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The Concept of Law in Jurisprudence

ROHAN PRIYAM[1]

ABSTRACT

The topic basically discusses about the importance of concept of law in Jurisprudence and how it holds its relevance. Jurisprudence is a vast subject and the Concept of Law in Jurisprudence holds a really significant importance in the field of Jurisprudence. The word 'Jurisprudence' is made from the Latin Word 'Juresprudentia'- 'The Knowledge of Law'. But this meaning is vague and general. The meaning which the word 'jurisprudence' conveys in modern times is the result of a course of Evolution. Along with Jurisprudence, The Concept of Law also developed and hence is intermingled with each other. Through this project, we would be studying about the concept of Law in Jurisprudence, various philosophies and ideas given by Scholars related to it, criticisms and theories etc

Keywords: *Concept of Law in Jurisprudence, Theories and Philosophies, Relation Between Law and Jurisprudence*

I. INTRODUCTION

'Right', in the ordinary sense of the term, means a number of things, but it is generally taken to mean 'the standard of permitted action within a certain sphere.' As a legal term, it means the 'standard of permitted action by law'. Such permitted action of a person is known as his legal right. A legal right is a must be distinguished from a 'moral or natural right.' ' A legal right is an interest recognized and protected by a rule of legal justice- an interest the violation of which would be a legal wrong, done to him whose interest it is, and respect for which would be a legal wrong, done to him whose interest it is, and respect for which would be a legal wrong, done to him whose interest it is, and respect for which would be a legal wrong, done to him whose interest it is, and respect for which is a legal duty.'

'Moral' or 'Natural Right' means 'an interest the violation of which would be a moral wrong, and respect for which is a moral duty. The difference between the two lays in the sanctions behind them. The violation of a legal right is moral and social rebuke or disapprobation. Prof. Holland distinguishes legal right from 'might' and 'moral right'. About 'moral rights' he says: "If the public opinion would view with approval or at least with acquiescence, a person

[1] Author is a student at Jamia Millia Islamia, India.

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carrying out his wishes, with disapproval of any resistance made to his doing it, then he has a 'moral right' so as to carry out his wishes

Therefore, in most cases, moral rights and legal rights coincide and they clash only in rare cases. Many Jurists (Positivists) are opposed to the idea of 'natural rights' and they do not regard it as more than a fiction or metaphor

Definition of Right

Austin: About the definition and the analysis of the legal rights, there is great deal of difference of opinion among the jurists. According to Austin, right is a 'faculty which resides in a determinate party or parties by virtue of a given law and which avails against a party or parties (or answer to a duty lying on a party or parties) other than the party or parties in whom it resides.' According to him, a person can be said to have a right only when another or others are bound or obliged by law to do something or when another or others are bound or obliged by law to do something or forbear in regard to him. It means that a right has always a corresponding duty. This definition, as it appears on its very face, is imperfect because in this definition there is no place for 'imperfect rights.'[2]

Holland: Holland defines legal right as the 'capacity residing in one man of controlling, with the assent and assistance of the State the actions of others.' It is clear that Holland follows the definition given by Austin.

Salmond: Salmond defines right from a different angle. He says, 'A right is an interest recognized and protected by a rule of right. It is an interest, respect for which is a duty, and disregard of which is a wrong.' The main elements in this definition are two: First,' a rule of right' means a rule of law, or in other words, that which is judicially enforceable. Thus, according to Salmond, a right must be judicially enforceable

Second, a right is an interest. The element of interest is essential to constitute a right. So far as Salmond's first element is concerned, it is a corollary to his definition of law. In laying down the second element, he follows Ihering's Theory of Right

Duguit and Kelsen: There are certain Jurists who do not recognize the existence of any legal right. According to them, there is no such concept as 'legal right'. Prof. Duguit says that 'no one has any other right than always to do his duty.' Prof. Kelsen also says that there is no such idea of rights. It is not possible here to discuss the numerous definitions of right given by various jurists. It would be convenient to classify the definitions on the basis of the main

[2] *Shorter Oxford English Dictionary, Salmond Jurisprudence, Jurisprudence, Legal Duties, A.I.R 1977 S.C 1361, Legal Duties*

elements in them and discuss them

Indian Supreme Court: The Supreme Court has in State of **Rajasthan v Union of India, observed:** "In a strict sense, legal rights are correlative of legal duties and are defined as interests whom the law protects by imposing corresponding duties on others. But in a generic sense, the word 'right' is used to mean immunity from the legal power of another; immunity is exemption from the power of another. Immunity, in short, is 'no-objection.'

