INTRODUCTION TO JURISPRUDENCE

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1. Nature and Scope of Jurisprudence

Jurisprudence is an unpopular subject both with students and practicing advocates. In the words of Dicey, Jurisprudence is a "word which stinks in the nostrils of a practising barrister". Practicing advocates and judges view it as impractical and irrelevant in interpreting legislation and administering laws. Thus for you to appreciate and make most of your study of jurisprudence, it is important from the outset to grasp the meaning, nature and relevance of jurisprudence as well as the correct approach to the study of jurisprudence.

There is no universal or uniform definition of Jurisprudence since people have different ideologies and notions throughout the world. It is a very vast subject.

When an author talks about political conditions of his society, it reflects that condition of law prevailing at that time in that particular society. It is believed that Romans were the first who started to study what is law.

Jurisprudence - Latin word *'Jurisprudentia'*, which means knowledge of Law or skill in Law.

- Most of our law has been taken from Common Law System.
- Bentham is known as Father of Jurisprudence. Austin took his work further.
- Bentham was the first one to analyse what is law. He divided his study into two parts:
    i. Examination of Law as it is - **Expositorial Approach** - Command of Sovereign.
    ii. Examination of Law as it ought to be - **Censorial Approach** - Morality of Law.

However, Austin stuck to the idea that **law is command of sovereign**. The structure of English Legal System remained with the formal analysis of law (Expositorial) and never became what it ought to be (Censorial).

J. Stone also tried to define Jurisprudence. He said that it is a lawyer's extraversion. He further said that **it is a lawyer's extraversion** of the percept, ideas and techniques of law in the light derived from present knowledge in disciplines other than the law.

Thus, we see that there can be no goodness or badness in law. Law is made by the State so there could be nothing good or bad about it. Jurisprudence is nothing but the science of law.

Definition:

I. Austin

He said that "Science of Jurisprudence is concerned with Positive Laws that is laws strictly so called. It has nothing to do with the goodness or badness of law.

This has two aspects attached to it:

a) **General Jurisprudence**: It includes such subjects or ends of law as are common to all system.
b) **Particular Jurisprudence:** It is the science of any actual system of law or any portion of it.

Basically, in essence they are same but in scope they are different.

Salmond's Criticism of Austin

He said that for a concept to fall within the category of 'General Jurisprudence', it should be common in various systems of law. This is not always true as there could be concepts that fall in neither of the two categories.

Holland's Criticism of Austin

He said that it is only the material which is particular and not the science itself.

II. Holland

Jurisprudence means the formal science of positive laws. It is an analytical science rather than a material science.

A. He defined the term positive law. He said that Positive Law means the general rule of external human action enforced by a sovereign political authority.
B. We can see that, he simply added the word 'formal' in Austin's definition. Formal here means that we study only the form and not the essence. We study only the external features and do not go into the intricacies of the subject. According to him, how positive law is applied and how it is particular is not the concern of Jurisprudence.
C. The reason for using the word 'Formal Science' is that it describes only the form or the external sight of the subject and not its internal contents. According to Holland, Jurisprudence is not concerned with the actual material contents of law but only with its fundamental conceptions. Therefore, Jurisprudence is a Formal Science.
D. This definition has been criticized by Gray and Dr. Jenks. According to them, Jurisprudence is a formal science because it is concerned with the form, conditions, social life, human relations that have grown up in the society and to which society attaches legal significance.
E. Holland said that Jurisprudence is a science because it is a systematized and properly co-ordinated knowledge of the subject of intellectual enquiry. The term positive law confines the enquiry to these social relations which are regulated by the rules imposed by the States and enforced by the Courts of law. Therefore, it is a formal science of positive law.

F. Formal as a prefix indicates that the science deals only with the purposes, methods and ideas on the basis of the legal system as distinct from material science which deals only with the concrete details of law.
G. This definition has been criticized on the ground that this definition is concerned only with the form and not the intricacies.

