JURISPRUDENTIAL PRINCIPLES

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ABSTRACT:

The study of the underlying ideas, theories, and principles of the legal system is known as jurisprudence, sometimes known as the philosophy of law. The famous legal philosophy school of analytical legal positivism maintains that morality and the law are distinct from one another. This method, which was developed by philosophers like H.L.A. Hart and Joseph Raz, stresses the analysis of law as a social institution that is separate from moral considerations. Analytical legal positivism holds that social realities influence the validity of legal norms and that the presence of a "rule of recognition" that directs legal authorities in determining what constitutes law indicates the existence of a legal system. According to Hart, primary and secondary rules establish a fundamental framework that emphasises the fundamental codes of behaviour and the secondary rules that grant the power to establish or amend primary rules. The Supreme Court is at the top of the Indian legal system's hierarchical structure, which is followed by High Courts and lower courts. A hierarchy of authority is established by the decisions made by higher courts, which aims to preserve uniformity and coherence in the interpretation of the law. By ensuring that legal principles are applied consistently across the nation, this hierarchical approach promotes justice and legal certainty. The existence of several legal systems within a single region or among a certain population is referred to as legal pluralism. The intricate nature of legal plurality in India stems from the nation's heterogeneous population, multifarious historical background, and coexisting legal systems. Legal plurality is facilitated by the formal and informal components of India's legal system.

KEYWORDS:

Legal positivism , Bentham , Austin , precedents, Ratio decidendi , Legal Pluralism, Baxi

INTRODUCTION:

Theory and reality are central to the concept of jurisprudence. It addresses the fundamental ideas that form the foundation of the legal system. In essence, the idea of jurisprudence aids in the development of one's own opinions with reference to a specific theory. In general, the knowledge of jurisprudence serves as the cornerstone and basis for all legal studies. A particular kind of legal inquiry known as "case precedent" aims to reflect the essence of legal norms, the fundamental meaning of legal concepts, and the fundamental features of the legal system. Law is an idealistic, abstract science that studies how people behave in society.

Jurisprudence (from the Latin word “jurisprudential” meaning “knowledge of the law”) was developed in the early 19th century by the theories of Bentham, Austin, and others. Bentham is often referred to as “the father” or “the first thinker” who was responsible for the first analysis of what the law was. The social sciences are closely related to one another, as all of them deal with human conduct in society. According to Roscoe Pound (who popularized legal theory as “social engineering”), “the social sciences are closely connected to one another, not so closely that they are mutually exclusive as to be necessary, but inextricably linked.”

ANALYTICAL LEGAL POSITIVISM:

Analytical legal positivism is the broad name for a legal philosophy that focuses on the classification of principles and rules of law, as well as the analysis of concepts, relationships, words and ideas used throughout the legal system, such as person, obligation, right, duty, act, etc. The main goal of the analytical legal positivism is to examine the law as it currently exists. The first principle of the theory is to analyze the law as it actually exists in the legal order. The most important part of the law according to the exponent is its relationship with the state. They view law as an order issued by the sovereign, i.e., the state.

Analytical School – Meaning:

Analytical School – Refers to the analytical jurisprudence taught by Sir John Salmond and C.K. Allen. It is called systematic jurisprudence.

Allen's imperative jurisprudence is a methodological approach that treats law not as a set of contingent rules closely tied to transcendent natural law, but as a set of interrelated principles of reality. Its purpose is to define all laws, to classify all laws, to discover the essential characteristics of each law, and to obtain standards against which all laws can be measured.

The main objective is to reconstruct scientifically valid institutions by analyzing legal concepts based on observation and comparison through the logical reduction of law. This approach to law is called analytical jurisprudence. However, Allen argues that this school of jurists considers laws to be commands or orders issued by a politically independent sovereign. The approach of these lawyers can be called the jurisprudential school of law.

The analysis of legal rules, concepts, and ideas using empirical or scientific methods is commonly referred to as analytical jurisprudence.