II. JURISPRUDENCE AND LEGAL THEORY

Though the terms 'Jurisprudence' and 'Legal Theory' have often been used interchanging these do not necessarily mean the study or investigation of an identical nature. As stated earlier, the word 'Jurisprudence' owes its origin to Roman term Jurisprudentia. Thus, it is of ancient origin. The term 'Legal Theory' has been coined in the last century. It indicates a new field of study of Law. The term 'Jurisprudence' indicates certain type of investigation into law which may be of theoretical nature also. 'Legal Theory' makes philosophical approach to Law.

"All systematic thinking about legal theory is linked at one end with philosophy and, at the other end, with political theory. Sometimes the starting point is philosophy, and political ideology plays a secondary part- as in the Theory of German Classical Metaphysicians or the neo Kantinians. Sometimes the starting is political ideology, as in the legal theories of Socialism and Fascism. Sometimes, theory of knowledge and political ideology are welded into one coherent system, where the respective shares of the two are not easy to disentangle as in the scholastic system or in Hegel's Philosophical System. But all Legal Theory must contain elements of Philosophy- man's reflections on his position with universe-and gain its color and specific content from political theory-the ideas entertained on the best form of society. For all thinking about the end of Law is based on conceptions of man both as a thinking individual and as a political being."

III. LEGAL THEORY AND SCHOOLS OF JURISPRUDENCE

Jurists at various times and times and places have made their approaches to the study of law from different angles. They have defined law, determined its sources and nature and discussed its purpose and ends. This systematic thought about law is termed 'legal theory' or 'legal philosophy'. As a matter of its nature, it relates to philosophy and political theory. "All systematic thinking about legal theory is linked at one end with philosophy and, at the other end, with political theory. Sometimes the starting point is philosophy and political ideology plays a secondary part-as in the theories of the German Classical Metaphysicians or the Neo-

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Sometimes the starting point is political ideology, as in the legal theories of Socialism and Fascism. Sometimes theory of knowledge and political ideology are welded into one coherent system, where the respective shares of the two are not easy to disentangle, as in the scholastic system or in Hegel's Philosophic System. But all legal theory must contain elements of philosophy- man's reflection on his position in the universe- and gain its color and specific content from political theory- the ideas entertained on the best form of society. For all thinking about the end of law is based on conceptions of man both as thinking individual and a political being.

For the sake of clarity and convenience in understanding their viewpoints, legal philosophers have been divided into different schools on the basis of their approaches to law. But any such division may not be falling within the strict bounds of any one school. Some of the schools are only a synthesis of two approaches. However, in spite of the overlapping, the division is helpful. It helps in understanding the evolution of the legal philosophy. Though the approaches which properly deserve to be called legal thought before that time is also necessary because it sometimes worked as a 'thesis' in Marxian Terminology and sometimes worked as the foundation-stone of a new thought.

IV. HISTORICAL SURVEY

Roman Thought- Roman Law is the starting point for the systematic study of western legal system and thought. Romans founded the modern analytical approach to law, but as stated in the preceding chapter, they could not make any substantial contribution to legal philosophy because in theory they confused law with justice and morals.

Greek Thought- The Greek legal thought which may be gathered from ancient Greek Literature and works on philosophy, specially by Homer, Socrates, Plato and Aristotle shows that their main concern was the relation of 'natural' or 'eternal' justice to law as it existed (Positive Law). It is found in their works much discussion about government and law. Though they inspired later jurists on these subjects, their contribution to the science of jurisprudence, as it understood in modern times, it is not considerable.

