLOGICAL JURISPRUDENCE:

This Trend in the development of jurisprudence reflected the greatest need of adopting the science of law to change it circumstances. To attempt to imprison the law of the time of the people within the sections of the code is about as reasonable as to attempt to confined a stream within a pond. Sociology is the study of a man in society. A sociologist considered law as a social phenomenon. The theme of this branch is to study leaving law in the same manner as a psychologist studies living tissue. Law is not essentially that which is created by the state or

[3] Dr. M.P. Tandon , Jurisprudence legal theory, 19th edition 2016, Allahabad Law Agency, page number 6.

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applied by the courts, or that their need be a system of legal compulsion.[4]

V. JUDICIAL PRECEDENTS:

If justice is to be dispensed even handedly, similar cases must be decided similarly. Precedent, aka stair decisis, is the doctrine which means that all the courts bound to follow the rules of law let them in all previous decisions by higher quotes in what is called the holding . The holding of a case is the opposite of dictum , what is irrelevant to decide a case. Taking recourse to the doctrine his an imperative necessity to avoid uncertainty and confusion. The basic feature of the law is it certainty and in the event of their being uncertainty as regards the state of law the society would be in utter the resultant effect of which would bring about a situation of chaos situation which ought always to be avoided.

The principles of the doctrine of binding precedent are no more in doubt. It is a common knowledge that most of the decisions of the court are significance not nearly because they constitute adjudication and the right something parties and resolve the disputes between them but also because in doing so they embody of declaration of law operating as a binding principle in future cases.

Chandra Prakash v. State of Uttar Pradesh.

In this case, the court observe that the doctrine of binding precedent is the utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation half legal principals in the decisions of the court.[5]

VI. DOCTRINE OF STARE DECISIS:

The principle of stare decisis can be divided into two components:

The 1st is the rule that a decision made by a higher Court is binding precedent which a lower Court cannot overturn. The second is the principal that a quote should not overturn it is own precedents unless there is a strong reason to do so and should be guided by principals from lateral and the lower courts. The second principle is an advisory one which code can and do occasionally ignore.

A. STARE DECISIS AS A QUALITY CONTROL MECHANISM:

i. Stare decisis ,at its heart, is a quality control mechanism, arising all error for discussion and correction.

ii. Stare decisis , guarantees are consistent level of quality, consistency are reasoning in the law and application of law.

iii. Stare decisis guarantees that all judges will meet the standards of the most conscientious of their brethren. As such, it rises the quality of law and judicial functions.

iv. Public Awareness of Stare decisis encourage the continual inspection of the law and participation in the legal process by the public.[6]

VII. ADVANTAGES FROM STUDY OF JURISPRUDENCE:

Jurisprudence thus provides are precise and unambiguous terminology, which enables a lawyer to have a clear conception of the subject. It is only by an understanding of the nature of law and a logical conception and distinctions that a lawyer is amply equipped for the study of actual rules of law. It has, therefore, rightly been said that without knowledge of jurisprudence , no lawyer howsoever practically eminent, can really measure the meaning of the assumption upon which his subject rests. Jurisprudence is the eye of law. It stands towards actual system in a relation like that of grammar to particular language. It teach the lawyer and legislator the correct use of legal terms by providing the precise and unambiguous terminology, which is so essential for their task of pleading and legislation. It also

[4] Lecturer notes, Manjunath. S. S. Professor at Vidya Vikas Institute of legal studies Mysore.

[5] N. K. Jayakumar ,Lectures in jurisprudence , 3rd edition, Lexis Nexis, page number 45

[6] N. K. Jayakumar ,Lectures in jurisprudence , 3rd edition, Lexis Nexis, page number 49.

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brings about homogeneity and accuracy in legal phraseology.

Jurisprudence trains the mind so as to enable us to discover legal fallacies , which would otherwise remain unnoticed. The study of Jurisprudence aim at the education as well as the equipping of as efficient a lawyer as possible, and it trains students in how to think profitably and for themselves. It provides, as part of the training of lawyer, something which are near technical training in the substantive law cannot give them, something which is not only addition to their technical equipment, but which is also an education in the board sense of the term, that is to say and outlook on the love has it stands in relation to other field of knowledge. It is also of assistance to a moralist in as much as in progressive societies the law makers the stages of moral growth by crystalizing moral ideas. It grows as the people grow and develops with the people.[7]

VIII. QUESTION OF LAW:

Every question which requires determination in a court of law in either one of law or one of fact. It is sometimes also a combination of law and fact, Le.. partly of fact and partly of law. Fact and law are often inextricable. It is difficult to define the terms as much depends on the rules of the particular system in question. A question of law connotes the following three distinct though related senses. In the first sense, it means that the answer to the question is determinable by some proscribed rule or principle of law, which is binding on the courts The law itself had authoritatively answered the question and it has naturally to be answered in manner in which it has been laid down in the already prescribed principles or rule of law. It excludes the right of the court to answer the question as it thinks fit in accordance with its notion of truth and justice of the matter.

IX. QUESTION OF FACT:

The term 'question of fact is also used in different senses. In the first place, all those questions which are not questions of law are questions of fact. In the most general sense a question of fact means (1) any question which has not been previously determined by a rule of law, () any question other than a question as to what the law is, or (ii) any question which is to be answered by the jury and not by the judge

In the narrower and more specific sense, the phrase 'question of fact does not include all questions that are not questions of law, but only some of them. In this sense a question of fact is opposed to a question of judicial discretion. Judicial discretion determines what is right, just and equitable so far as a question has not been predetermined by an established rule of law, and consequently affording no guide for its determination. Salmond uses the expression question of fact in this narrower and specific sense. He observes that a question of judicial discretion pertains to the sphere of right as opposed to that of fact in its stricter sense.[8]

X. CONCLUSION:

The study of jurisprudence helps one remove the complications in the understanding of legal concepts. It helps the mind in creating logic and understanding the reason behind such legal concepts. Even the lawyers and judges take the help of jurisprudence for the interpretation of some rules. A law student must read jurisprudence to understand the depth of the concept of law and create a solid foundation in one's mind. Jurisprudence is also known as the 'eye ' of the law. Jurisprudence is an important part of the law and it can never be separated from it.

XI. REFERENCE:

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2. N. K. Jayakumar ,Lectures in jurisprudence , 3rd edition, Lexis Nexis.

[7] Dr. M.P. Tandon , Jurisprudence legal theory, 19th edition 2016, Allahabad Law Agency, page number 7.

[8] N. K. Jayakumar ,Lectures in jurisprudence , 3rd edition, Lexis Nexis, page number 112 to 113.

B. NOTES :

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