Jeremy Bentham :

1. **Analytical Aspect:**
    - **Quantitative Analysis:** Bentham's utilitarianism is often described as analytical because it involves a quantitative approach to ethics. Bentham attempted to create a systematic and mathematically precise method for determining the moral worth of actions. He believed that pleasure and pain could be measured and compared in a somewhat objective manner.
    - **Felicific Calculus:** Bentham introduced the idea of the "felicific calculus," which is a method for calculating the pleasure and pain produced by an action. The calculus includes various factors such as intensity, duration, certainty or uncertainty, propinquity or remoteness, fecundity, purity, and extent. By assigning numerical values to these factors, one could, in theory, determine the overall utility of an action.
2. **Positivist Aspect:**
    - **Legal Positivism:** Bentham is often associated with legal positivism, which is the view that the legitimacy of laws is not dependent on their moral content but on the authority of the lawmaker. In other words, the law is what the sovereign says it is, regardless of its moral implications. Bentham argued for a scientific and systematic approach to law, separate from moral considerations.
    - **Utility as the Basis of Law:** For Bentham, the foundation of legislation and legal systems should be the principle of utility. Laws should be designed to promote the greatest happiness for the greatest number. He advocated for legal reform based on utilitarian principles, aiming to create a legal system that maximizes overall well-being.

He described regulation “as an assemblage of symptoms and symptoms declarative of a volition conceived or followed with the aid of using the Sovereign in a State, regarding the behaviour to be determined in a sure case with the aid of using a sure man or woman or magnificence of humans, who withinside the case in the query are or are imagined to be issue to his electricity; such violation trusting for its accomplishment to the expectancy of sure occasions which it's miles meant such statement need to upon event be a way of bringing to pass, and the possibility of which it's miles meant need to act as a purpose upon whose behaviour is in query”. Bentham’s idea of regulation is vital i.e., regulation is a meeting of symptoms and symptoms, declarations of violation conceived or followed with the aid of using Sovereign in a State. He believed that each regulation can be taken into consideration inside the mild of 8 special elements namely,

1.Source (regulation as the need of the Sovereign)

2. Subjects (can be humans or things)

3. Objects (act, situation, or forbearance)

4. Extent (regulation covers a part of the land on which acts had been done)

5. Aspect (can be directive or sanctions)

6. Force

7. Remedial State Appendages

8. Expression

Bentham characterized law with the help of huge perspectives: For example, The Regulation is "Bliss is the Best Great": As indicated with the aid of Bentham, the policies mentioned need to boost pleasure and reduce any type of aggravation to individuals. Regulation is the order of the sovereign: The concept of electricity seemed with the aid of using Bentham earlier than Austin could make it. Bentham says the regulation is the order given with the aid of using the sovereign. Guideline Of Utility As indicated with the aid of using him the effects of excellent and evil are separate 'delight' and 'torment.

Principle Of Utility

According to him the consequences of good and evil are respectively ‘pleasure’ and ‘pain. In simple words, the basic thing comes under the principle of utility i.e. pleasure and pain. The principle of utility recognizes the role of pleasure and pain in human life.

Pleasure = ‘everything that is good’

Pain = ‘everything that is bad or evil’.

He believed that happiness of social order is to be understood in the objective sense and it broadly includes satisfaction of certain needs, such as the need to be fed, clothed, housed, etc. According to him, happiness changes its significance in the same way as the meaning also undergoes changes with the changes in societal norms.

Criticisms of Bentham’s Theory:

There are two shortcomings of Bentham’s theory:

1. Bentham’s abstract and doctrinaire rationalism
2. Bentham’s weakness in developing clearly his own conception of the balance between individual and community interests.

John Austin:

John Austin(1790- 1859) worked as a speaker at the University of London. He used the logical fashion – ‘ Law should be strictly examined and estimated, and the principle underpinning it should be discovered ’ and limited his exploration to Positive law. As a result, he used the terms “ logical, ” and “ positivism, ” to describe the academy he formed, thus, the analytical Academy of justice is also known as Analytical Legal Positivism. Being the father of the Analytical academy, his lectures were published under the title, “The Province of Justice 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, ‘ proper law ’ encompasses God’s law, mortal laws, and Positive laws. Laws by analogy and laws by conceit are two types of ‘ inaptly ’ named laws. Austin claims that “ Positive morality ” comprises laws not assessed by men(as political elders) or in the pursuit of a legal right, as well as laws assessed by analogy, similar to fashion laws. He further stated that the indecorous laws weren't sanctioned by the State.

Law = command + sanction + sovereign

Austin noted that every law, duly pertained to as similar, must have three rudiments, videlicet, command, permission, and autonomous authority thereby intending to say that “ law is the accreditation of an autonomous, ordering his subjects to do or refrain from specifications. However, there's an inferred trouble of discipline ”, If the command isn't followed. In his proposition, Austin didn't include laws of insensible objects or indecorous laws. Austin also tried to point out the differences between positive law and positive morality. As per Austin, moral rules that act positive law make up positive morality. There are colorful rules of positive morality that are extensive with rules of positive law. For illustration rules against killing someone, stealing, violating, or assaulting. He had a firm idea of law being rules set by men for men. He divided law into two corridors.