III. Salmond

He said that Jurisprudence is Science of Law. By law he meant law of the land or civil law. He divided Jurisprudence into two parts:

i. **Generic:** This includes the entire body of legal doctrines.
ii. **Specific:** This deals with the particular department or any portion of the doctrines.

'Specific' is further divided into three parts:

i. **Analytical, Expository or Systematic:** It deals with the contents of an actual legal system existing at any time, past or the present.
ii. **Historical:** It is concerned with the legal history and its development
iii. **Ethical:** According to him, the purpose of any legislation is to set forth laws as it ought to be. It deals with the 'ideal' of the legal system and the purpose for which it exists.

Criticism of Salmond

Critics say that it is not an accurate definition. Salmond only gave the structure and failed to provide any clarity of thought.

IV. Keeton

He considered Jurisprudence as the study and systematic arrangement of the general principles of law. According to him, Jurisprudence deals with the distinction between Public and Private Laws and considers the contents of principle departments of law.

V. Roscoe Pound

He described Jurisprudence as the science of law using the term 'law' in juridical sense as denoting the body of principles recognized or enforced by public and regular tribunals in the Administration of Justice.

VI. Dias and Hughes

They believed Jurisprudence as any thought or writing about law rather than a technical exposition of a branch of law itself.

Significance and Utility of the Study of Jurisprudence

I. This subject has its own intrinsic interest and value because this is a subject of serious scholarship and research; researchers in Jurisprudence contribute to the development of society by having repercussions in the whole legal, political and social school of thoughts. One of the tasks of this subject is to construct and elucidate concepts serving to render the complexities of law more manageable and more rational. It is the belief of this subject that the theory can help to improve practice.

II. Jurisprudence also has an educational value. It helps in the logical analysis of the legal concepts and it sharpens the logical techniques of the lawyer. The study of jurisprudence helps to combat the lawyer's occupational view of formalism which leads to excessive concentration on legal rules for their own sake and disregard of the social function of the law.

III. The study of jurisprudence helps to put law in its proper context by considering the needs of the society and by taking note of the advances in related and relevant disciplines.

IV. Jurisprudence can teach the people to look if not forward, at least sideways and around them and realize that answers to a new legal problem must be found by a consideration of present social needs and not in the wisdom of the past.

V. Jurisprudence is the eye of law and the grammar of law because it throws light on basic ideas and fundamental principles of law. Therefore, by understanding the nature of law, its concepts and distinctions, a lawyer can find out the actual rule of law. It also helps in knowing the language, grammar, the basis of treatment and assumptions upon which the subject rests. Therefore, some logical training is necessary for a lawyer which he can find from the study of Jurisprudence.

VI. It trains the critical faculties of the mind of the students so that they can dictate fallacies and use accurate legal terminology and expression.

VII. It helps a lawyer in his practical work. A lawyer always has to tackle new problems every day. This he can handle through his knowledge of Jurisprudence which trains his mind to find alternative legal channels of thought.

VIII. Jurisprudence helps the judges and lawyers in ascertaining the true meaning of the laws passed by the legislators by providing the rules of interpretation. Therefore, the study of jurisprudence should not be confined to the study of positive laws but also must include normative study i.e. that study should deal with the improvement of law in the context of prevailing socio-economic and political philosophies of time, place and circumstances.

IX. Professor Dias said that *'the study of jurisprudence is an opportunity for the lawyer to bring theory and life into focus, for it concerns human thought in relation to social existence'.*

Relationship of Jurisprudence with other Social Sciences

A. **Sociology and Jurisprudence:** There is a branch called as Sociological Jurisprudence. This branch is based on social theories. It is essentially concerned with the influence of law on the society at large particularly when we talk about social welfare. The approach from sociological perspective towards law is different from a lawyer's perspective. The study of sociology has helped Jurisprudence in its approach. Behind all legal aspects, there is always something social. However, Sociology of Law is different from Sociological Jurisprudence.