Ancient Thought- Ancient India had a very developed legal system which is termed as Hindu Legal System. It is one of the most ancient legal systems of the world. There are voluminous [3]legal literatures of Smritis, commentaries and Arthashastra. Though there is no

[3] *Friedmann W., Legal Theory (5th Edn.) p.286, Hagerstorm, The Nature of Law and Morals, (1953) Ch 1VAllen, 'Law in the Making*

concept of legal theory in the modern sense of the term and there are no works dealing with it exclusively, ideas and thoughts about the nature, givers of recognized authority, there is striking similarity between some of their views and that of many modern thinkers. Investigation, analysis and systematization of these still remains to a great extent, undone it is to be stated that modern legal systems may learn many things from it.

Dark Ages- The ancient jurisprudence of Greece and Rome was demolished during the Dark Ages. The Church claimed authority over the secular government also. They wanted that a mystic and religious philosophy should dominate every aspect of life including law.

Reformation- Reformation tried to draw a line between secular and religious acts and asserted that the secular activities of the State could not be directed by the Church. Consequently, a system of law based on local needs developed in various territories. State was freed from the yoke of the Church. Now it became very powerful. It belittled the importance the importance of the individual. A reaction became inevitable against the crushing State was prepared. It is from this time that we can trace the origin and development of modern jurisprudence or legal thought.

Thinking about the individual's freedom and progress started. Grotious opened a new era in legal thought. He propounded the theory of 'social contract.' Accordingly to Locke, the purpose of government and law is to uphold and protect the natural rights of man. Rosseau also advocated for the freedom and progress started. Grotius opened a new era in legal thought. He propounded the theory of 'social contract'. Accordingly, it is the duty of the sovereign to safeguard the citizens. He is bound by 'natural law'. Later on, Rosseau put forward their theories with the aim of removing the shackles on individual's freedom. According to Locke, the purpose of government and law is to uphold and protect the natural rights of man. Rosseau also advocated for the freedom and equality of men on the basis of natural law. These ideas brought about not only political revolutions but a complete change in the whole outlook also. The law of the land must conform to the eternal or 'natural law' became the slogan which stood for the individual's freedom and progress.

Rationalism- It is to be stated that the natural law theories reflected, more or less, the great social, economic and political changes which had taken place in Europe. 'Reason' or rationalism was the burden of this thought. It was based on abstract ideas

New Developments- New Problems created by the new changes and developments demanded practical and concrete solutions. The excessive individualism gave way to a collectivist outlook. Prior methods of the natural law philosophers were unacceptable in the

emerging age of science. These all created conditions for the emergence of new ideas and theories. Two theories simultaneously developed i.e. analytical and historical

Positivist and Historical Approaches- Due to the movement for the individual's freedom, great attention was given to the study of law by men having taken the profession of law- both the teacher and the lawyer. They were mainly concerned with positive law which had little to do with the vogue and abstract notions of 'natural law'. They started demarcating the proper bounds of law and analyzing and systematizing it.

They preached for legal reform also. The reform should be made taking into account the changed social needs and conditions and not on extraneous considerations. They were called 'analysts' or positivists. Some thinkers turned to history and historic conception for guidance and enlighten. They developed their theories of the origin and development of law. This is known as historical approach

The historical and analytical approaches to the study of law were more realistic and attracted jurists. They heralded a new era in the field of legal thought.

Bentham's Definition of Law- He defined Law as follows-

"A law may be defined as an assemblage of signs declarative of a volition conceived or adopted by the sovereign in a state, concerning the conduct to be observed in a certain case by certain person or class of persons, who in the case in question are or are supposed to be subject to his power: such volition trusting for its accomplishment to the expectation of certain events which it is intended such declaration should upon occasion be a means of bringing to pass, and the prospect of which it is intended should act as a motive upon those whose conduct is in question".