1. mortal law

2. Laws of God mortal law can be further divided into two kinds

1. Positive law – Laws set by persons acting as political elders in the performance of legal rights. (According to Austin, positive law was the proper subject matter to be dealt with under justice.)

2. Other laws – Several rules or opinions which have moral and novelettish undertones. (transnational law is classified under this order by John Austin.) Austin’s proposition was clear, simple, and harmonious in respect to what it wanted to explain. This made his proposed academy of study relatively notorious, and numerous other justices and seminaries of study have followed after it. Still, numerous proponents have later classified John Austin’s academy as the Imperative Academy.

Criticism:

Australian theory has been criticized by a number of jurists points of the criticism against Austin's theory of law which are as follows:-

1.Ignoring custom: The Australian view is that the law is the command of the sovereign. Austin emphasizes the commands, or laws, issued by the sovereign. But in the past, it was customs, not orders from superiors, that determined people's behavior. Even if a nation is established, the behavior of its citizens must be regulated. Some legal scholars support custom as law, arguing that law is not the command of a sovereign, but rather the customs that people have followed over time.

2.Judges made the laws: -

In Austin there was theoretically no room for judges' laws. Judges do their job by applying the law and interpreting the law. Even if Austrians say that judges act within the framework of sovereignty, but that their actions are the orders of sovereign bodies, today this prohibits judges from exercising creative functions.

3.Objections to Decree: -

Austin believes that the determination of human superiority is the only lawgiver and that his decrees are the law. However, along with other historical jurists, Sir Henry Mayne criticized and condemned Austin's theory of sovereignty.

Sir Henry Menn believes that sovereignty is not about defining human superiority.

According to him, ``There are a number of influences that may be called lower morals, constantly changing, limiting, or denying the true direction of the power of these rulers.

" This theory Making the Sovereign Absolute: This theory states that the Sovereign is absolute, but in reality, it is impossible for the Sovereign to be absolute.

In ancient times and the Middle Ages, they were absolute rulers.

However, rulers could not remain completely absolute in their actions and actions. They underwent studies in ethical theory, codes of conduct, and religion.

When he tried to violate established moral, ethical and religious principles, he risked rebellion. This theory does not even apply to Europe: Austin argued that England's Royal Parliament was sovereign. However, legally this argument is incorrect. Because neither the king nor parliament can be completely absolute. We must always pay attention to the wishes of the people. The reality is that your audience is your ultimate source of power.

Parliament is vested with the powers of the people. Therefore, elections are held every five years after the end of the House of Commons. And because there is no House of Lords, the House of Lords is pretty powerless.

Hence , According to Austin, whenever there is a conflict between positive law and positive morality, positive law prevails. Austin was a person who argued that the sovereign must obey God's law, but he saw this as a moral obligation, and even if the sovereign enacted a law that went against God's law, it would still be considered a law. He said that there is no change in that. aaaAustin added that other opinions on this issue are not only wrong but harmful as they can lead to anarchy. However, the positivist school of law has certain drawbacks, such as the fact that it does not understand any legal system and considers sanctions as the only basis of law. Furthermore, the concept of absolute sovereignty proposed by John Austin called into question

international law and the fundamental rights of individuals. Although it has certain limitations, legal positivism is considered the most influential school of law.

LAW OF PRECEDENTS IN INDIA

Historical growth of precedents in India:

Precedents are considered to be a source of law in India, and it is considered so only after British rule in India. the beginning of usage of precedents in giving judgements began after the establishment of the federal court and the privy council under the Government of India Act, 1935. The laws and judgements made by the privy council and the federal court shall have a precedential value and will be binding on all the Indian courts as per SEC 212 of the 1935 act. After independence, the same principle was reiterated under Art 141 of the Indian constitution. This article gave a status to precedents in the Indian legal system.

Article 141 -

Supreme Court declares law to be binding on all courts: The Supreme Court has stated that the law is binding on all courts located within the borders of India.

There arises a question whether the term 'all courts' will include the Supreme court or not ?

This question was resolved in the case of **Bengal Immunity co. Vs State of Bihar -** The SC remarked that **' there is nothing that can withhold a SC from departing from its own decisions' ,** if it is satisfied with its errors and of the beneficial interest of the public .Thus it was clearly stated that SC is not bound by its own decisions .