B. **Jurisprudence and Psychology:** No human science can be described properly without a thorough knowledge of Human Mind. Hence, Psychology has a close connection with Jurisprudence. Relationship of Psychology and Law is established in the branch of Criminological Jurisprudence. Both psychology and jurisprudence are interested in solving questions such as motive behind a crime, criminal personality, reasons for crime etc.

C. **Jurisprudence and Ethics:** Ethics has been defined as the science of Human Conduct. It strives for ideal Human Behaviour. This is how Ethics and Jurisprudence are interconnected:

   a) **Ideal Moral Code:** This could be found in relation to Natural Law.
   b) **Positive Moral Code:** This could be found in relation to Law as the Command of the Sovereign.
   c) Ethics is concerned with good human conduct in the light of public opinion.
   d) Jurisprudence is related with Positive Morality in so far as law is the instrument to assert positive ethics.
   e) Jurisprudence believes that Legislations must be based on ethical principles. It is not to be divorced from Human principles.
   f) Ethics believes that No law is good unless it is based on sound principles of human value.
   g) A Jurist should be adept in this science because unless he studies ethics, he won't be able to criticize the law.
   h) However, Austin disagreed with this relationship.

D. **Jurisprudence and Economics:** Economics studies man's efforts in satisfying his wants and producing and distributing wealth. Both Jurisprudence and Economics are sciences and both aim to regulate lives of the people. Both of them try to develop the society and improve life of an individual. Karl Marx was a pioneer in this regard.

E. **Jurisprudence and History:** History studies past events. Development of Law for administration of justice becomes sound if we know the history and background of legislations and the way law has evolved. The branch is known as Historical Jurisprudence.

F. **Jurisprudence and Politics:** In a politically organized society, there are regulations and laws which lay down authoritatively what a man may and may not do. Thus, there is a deep connected between politics and Jurisprudence.

2. State, Sovereignty and Law

2.1. State

Salmond defines State as "an association of human beings established for the attainment of certain ends by certain means". A state is the most important of all associations and is distinguished from all of them by its functions. The chief ends for which human beings associate state are :

- to prevent war
- for the administration of justice

The means employed to attain these ends is the physical force of the State.

According to Holland, "A State is a political society. He further writes society means a natural unit of a large number of human beings united together by a common language and by a common language and by similar customs and opinions resulting from common ancestry, religion and historical circumstances."

Grotius defines States as "the complete union of freemen who join themselves together for the purpose of enjoying law and for the sake of public welfare."

ORIGIN AND EVOLUTION OF THE STATE

The origin of State has been a favourite subject of speculation. The Greeks organised city-states which according to them had a divine origin. Later speculators were not convinced with the divine origin of States, explain the rise of political society by the hypothesis of an "original contract" theory of which Hugo Grotius was the main supporter. However, this theory was later proved as superfluous and untenable by subsequent thinkers.

ESSENTIAL ELEMENTS OF STATE

It may be reiterated that a State is nothing but an independent political society which is made for the maintenance of peace and administration of justice amongst its population. A state has the following elements :

I. **Population:** It implies a considerable group of human beings living together in a community since the State comes into existence for the people, the population is one of the essential elements of the State. There is no fixed number of persons to constitute a State, but it must be a considerable number.
II. **Territory:** No people can constitute a State if they are not permanently settled on a fixed territory. The territory of a State includes land, water and airspace. More than one state cannot be located on the same territory. The size of the State is not materialistic.
III. **Government:** It is the important machinery or agency by means of which the State maintains its existence, carries on its functions and formulates, expresses and realizes its policies and objectives. It is regarded as indispensable because without it the state cannot exist.
IV. **Sovereignty:** Sovereignty of a State implies that it is free from any kind of external control and commands habitual obedience from the people within its territory. It confers upon the state two things namely internal supremacy and external independence. It can also be defined as supreme and unfettered authority within a state.