The learned editor of Bentham's work has analyzed this definition as follows-

1. In respect to its source: that is, in respect to the person or persons of whose will it is the expression
2. In respect to the quality of its subjects: by which I mean the persons and things to which it may apply
3. In respect to its objects: by which I mean the persons and things to which it may apply
4. In respect to its extent the generality or the amplitude of its application: that is in respect to the determinateness of the persons whose conduct it may seek to regulate
5. In respect to its aspects: that is in respect to the various manners in which the will whereof it is the expression may apply itself to the facts and circumstances which are

its objects[4]

6. In respect to its force: that is in respect to the motives it relies on far enabling it to produce the effect it aims at, and the laws or other means which it relies on for bringing those motives into play: such laws may be styled its corroborative appendages
7. In respect to its expression: that it is in respect to the nature of the signs by which the will whereof it is the expression may be made known
8. In respect to its remedial appendages, where it has any: by which I mean certain other laws which may occasionally come to be subjoined to the principal law in question: and of which the design is to obviate the mischief that stands connected with any individual act of the number of those which are made

Individualism: Utilitarianism: Bentham's legal philosophy is called 'utilitarian individualism'. He was an individualist. He said that the function of law is to emancipate the individual from the bondage and restraint upon his freedom. Once the individual was made free, he himself shall be looking after his welfare. In this way, he was a supporter of 'laissez faire' principle of economics. He pleaded for codification and condemned judge- made law and customs etc. He was a utilitarian also. According to him, the end of legislation is the 'greatest happiness of the greatest number'. According to him, the end of legislation is the

Bentham's Contribution: Bentham's contribution to legal is epoch making. "The transition from the peculiar brand of natural law doctrine in the work of Blackstone to the rigorous positivism of Bentham represents one of the major developments in the history of modern legal theory." He gave new directions for law making and legal research.

"With Bentham came the advent of legal positivism and with it, the establishment of legal theory as a science of investigation as foundations of this new approach, but, far from containing the solution beginning of a very still going on today long and varied, series of debates, which are still going on today.

Criticism against Bentham- Bentham's theory has its weaknesses. "The main weaknesses of Bentham's work" says Friedmann, "derive from two shortcomings. One is Bentham's abstract and doctrinaire rationalism which prevents him from seeing man in all his complexity, in his blend of materialism and idealism, of nobility and baseness, of egoism and altruism. This leads Bentham to an overestimate of the powers of the legislator and an underestimate of the need for individual discretion and flexibility in the application of law….

[4] *Ibid, p.133, Ibid, p.18, The Province of Jurisprudence Determined Of Laws in General (Edn. Hart) 1970 p.1 Friedmann W., Legal Theory (5th Edn.) p.3, Salmond on Jurisprudence*

The second fundamental weakness stems from Bentham's failure to develop clearly his own conception of the balance between individual and community interests."

Many of his propositions are neither convincing nor prove true in practical application. According to him, the interests of the community, as the freedom of enterprise will automatically conducive to the interests of the community, as the freedom of enterprise will automatically lead to greater equality. But it gave just the reverse results when it was put in practice later on. In the same way, pleasure and pain alone cannot be test to judge the law.

Bentham, on the one hand, emphasized the analysis of law, but, on the other hand, proposed the ends also that the law should pursue. After Bentham, these two sides were not taken together. Some took only analysis and they had nothing to do with the ends of law. Others concentrated only on the ends of law. Others concentrated only on the ends of law and ignored analysis. A comprehensive approach on the lines of Bentham could not be made. Bentham's view that the law should be made exclusively by legislation has been adopted in most of the countries in the world but it has not remained confined only to the sphere proposed by Bentham.

Austin's Method- Analytical- The method, which Austin applied, is called analytical method and he confined his field of study only to the positive law. Therefore, the school founded by him is called by various names- 'analytical', 'positivism', 'and Analytical positivism'. Some have objected to all the three terms. They say that the word 'Positivism' was started by Auguste Comte to indicate a particular method of study. Though this does not convey exactly the same sense at both the places therefore, the word 'positivism' alone will not give a complete idea of Austin's School. In the same way, 'analyses also did not remain confined only to this school; therefore, it alone cannot give a separate identity to the school. 'Analytical Positivism' too may create confusion. The 'Vienna School' in its 'Pure Theory of Law' also applies analytical positivism although in many respects they vitally differ from Austin's School. To avoid confusion and to give clarity which is the aim of classification, Prof. Allen thinks it proper to call the Austin's School as "Imperative School". This name he gave on the basis of Austin's Conception of Law ("Law is Command"). It shall be convenient to discuss Austin's theory under two main heads:-