Ratio decidendi:

It is the **principle** behind the judgment which is binding on all courts. This principle has authority, has a force of law which will bind the court in future cases or judgements. Hence, this authoritative principle in any judicial decision is called the **ratio decidendi**.

In **State Bank of India v. Yasangi Venkateswara Rao** - the court stated that when the judgment is laconic and contains only conclusions without any reasoning, such a judgment would have no binding effect as a precedent.

In the case of **Dalbir Singh v. State of Punjab -** the court clearly stated that every decision contains three basic ingredients

1. Finding of facts, whether it may be direct or inferential
2. Principles of law applicable to the problems
3. Judgment based on the above (1) and (2)

However for the purpose of the doctrine of precedents it is the ingredient (2) which is a very vital element. That is the Ratio decidendi of any case.

Ratio decidendi is the part of the judgment which alone binds in future cases. In the case of **Union of India vs Pfizer ltd -** the court held that - '**A stray sentence in a judgment without a focused argument cannot be considered as the ratio of such a judgment.**

There is nothing mentioned in the constitution that prevents the SC from overriding the previous decision of its own if it is satisfied of its error and also on its harmful effect on the general public. in the case of **Kesavanandha bharathi vs State of Kerala,** the SC reconsidered its previous decisions in Golaknath's case and overruled it. However, in the case of **Kartar singh vs State of Punjab -** the court held that, **the earlier decision of the SC cannot be overruled even by a co-equal bench of the court**. Incase of conflict between two or more judgements the judgement of the larger bench will prevail and it should be followed .

Thus it is clear that the doctrine of precedent is not strictly adhered in India. Adherence is done to a limited extent.

Obiter dicta:

In the case of **Ambika Prasad vs State of UP,** the court held that -the Supreme Court's obiter dicta to be a law in accordance with Article 141 and hence enforceable by all courts**.** In the case of **Municipal Corpn. of Delhi v. Gurnam Kaur,** the Court stated that - **Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative'.**

These are the landmark cases that played a major rule in shaping the role of precedents in the Indian legal system:

1)Kesavananda Bharati v. State of Kerala:

The fundamental framework of the Constitution was established by this ruling. The Supreme Court ruled that while the Parliament might modify any aspect of the Constitution, including the Fundamental Rights, even a constitutional amendment could not change the fundamental framework of the document." In accordance with Indian law, the judiciary has the authority to invalidate any amendment adopted by Parliament that conflicts with the core principles of the Constitution.

2)Maneka Gandhi v. Union of India:

Whether the freedom to travel abroad is a component of Article 21's Right to Personal Liberty was one of the case's key issues. According to the SC, it is covered by the right to personal liberty. The Supreme Court also decided that limiting personal liberty did not require only the presence of an enabling law. A law like this needs to be "just, fair, and reasonable."

3)Shah bano begum case:

Milestone case for Muslim women's fight for rights. The Supreme Court affirmed a Muslim woman's right to alimony and declared that all citizens, regardless of faith, are covered by the Code of Criminal Procedure, 1973. Due to political backlash, the ruling government at the time reversed the decision and passed the Muslim Women (Protection on Divorce Act), 1986, which limited the requirement for alimony payments to the iddat term (as per Islamic personal law).

4)Vishaka vs State of Rajasthan:

Workplace sexual harassment was the subject of this case. The SC provided a set of guidelines in the ruling that employers, along with other accountable individuals or organizations, should follow right away to guarantee that sexual harassment is prevented. We refer to these as the "Vishaka Guidelines." Until the proper laws were passed, these were to be regarded as law.

5)Aruna Shanbaug case:

The Supreme Court decided that everyone had the right to die with dignity, permitting limited passive euthanasia. The tragic case of Aruna Shanbaug, who lay in a vegetative state for 42 years (blind, paralyzed, and deaf), led to calls for reforming India's euthanasia laws.

LEGAL PLURALISM:

In legal anthropology and jurisprudence, the idea of legal pluralism acknowledges the existence of several legal systems or norms within a single society or group. Different sources of law, including state law, customary law, religious law, and community-based law, coexist and may overlap or clash in a legally diverse setting. The concept of legal pluralism recognises that many social groupings within a community may have their own set of formal and informal legal institutions and norms.