FUNCTIONS

It has been generally accepted that for an administration of justice, are the two main functions of the State. The functions of the State are divided into two categories which are Primary and Secondary.

Primary Functions: The primary functions of a State are war and administration of justice. The fundamental purpose and end of political society is a defence against external enemy and maintenance of law and order within the country. These are also called the constituent functions as they are necessary for the very existence of the State. Herbert Spencer also supported the view that the primary functions of the State include defending the country against external aggression and to maintain internal law and order.

Secondary Functions: A State may exist without discharging these functions as they are not essential. These functions are mostly related to welfare activities of the State. The main secondary functions of the State are legislation and taxation. There are also two theories of the State – socialism and individualism. Under the former theory, the state assumes itself an unlimited variety of functions and the in the latter theory, the state leaves the individuals free.

2.2. Theories of the State

A. The Divine Theory

This is the oldest theory of the origin of the State. The Jews believed that God appointed the king, deposed him and even killed bad rulers. The king of the Jews was therefore looked upon as the agent of God and was regarded as responsible to him. The theory of divine creation leads to the theory of divineright of Kings. Not only is the state a divine institution, it is also ruled by the king who acts as the agent and representatives of God. This aspect of the theory was fully developed during the 16th and 17th centuries. The leaders of the reformation movement used this theory to support and justify the Institution of absolute monarchy. King is like a father compared with his children or like the head as compared with the body, without him, there can be no Civil Society. Today no one believes in this theory because it is based on faith and not reason.

B. The Social Contract Theory

The most famous exponents of the social contract theory are Hobbes, Locke and Rousseau. The substance of the social contract theory is that the state was created by men, by means of a contract. In the earlier times, there was no state and no man-made laws as men regulated their conduct on the basis of the laws prescribed by nature but there was no human agency to formulate and enforce the laws of nature. Men entered into an agreement and created the state. According to Hobbes, man is selfish By Nature. According to Locke, man is social by nature and according to Rousseau, human nature is made up of 2 elements: self-preservation and sympathy for others. The theory plays an important role in the people struggle against absolute monarchy.

C. Patriarchal Theory

According to this theory, the state is the natural extension of the family. The early family was patriarchal. Descent in the family was traced through males and the eldest male parent exercised Supreme authority over all members of the family.

D. Matriarchal Theory

According to this theory, the early society was matriarchal. The Institution of the family did not exist. People lived in groups. The descent was traced through the mother. The

matriarchal society evolved into a patriarchal society which ultimately led to the emergence of the state.

E. Evolutionary Theory

The state is not an invention; it is a growth and evolution the result of the gradual process running throughout the known history of man. It is now commonly agreed that four factors particularly influence the process of evolution of the state.

F. Kinship

Whether the primitive form of society was patriarchal or matriarchal, is a subject of controversy but there is no doubt that kinship of blood relationship was the first and the strongest bond of social organization. It was blood relationship that was the fundamental bond of union everywhere in primitive societies.

G. Religion

Religion was another element that welded together families and tribes. Religion was linked with kinship. All the members of the family or group worshipped together their ancestors. It may be said that religion plays an important role in primitive Social Organisation.

H. Class Struggle and War

Class struggle and war were important factors in the origin and development of the state. Reorganization of primitive communities was very simple there was no need for organized forced to maintain unity and discipline.

I. Political Consciousness

Political Consciousness was another important factor that contributed to the emergence of political power. It may be described as the innate feeling among men that they have certain aim and objects which they cannot achieve without living under an organized authority.

It may be reasonably concluded that the origin of the state cannot be assigned to a particular point of time or one particular factor it has evolved gradually with certain specified factors

playing an important role in its growth and development these factors are kinship religion war and political consciousness.