1. Austin's Conception of Law

2. His Method [5]

[5] *Wayne Morrison: Jurisprudence: From the Greeks to Post Modernism (1997) p.1, Ibid L. 14, Paton G.W Text Book of Jurisprudence (4th Edn.) p.1, Paton G.W. supra. p..8., Friedmann: Legal Theory p.3, Ibid, p.4*

(1) Austin's Conception of Law

Austin's Definition of Law- Law, in the common use, means and includes things which cannot be properly called 'law'. Austin defined Law as 'a rule laid down for the guidance of an intelligent being by an intelligent being having power over him

Law of Two Kinds: (1) Law of God, and (2) Human Laws: This may be divided into two parts: (1) Law of God- Laws set by God for men.

(2) Human Laws- Laws set by men for men

Two kinds of Human Laws- Human Laws may be divided into two classes:

(1) Positive Law- These are the laws set by political superiors as such, or by men not acting as political superiors but acting in pursuance of legal rights conferred by political superiors. Only these laws are the proper subject-matter of jurisprudence

(2) Other Laws- Those laws which are not acting in the capacity or character of political superiors) or by men in pursuance of legal rights

Analogous to the laws of the latter class are a number of rules to which the name of law is improperly given. They are opinions or sentiments of an indeterminate body of men, as laws of fashion or honor. Austin places International Law under this class. In the same way, there are certain other rules which are called law metaphorically. They too are laws improperly so called. A chart presenting this division clearly as given below:

Law- (a) Law Properly So Called (b) Law Improperly so Called

(a) Law Properly So Called- (1) Law of God , (2) Human Laws

(b) Law Improperly So Called- (1) Laws by Analogy, as laws of fashion, (2) Laws by Metaphor, i.e. Laws of Gravity

Human Laws- (a) Positive Laws (or laws strictly so called) set by political superior to political inferior or by private persons in pursuance of a legal right. (b) Laws not set by men, as political superior, or in pursuance of a legal right- Positive Morality

"Laws proper, or properly so called, are commands; laws which are not commands, are laws improper or improperly so called. Laws properly so `called, with laws improperly so called, may be aptly divided into the following four kinds:

(1) The Divine Laws, or the Laws of God; that is to say, the laws which are set by God to his human creatures

(2) Positive Laws, that is to say, laws which are simply and strictly so called, and which form the appropriate matter of general and particular jurisprudence

(3) Positive morality, rules of positive morality or positive moral values

(4) Laws metaphorical or figurative, or merely metaphorical or figurative

The divine laws and positive laws are laws properly so called. Of positive moral rules, some are laws properly so called, but others are laws improper. The positive moral rules which are laws improperly so called may be styled laws or rules set or imposed by opinion; for they are merely opinions or sentiments held or felt by men in regard to human conduct. A law set by opinion and a law imperative and proper are allied is strong or close- Laws Metaphorical or Figurative, or merely metaphorical or figurative, or merely metaphorical or figurative, are laws improperly so called. A law metaphorical or figurative and a law imperative and proper are allied by analogy merely; and the analogy by which they are allied is slender or remote

Consequently, positive laws (the appropriate subject-matter of jurisprudence) are related in the way of resemblance, or by close or remote analogies, to the following object: '1. In the way of resemblance, they are related to those rules of positive morality which are laws properly so called: And by a close or strong analogy, they are related to those rules of positive morality which are laws properly so called: And by a close or strong analogy, they are related to those rules of positive morality which are laws properly so called: And by a close or strong analogy, they are related to those rules of positive morality which are laws set by opinion. By a remote or slender, analogy they are related to laws metaphorical, or laws merely metaphorical."

