

UNIT - I

Meaning, Nature & Schools of Jurisprudence

Natural Law • Imperative Theory • Legal Realism • Historical School • Sociological School

Unit Structure

01

Meaning & Nature of Jurisprudence

Definition, scope, purpose and value of the subject

02

Natural Law School

Classical to modern – Aquinas, Locke, Fuller, Finnis

03

Imperative / Analytical School

Austin, Bentham – Command theory

04

Historical, Realist & Sociological Schools

Savigny, Holmes, Pound and others

Meaning and Nature of Jurisprudence

Jurisprudence is the science or philosophy of law. It is the study of the fundamental principles of law, its nature, sources, purpose and the concepts that underlie legal systems.

Julius Stone described it as “the lawyer’s extraversion” – the examination of the precepts, ideals and techniques of the law by the light of disciplines other than law.

Salmond: Jurisprudence is the “science of the first principles of the civil law”.

Holland: “Jurisprudence is the formal science of positive law”.

It is not concerned with the content of any particular legal system but with the abstract, general and theoretical aspects of law as such.

Purpose and Value of Jurisprudence

- Develops the capacity for critical thought about law and its context – social, political and theoretical.
- Helps the student understand the nature of law, what law is, what the purposes of law are, and the relationship between law and justice.
- Provides the theoretical foundation for the study of particular branches of law (contracts, torts, constitutional law, etc.).
- Enables comparison of different legal systems and schools of thought.
- Trains the mind to analyse legal concepts (right, duty, ownership, possession, personality, liability) in a rigorous manner.

Without a deep understanding of jurisprudence, legal education remains incomplete – it produces technicians rather than thinkers.

Natural Law School

Natural Law theory holds that there is a higher law based on morality, reason or the nature of man, which is independent of and superior to positive law made by the State.

Key thinkers:

- Classical: Aristotle, Cicero, St. Thomas Aquinas (lex humana must conform to lex naturalis)
- Social Contract: Hobbes, Locke, Rousseau
- Modern: Lon Fuller (inner morality of law), John Finnis (basic goods and practical reasonableness)

Central claim: An unjust law is not a true law (lex iniusta non est lex). Law and morality are necessarily connected.

Indian connection: The idea of Dharma in ancient Indian thought shares affinities with natural law.

Imperative Theory (Austinian Positivism)

John Austin (Province of Jurisprudence Determined):

Law is the command of the sovereign backed by sanctions. A “command” is a wish expressed by a person who has the power to inflict evil if the wish is not fulfilled.

Key elements:

- Sovereign – a person or body to whom the bulk of a given society is in a habit of obedience, and who is not in the habit of obedience to any other
- Command – expression of desire + threat of sanction
- Sanction – the evil that will be incurred in case of disobedience

Bentham’s utilitarianism provided the philosophical background. Austin sharply separated law as it is from law as it ought to be (the separation thesis).

Criticism: Ignores customary law, international law, and the role of morality; over-emphasises coercion.

Historical School of Jurisprudence

The Historical School emphasises that law is not made but found; it grows organically out of the popular consciousness (Volksgeist) of a people.

Friedrich Carl von Savigny:

- Law is a product of the historical development of the nation
- It is rooted in the common consciousness of the people
- Legislation should only declare what has already grown up as custom
- Opposed the codification of German law on the French model

Sir Henry Maine: “The movement of progressive societies has hitherto been a movement from Status to Contract.”

The school values custom, tradition and historical continuity over abstract reason or sovereign will.

Legal Realism

Legal Realists focus on “law in action” rather than “law in books”. They emphasise the role of judges, social context and the actual prediction of what courts will do.

American Realism (Holmes, Llewellyn, Frank):

- Oliver Wendell Holmes Jr.: “The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law.”
- Law is what the judges say it is; rules are only one factor among many (facts, personality of the judge, social forces).

Scandinavian Realism (Hägerström, Ross, Olivecrona): Law is a psychological and social phenomenon; legal concepts are largely fictional.

Realism shifted attention from formal rules to the behaviour of legal officials and the social consequences of decisions.

Sociological School of Jurisprudence

The Sociological School studies law as a social phenomenon and as an instrument of social control and social engineering.

Roscoe Pound: Law is a tool of “social engineering” – the task of the lawyer and the judge is to balance competing interests in society with the minimum of friction and waste.

Interests are classified as individual, public and social. The goal is to satisfy as many interests as possible with the least sacrifice of other interests.

Other contributors: Eugen Ehrlich (living law), Duguit (social solidarity), Ihering (law as a means to an end).

The school emphasises the functional aspect of law and its relationship with society, economics and politics.

Schools of Jurisprudence – Comparative View

School	Key Idea	Main Thinkers
Natural Law	Higher moral law	Aquinas, Fuller, Finnis
Imperative	Command of sovereign	Austin, Bentham
Historical	Volksgeist / custom	Savigny, Maine
Realist	Law in action / prediction	Holmes, Llewellyn
Sociological	Social engineering	Pound, Ehrlich

Indian Orientation in Jurisprudence

The course emphasises native Indian orientation wherever possible.

- Ancient Indian thought (Dharma, Nyaya, the concept of Raja-dharma) contains rich jurisprudential ideas that parallel natural law and sociological approaches.
- The Indian Constitution itself embodies a mix of natural-law values (fundamental rights, dignity) and positivist structures.
- Judicial decisions of the Supreme Court of India frequently draw upon natural-law reasoning (e.g., in expanding Article 21) while remaining within a positivist constitutional framework.
- Comparative study of English and Indian legal thought is encouraged.

Students should be able to relate Western schools to Indian legal experience.

Landmark Thinkers & Their Core Ideas

Austin

Law = Command of the Sovereign + Sanction

Savigny

Law grows from the Volksgeist (spirit of the people)

Holmes

Law = prophecies of what courts will do in fact

Pound

Law as social engineering – balancing of interests

Fuller

Inner morality of law – eight principles of legality

Key Takeaways – Unit I

- Jurisprudence is the theoretical and philosophical study of law – its nature, purpose and fundamental concepts.
- Natural Law asserts a necessary connection between law and morality; an unjust law is not true law.
- Austin's Imperative Theory defines law as the command of a sovereign backed by sanctions.
- The Historical School sees law as an organic growth from the spirit of the people (Volksgeist).
- Legal Realism focuses on law in action and the actual behaviour of judges.
- The Sociological School treats law as an instrument of social control and social engineering.

Quick Reference – Schools & Thinkers

Natural Law	Aquinas, Locke, Fuller, Finnis
Imperative / Analytical	Austin, Bentham, Kelsen (Pure Theory)
Historical	Savigny, Maine, Puchta
Legal Realism	Holmes, Llewellyn, Frank, Ross
Sociological	Pound, Ehrlich, Duguit, Ihering
Core Question of Jurisprudence	What is law? What is its purpose?

End of Unit – I

Meaning, Nature & Schools of Jurisprudence

Proceed to Unit-II: Functions of Law, Justice & Theories of Punishment