2.3. Sovereignty

Sovereignty is one of the chief attributes of statehood. This term was for the first time introduced by the French political thinker Jean Bodin. The word sovereignty is derived from the French word 'soverain' which in its own turn was derived from the Latin word 'suprifus' which meant a supreme authority having no other authority above it. The term sovereignty also means Supremacy on right to command obedience. A Sovereign state is one which is not subordinate to any other state and is Supreme over the territory under its control. Its commands are necessary to be opened by all men and associations within its territory. Thus in a modern sense, the sovereign is that person or body which is the supreme legislative authority in a given state.

Concept:

The concept of sovereignty was unknown in the ancient world. It is an essential outcome of the medieval period when there were renaissance and reformation in Europe. It was Machiavelli who developed the concept of state absolutism, that is this state is absolute and an end in itself and there cannot be restraints on its powers.

The term sovereignty was for the first time introduced by French jurist Jean Bodin in his famous work Republic which appeared in 1577.

The great law reformer Jeremy Bentham of England also supported the absolute power of the sovereign but he justified it on the utilitarian principle of hedonism. According to him, the sovereign had the authority to make laws but this should be in conformity with the principles of utility. He believed that sovereign power can be subjected to certain legal restrictions.

He also defined 'sovereign' as a person or group of person to whose will a political community are supposed to be in a disposition to pay obedience in preference to any other person.

Lord Lloyd defined sovereignty as a practical device of law and politics whereby the effect is given to the practical need in any community for some final ultimate authority.

Austinian Theory of Sovereign:

"If a determinate human superior, not in the habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinate superior is sovereign in that society and the society, includes superior is the society political and independent. To that determinate superior, the other members of the society are dependent. The position of its other

members towards the determinate superior is a state of subjection or a state of dependence, the mutual relations which subsist between that superior and then maybe styled the relation of sovereign and subject or the relation of sovereignty and subjection."

Salmond's Theory of Sovereignty:

Like Austin, Salmond also believes that sovereign power is determinate, that is, in every political society, there must be a sovereign authority. He also points out that it is not necessary that sovereignty in all cases should be found in its eternity within the confines of the state itself and it may wholly or partly be external to the state. He also suggested that the sovereign power is divisible. It may be divided into three organs of the state namely legislative, executive, and Judiciary being free and uncontrolled in its own sphere.

He also observed that the theory of sovereignty is founded on three fundamental propositions namely:

- Essentiality
- Indivisibility
- Illimitability

Thus Salmond has asserted that sovereignty is indivisible, essential and illimitable.

It cannot be subordinated to any other person because the sovereign is limited to the extent to which the subjects are willing to submit to his domain.

STATUS OF SOVEREIGNTY IN INDIA

India does not agree with the view that sovereignty is an absolute and unlimited power. Here, the Constitution is supreme which vests the executive sovereignty in the president and legislative sovereignty is vested in the Parliament as well as the state legislature. There is nothing like judicial sovereignty.

2.4. Law

State is sovereign. Sovereignty is its exclusive and most important element. It is the supreme power of the state over all its people and territories. The State exercises its sovereign power through its laws. The Government of the State is basically machinery for making and enforcing laws.

Each law is a formulated will of the state. It is backed by the sovereign power of the State. It is a command of the State (sovereign) backed by its coercive power. Every violation of law is punished by the State. It is through its laws that he State carries out its all functions.

Meaning and Definition

The word 'Law' has been derived from the Teutonic word 'Lag, which means 'definite'. On this basis Law can be defined as a definite rule of conduct and human relations. It also means a uniform rule of conduct which is applicable equally to all the people of the State. Law prescribes and regulates general conditions of human activity in the state.

1. "Law is the command of the sovereign." "It is the command of the superior to an inferior and force is the sanction behind Law." —Austin
2. "A Law is a general rule of external behaviour enforced by a sovereign political authority." -Holland

In simple words, Law is a definite rule of behaviour which is backed by the sovereign power of the State. It is a general rule of human conduct in society which is made and enforced by the government' Each Law is a binding and authoritative rule or value or decision. Its every violation is punished by the state.