V. LAW IS COMMAND

Positive Law is the Subject-Matter of Jurisprudence- Austin says that only the positive law is the proper subject-matter of study of jurisprudence. "The matter of Jurisprudence is positive law: law simply and strictly so called: or law set by political superiors to political inferiors". Jurisprudence is the general science of positive law. The characteristics of law properly so called are as given by Austin-

"Law is Command of the Sovereign Command implies duty and Sanction"- Laws properly so called are species of commands. But being a command, every law properly so called are species of commands. But being a command, every properly so called flows from a determinate source, or emanates from a determinate author. In other words, the author from

whom it proceeds [6]is a determinate rational being, or a determinate body, or aggregate of rational beings. For whenever a command is expressed or intimated, one party signifies a wish that another shall do or forbear; and the latter is obnoxious to an evil which the former to an evil which the former intends to inflict in case the wish be disregarded.'

But every signification of a wish made by a single individual, or made by a body of individuals as a body or collective whole, supposes that the individual or body is certain or determinate, and every intention or purpose held by a single individual, or held by a body of individual as a body or collective whole, involves the same supposition

The power and purpose to inflict penalty for disobedience are the very essence of a command. The person liable to the evil or penalty is under a duty to obey it. The evil or penalty for disobedience is called sanction. Command, duty and sanction are, therefore inseparably connected terms; that each embraces the same ideas as the others, through each denotes those ideas in a peculiar order or series. "A wish conceived by one and expressed or intimidated to another, with a evil to be inflicted and incurred in case the wish be disregarded" are signified directly and indirectly by each of the three expressions. Each is the name of the same complex notion." So every law is a command, imposing duty, enforced by a sanction

Only General Commands are Law- However, all the commands are not law, it is only the general command, which obliges to a course of conduct, is law

Exceptions to the Above Definitions- These general commands, are the proper subject of study of jurisprudence. But according to Austin, there are three kinds of laws which though not commands, are still within the province of jurisprudence. They are:-

(i) Declaratory or Explanatory Laws- Austin does not regard them as commands, because they are passed only to explain laws already in force

(ii) Laws to Repeal Laws- These too are not commands but are rather the revocation of a command

(iii) Laws of Imperfect Obligations- These Laws have no sanction attached to them

In Austin's conception of Law such notions as justice or morality have no place. The basis of laws is the power of superior and not the ethics or the principles of 'natural justice'. Austin

[6] *Lord Lloyd, supra, p.17*
Friedmann W Legal Theory (5th Edn.)
Hart H.L.A Concept of Law
E.W. Patterson, Jurisprudence (1st Edn.) p.2
Keeton C.G., Elements of Jurisprudence

stands with absolutists like Hobbes, etc in regarding laws as the command of the sovereign

VI. CRITICISM AGAINST AUSTIN'S THEORY

Austin's Theory has been criticized by a number of jurists and by some of them very bitterly. Bryce went to the extent of saying that 'his contributions 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 student.' However, this is an extreme view. The main points of criticism against Austin's Theory are as follows:

(1) Customs Ignored- 'Law is the command of sovereign', as Austin says, is not warranted by historical facts. In the early times, not the command of any superior, but customs regulated the conduct of the people. Even after the coming of state into existence, customs continue to regulate the conduct. Therefore, customs, should also be included in the study of jurisprudence, but Austin ignored them

The supporters of Austin's Theory say that his theory takes into consideration law as it exists in a developed society; the rules which existed prior to the existence of state might be the historical sources from which law was derived, but when state comes into existence , customs continue to regulated the conduct of the people. Even after the coming of state into existence, customs continue to regulate the conduct. Therefore, customs should also be included in the study of jurisprudence, but Austin ignored them.

The supporters of Austin's Theory say that his theory takes into consideration law as it exists in a developed society, the rules which existed prior to the existence of State might be the historical sources from which law was derived, but when state comes into existence they continue only by the sanction of the sovereign and are given imperative force by him and in this way they are also commands.

(2) Law Conferring Privileges- The law which is purely of a permissive character and confers only privileges, as the Wills Act, which lays down the method of drawing a testamentary document so that it may have legal effect is not covered by Austin's Definition of Law.