Indian context of legal pluralism:

India has an official system of faith-based pluralism, which is the result of centuries-long attempts to codify customary religious practices. The Shariat Act, 1937, which codified a section of the fiqh (law with an Islamic basis and interpretation found in Islamic sources) is the formal legal genesis of "Mohammedan" or Sharia law, which is part of this pluralist system. However, the law existed in practice long before that date. Hindu law is specifically used in family issues and is a component of the larger Indian legal system. However, since it accepts Sikhs and Buddhists, it may be more inclusive than Mohammedan law. Christian law has also been acknowledged as a multiple jurisdiction since the 2000s, changing the rules for Christians on divorce, separation, maintenance, and adoption in the Indian Divorce (Amendment) Act 2001 to resemble British laws, resulting in a highly complex legal framework.

Pluralism and constitutional rights:

The Indian constitution's Article 14 guarantees everyone equality in the eyes of the law. Article 14's definition of "any person" also includes all Muslim women living in the nation. Muslim males are permitted to have more than four marriages under Islamic law, while Muslim women are not. These rights are not vested only to Muslim women; they also do not apply to men and women of other religions. It doesn't mean that everyone should have the ability to have four spouses at once, but because most people practice monogamy, why is it not in the case for Muslim men as well? Are they given the same treatment by the law? Is it not like Muslim men, citing their traditions, have been accorded certain privileges?

Prof. Baxi on pluralism:

An important part of expanding our understanding of legal diversity has been played by the important contributions made to the topic by the Indian legal scholar Professor Upendra Baxi. His research has centred on how justice, society, and the law interact, especially when it comes to developing nations such as India. Among his most significant contributions to legal plurality are:

1. Conceptual Framework: Baxi offers a conceptual framework for comprehending legal pluralism, highlighting the fact that societies frequently have numerous legal orders coexisting, each with its own set of standards, beliefs, and procedures for resolving disputes. He draws attention to how intricate these legal systems are and how important it is to understand and balance their interplay.

2. Legal Monism Critique: Baxi has criticised the notion that a nation-state ought to have a single, centralised legal system. He makes the case that monism is unable to explain the plurality of legal standards and the pluralistic character of different countries. Legal pluralism, according to Baxi, is a more practical and culturally aware strategy.

3. The rights and justice: Baxi has studied the effects of legal diversity on access to justice and human rights. He highlights how crucial it is to guarantee that people may access justice in all legal systems and that their rights are upheld whichever legal system they decide to interact with.

4. Legal Transformations: Baxi has researched how legal pluralism can change the law. He has studied how disparate legal systems interact to bring about social change and how marginalised people might take use of these pluralistic legal systems to advance their rights and interests.

5. Dialogic Approach: In order to resolve disputes and offer access to justice, Baxi supports a dialogic approach to legal pluralism that involves discussion and negotiation amongst various legal systems. This method acknowledges the fluidity of legal diversity and the necessity of constant communication and adjustment.

6. Difficulties and complexity: Baxi recognises the difficulties and complexity associated with legal pluralism, such as the necessity for unambiguous procedures for settling disagreements across many legal systems and concerns about jurisdiction and normative conflicts.

Baxi's contributions to legal pluralism are especially pertinent when considering India, a cosmopolitan and diversified nation with a long history of different legal customs and traditions. Discussions about personal laws, the function of legal systems unique to communities, and how Indian law accommodates cultural and religious norms have all benefited from his work.

Professor Upendra Baxi's contributions to legal pluralism have improved our comprehension of the difficulties associated with having several legal systems coexist. and the chances they offer in civilizations that are pluralistic and cosmopolitan, like India and others. His writings highlight how crucial it is to acknowledge and

honour the diverse legal customs of different cultures while simultaneously working for equity and the protection of human rights for all.

CONCLUSION:

In conclusion, the legal philosophy known as analytical legal positivism stresses the importance of studying and comprehending the law as a social institution distinct from moral considerations. It offers a framework for dissecting legal systems, with an emphasis on the policies and practises that establish them rather than necessarily assessing the moral implications of those policies. Enhancing predictability, consistency, and coherence in judicial decision-making is the law of precedents, a fundamental principle of the Indian legal system. This legal doctrine, which has its roots in the idea of stare decisis, or "to stand by things decided," states that conclusions reached in one case should be adhered to in another with comparable facts. The development of India's precedent law can be linked to its English common law roots, but the distinctive characteristics of the country's legal system have given it a unique personality. Hence, law of precedents play a major role in shaping the Indian legal system. Historical, cultural, and constitutional considerations have shaped India's legal pluralism, which is a dynamic and ever-evolving phenomena. The Indian legal system continues to face difficulties in striking a balance between the preservation of various legal traditions and the requirement for a unified legal framework.