Nature or Features of Law

I. Law is a general rule of human behaviour in the state. It applies to all people of the state. All are equally subject to the laws of their State. Aliens living in the territory of the State are also bound by the laws of the state.
II. Law is definite and it is the formulated will of the State. It is a rule made and implemented by the state.
III. State always acts through Law. Laws are made and enforced by the government of the State.
IV. Law creates binding and authoritative values or decisions or rules for all the people of state.
V. Sovereignty of State is the basis of law and its binding character.
VI. Law is backed by the coercive power of the State. Violations of laws are always punished.
VII. Punishments are also prescribed by Law.
VIII. The courts settle all disputes among the people on the basis of law.
IX. In each State, there is only one body of Law.
X. Legally, Law is a command of the sovereign. In contemporary times laws are made by the representatives of the people who constitute the legislature of the State. Laws are backed by on public opinion and public needs.

XI. The purpose of Law is to provide peace, protection, and security to the people and to ensure conditions for their all-round development. Law also provides protection to the rights and freedoms of the people.

XII. All disputes among the people are settled by the courts on the basis of an interpretation and application of the laws of the State.

XIII. Rule of law, equality before law and equal protection of law for all without any discrimination, are recognised as the salient features of a modern legal system and liberal democratic state.

Sources of Law

1. **Custom**

Custom has been one of the oldest sources of law. In ancient times, social relations gave rise to several usages, traditions and customs. These were used to settle and decide disputes among the people. Customs were practiced habitually and violations of customs were disapproved and punished by the society. Initially social institutions began working on the basis of several accepted customs.

Gradually, the State emerged as the organised political institution of the people having the responsibility to maintain peace, law and order; naturally, it also began acting by making and enforcing rules based upon customs and traditions. In fact, most of the laws had their birth when the State began converting the customs into authoritative and binding rules. Custom has been indeed a rich source of Law.

2. **Religion and Morality**

Religion and religious codes appeared naturally in every society when human beings began observing, enjoying and fearing natural forces. These were accepted as superior heavenly forces (Gods and Goddesses) and worshiped.

Religion then started regulating the behaviour of people and began invoking “Godly sanction”, “fear of hell”, and “possible fruits of heaven”, for enforcing the religious codes. It compelled the people to accept and obey religious codes. Several religions came forward to formulate and prescribe definite codes of conduct. The rules of morality also appeared in society. These defined what was good & what was bad, what was right and what was wrong.

The religious and moral codes of a society provided to the State the necessary material for regulating the actions of the people. The State converted several moral and religious rules into its laws. Hence Religion and Morality have also been important sources of Law.

3. Legislation

Since the emergence of legislatures in 13th century, legislation has emerged as the chief source of Law. Traditionally, the State depended upon customs and the decrees or orders of the King for regulating the behaviour of the people. Later on, the legislature emerged as an organ of the government. It began transforming the customary rules of behaviour into definite and enacted rules of behaviour of the people.

The King, as the sovereign, started giving these his approval. Soon legislation emerged as the chief source of law and the legislature got recognition as the Legal Sovereign i.e. law-making organ of the State. In contemporary times, legislation has come to be the most potent, prolific and direct source of law. It has come to be recognized as the chief means for the formulation of the will of the State into binding rules.

Delegated Legislation

Because of several pressing reasons like paucity of time, lack of expertise and increased demand for law-making, the legislature of a State finds it essential to delegate some of its law-making powers to the executive. The executive then makes laws/rules under this system. It is known as Delegated Legislation. Currently, Delegated Legislation has come to be a big source of Law. However, Delegated Legislation always works under the superior law-making power of the Legislature.

4. Judicial Decisions

In contemporary times, Judicial Decision has come to be an important source of Law. It is the responsibility of the courts to interpret and apply laws to specific cases. The courts settle the disputes of the people in cases that come before them. The decisions of the courts – the judicial decisions, are binding on the parties to the case. These also get accepted as laws for future cases. But not all judicial decisions are laws.