A modern advocate of Austin, Buckland has tried to defend Austin's Theory by arguing that the Statute as such and not a particular provision is a command. But, really a Procedural Law, in the same way, is not covered by Austin's Definition

(3) Judge- Made Law- In Austin's theory there is no place for judge-made law. In the course of their duty judges (in applying precedents and in interpreting the law) make law.

Though an Austinian would say that judges act under the powers delegated to them by the sovereign, therefore, their acts are the commands of the sovereign, nobody in modern times, will deny that judges perform a creative function and Austin's definition of law does not include it.

(4) Conventions- Conventions of the Constitution, which operate imperatively, though not enforceable by Court, shall not be called Law, according to Austin's Definition, although they are Law and are a subject-matter of a study in Jurisprudence

(5) Rules Set by Private Persons- Austin's view that 'positive law' includes within itself rules set by private persons in pursuance of legal rights is an undue extension because their nature is very vague and indefinite

(6) International Law- Austin put International Law under Positive Morality along with the Law of honor and the Law of Fashion. "The so called Law of Nations consists of opinions or sentiments current among nations generally. It, therefore, is not law properly so called." The main ingredient of law lacking in International Law is sanction but this alone will not deprive it from being called law. Now nobody will accept that International Law is not Law. Therefore, according to Austin's definition, a very important branch of law shall be excluded from the study

(7) Command Theory Untenable- A modern theorist, Prof. Olivecrona from Sweden had denied the applicability of the idea of command to Law. He says that a command is not identical with a declaration of will. There is a difference between a command and the statement or declaration of a will. A command is always an act through which one person seeks to influence the will of another. Secondly, the idea of command (for law) in the present systems of governments is completely untenable. Command presupposes some determinate person who commands and another to whom the command is addressed. In modern times, the machinery of State remains always changing and it is run by multitude of persons. Therefore, the idea of command does not apply in such systems.

(8) It is Artificial- The view that law is 'command of the sovereign' suggests that as if the sovereign is standing just above and apart from the community giving his arbitrary commands. This review treats law as artificial and ignores its character of spontaneous growth. The sovereign is an integral part of the community or state and his commands are the commands of the organized community. Most of the theories regarding state, in modern times, say that the sovereignty does not remain in the shape in which it was conceived by the

writers of past ages. They say that State itself is Sovereign and Law is nothing but the general will of the people. Therefore, the law cannot be said to be a command

(9) Sanction is not only means to induce obedience- According to Austin's view, it is sanction alone which induces the man to obey law. It is submitted that it is not a correct view. Lord Bryce has summed up the motives as indolence, deference, sympathy, fear and reason that induce a man to obey law. The power of the State is **ratio ultima-** the force which is the last resort to secure obedience

(10) Relation of Law and Morals Overlooked- According to Austin, "The Science of Jurisprudence is concerned with positive law, or with laws strictly so called, as considered without regard to their goodness or badness." In other words, law is not concerned with morals. But this is not a correct proposition. Law is not an arbitrary command as conceived by Austin but it is a growth of an organic nature. Dr. J Brown correctly says that even the most despotic of legislators cannot think or act without availing himself of the spirit of his race and time." Moreover, law has not grown as a result of blind forces but it has been developed consciously and has been directed towards a definite end. The words used for law in Latin and in many other Continental Languages support this view.

VII. CONCLUSION

From the above facts and discussions, it can be concluded that concept of Law holds a very significant importance in Jurisprudence. Law can be said to be a principle and regulation established in a particular community by an authority and applicable to its people, whether in the form of legislation or custom and policies recognized and enforced by State Authority. In Jurisprudence, Law is the subject matter. The schools of Jurisprudence have defined law in various aspects. Many Jurists have attempted to define the concept of law in clear aspects. The concept of law is still a developing area where it can have various abstracts as per the current scenario. The Schools of Jurisprudence have provided their views on the concept of Law as per their ideologies and thinking. There are various criticisms for the schools by different jurists. Thus concept of law is a difficult concept to be explained as to have a clear definition. Hence the viewpoints of various jurists and their school of thought may be considered for further development of this area and its practical application

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