Only the judicial decisions given by the apex court or the courts which stand recognized as the Courts of Record, (like the Supreme Court and High Courts of India) are recognized and used as laws proper. Lower Courts can settle their cases on the basis of such judicial decisions.

5. Equity

Equity means fairness and sense of justice. It is also a source of Law. For deciding cases, the judges interpret and apply laws to the specific cases. But laws cannot fully fit in each case and these can be silent in some respects. In all such cases, the judges depend on equity and act in accordance with their sense of fair play and justice. Equity is used to provide relief to the

aggrieved parties and such decisions perform the function of laying down rules for the future. As such equity acts as a source of law.

6. Scientific Commentaries

The works of eminent jurists always include scientific commentaries on the Constitution and the laws of each state. These are used by the courts for determining the meaning of law. It helps the courts to interpret and apply laws.

The jurists not only discuss and explain the existing law but also suggest the future possible rules of behaviour. They also highlight the weaknesses of the existing laws as well as the ways to overcome these. Interpretations given by them help the judges to interpret and apply Laws to specific cases.

The works of jurists like, Blackstone, Dicey, Wade, Phillips, Seeravai, B.Pi. Rau, D.D. Basu and others have been always held in high esteem by the judges in India. Scientific commentaries jurists always help the development and evolution of law. Hence these also constitute a source of law. Thus, Law has several sources. However, in contemporary times law-making by the legislature constitutes the chief source of Law.

Types of Law

Broadly speaking there are two main kinds of Law:

a. **National Law** i.e. the body of rules which regulates the actions of the people in society and it is backed by the coercive power of the State.
b. **International Law** i.e. the body of rules which guides and directs the behaviour of the states in international relations. It is backed by their willingness and consent that the states obey rules of International Law. It is a law among nations and is not backed by any coercive power.

National Law is the law by which the people are governed by the state. It stands classified into several kinds:

i. Constitutional Law

Constitutional Law is the supreme law of the country. It stands written in the Constitution of the State. The Constitutional Law lays down the organisation, powers, functions and inter-relationship of the three organs of government. It also lays down the relationship between the

people and the government as well as the rights, freedoms (fundamental rights) and duties of the citizens. It can be called the Law of the laws in the sense all law-making in the State is done on the basis of powers granted by the Constitutional Law i.e. the Constitution.

ii. Statute Law or Ordinary Law

It is also called the national law or the municipal law. It is made by the government (legislature) and it determines and regulates the conduct and behaviour of the people. It lays down the relations among the people and their associations, organisations, groups and institutions. The legislature makes laws, the executive implements these and judiciary interprets and applies these to specific cases.

A. Private Law

Private Law regulates the relations among individuals. It lays down rules regarding the conduct of the individual in society and his relations with other persons. It guarantees the enjoyment of his rights. It is through this law that the State acts as the arbiter of disputes between any two individuals or their groups.

B. Public Law

The law which regulates the relations between the individual and the State is Public Law. It is made and enforced by the State on behalf of the community.

I. General Law:

It lays down the relations between the private citizens (Non-officials or who are not members of the civil service) and the State. General Public Law applies to all the citizens in their relations with the State.

II. Administrative Law

It lays down the rules governing the exercise of the constitutional authority which stands delegated by the Constitution of the State to all the organs of government. It also governs the relations between the civil servants and the public and lays down the relations between the civil servants and the State. In some States like France, Administrative Law is administered by

Administrative Courts and General Law is administered by ordinary courts. However in countries like India, Britain and the USA the same courts administer both the General Law and Administrative Law.

Clarifying the distinction between Public law and Private law, Holland writes: “In Private Law the parties concerned are private individuals alone and between whom stands the State as an impartial arbiter. In Public Law also the State is present as an arbiter although it is at the same time one of the parties interested.”

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