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## School of contemporary jurisprudence

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### **Abstract**

An analysis of considering the futuristic impact of Contemporary Jurisprudence on Sociological and Political Science. Estimated changes on State rule, Democracy and Judiciary.

**Keywords:** Futuristic impact, contemporary, jurisprudence

### **1. Introduction**

Jurisprudence can be called as engineering level for our Democratic, Judicial, Social and Political System level, if any change made at Jurisprudence level that means a huge impact shall be made at large on our present democratic and Judicial level. Recently School of Contemporary Jurisprudence has been propounded with a separate philosophy of Jurisprudence, In the History of Jurisprudence, a number of jurists have explained it in the general form for better understanding of the lawmaking process. As we know that law has unpredictable arena. Its understanding differs from one particular individual to the others. Everybody has their own perception of law. These different perceptions can be clubbed under different schools of Jurisprudence. This article gives a brief outline of mainly new Schools of Contemporary Jurisprudence with in historical preview of what expected changes shall be made in nearby future due to Contemporary Jurisprudence. The consider the role of previous school of Jurisprudence as Analytical School, Historical School, Realist School, Sociological School, Philosophical or Natural School of Jurisprudence.

### **1.1 School of contemporary jurisprudence**

Recently, an Indian jurist Mr. Deepak Sharma (often called as father of Contemporary Jurisprudence) propounded the school of Contemporary Jurisprudence. He has challenged the cardinal principle of the current judiciary and democratic jurisprudence.

He said that

1. Parliament/Legislative Assembly could not be considered as the representative session of the public, because the personal interest of an elected person (M.P / MLA) never is the same as collective interest of the public. He propounded the three levels of democratic structure against public- Parliament, he propounds the three level Representative Sessions as Public – Society Representation – Parliament/Legislative assembly. He propounded that some group of people have common interest for their economic survival, such type of group called as Society, therefore any representative person from such society. Therefore, common interest of such representative shall be same of such society group, he further propounded that if Parliament and society representation both shall participate in the law-making process jointly, thereafter degree of democracy must be increased.
2. Judiciary system – School of Contemporary Jurisprudence also challenged the cardinal principle of current Judiciary system, as
3. Judges/ bench never be considered as independent Judiciary body, on the ground, that Court can't be treated as independent Judiciary body because of various functionality of court/ Judges run under the control of state/Nation.
4. A Just in trial (J.I.T.) is the world's first centralized trial proceeding provides the edge of public representation in Judiciary.

J.I.T. is considered 25 times faster and 20 times more transparent against the current Bar-Bench trial proceedings system.

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## 1.2 Other main features of Contemporary Jurisprudence

1. All types of law have been divided into five types and their codification process through joint session of Parliament and society representative session.
2. Degree of Democracy (details are not still available in public domain).
3. Developing stage of Judiciary system of any state (details are not available in public domain)

From all the above statements, it's true that the School of Contemporary Jurisprudence awarded a new edge of intellectuality about the next stage of Jurisprudence to mankind.

The entire structure of our democratic and Judiciary system shall be affected due to Contemporary Jurisprudence because of cardinal principle of our democratic and judicial system has been idle challenged upon initio by the concept of School of Contemporary Jurisprudence.

## 2. Historical View of Jurisprudence

At present civilisation depends upon State, where as Democracy, Judiciary, Human Rights, Civil and Criminal Laws etc exist, the aforesaid concept has been arrived from various School of thoughts as the Concept of State and Fundamental/Human Rights derived from Natural/Philosophical School of Jurisprudence. The concept of Civil law and Criminal laws deprived from Analytical, Sociological School of Jurisprudence, the Structure of Judiciary System has been deprived from Realist School of Jurisprudence. Let's consider the Historical preview of Jurisprudence view with some of eminent Jurist Contribution.

### 2.1 Analytical School

John Austin is said to have set up this methodology due to which it is sometimes referred as Austinian School. This school believes law as a direction from the supreme power (Sovereign). According to this School, Law is the Command of the Sovereign and owes its existence to state and is posterior to it. The exponent of this school regards Legislation as the most important source of law. According to them Custom has no place in law.

Austin was the one who propounded the theory of positive law but Bentham was the one who laid down its establishment.

#### 2.1.1 Jeremy Bentham

Bentham appears to be the founder of this approach. He was the firm supporter of *Laissez faire* principle of economy. He wrote a book, "Limits of Jurisprudence defined" which was published in 1945. He was against Judge made law; according to him law should be made only by the legislature. He was an individualist. He said that the function of law is to emancipate the individual from the bondage and restraint upon his freedom. The purpose of law is to bring pleasure and avoid pain. His legal Philosophy is called "Utilitarian individualism."

#### 2.1.2 John Austin

Austin is known as father of English Jurisprudence and Analytical School. He wrote a book, "Province of Jurisprudence Determined". He defined law as "a rule laid down for the guidance of an intelligent being by an

intelligent being having power over him". Law is the command of sovereign backed by Sanction.

### 2.2 Historical School

According to this School, Law is a matter of unconscious and organic growth. Therefore, law is found and not made. This school says that Law is anterior to state and does not owe its existence to it. They say custom is all important source of law and is superior to legislation. This School discourages creative activities and legal reform.

#### 2.2.1 Savigny

He is regarded as the originator of Historical School. He has propounded the *Volkgeist* Theory. Law has its source in the general consciousness (*Volkgeist*) of the people. He says law develops like a language and has national character. Law is a product of the people's life- it is a manifestation of its spirit.

The other eminent supporters of this School are Sir Henry Maine and Edmund Burke.



Fig 1: Savigny, Friedrich Carl von Savigny

### 2.3 Realist School

Roscoe Pound has defined 'realism' as "Fidelity to nature, accurate reordering of the things as they are, as contrasted to things as they are imagined to be, or wished to be or as one feels they ought to be." Basically, the evolution of Realist school lies in the English Jurisprudence. It is regarded as a branch of Sociological approach. Gray and O.W. Holmes were the two great jurists from whom the origin of this realist approach has been traced. Gray defined law as "What Judges Declare". Coming on to the Llewellyn, he said that Realist School is not a separate school of Jurisprudence instead it should be called as Sociological Jurisprudence.



Fig 2: Lord William Bentinck and Utilitarianism

Coming on to the factors responsible for this approach are numerous. The most important one is the pragmatic philosophy. They started dealing law with a practical approach rather than constraining them with the principles. The second most important factor which seems to have led this thought is the organization of judiciary in America. Eminent Supporters of this School are, Holmes, Gray, Jerome Frank, Llewellyn, and many more.

#### 2.4 Sociological School

This School takes law as an instrument of Social progress and treats law as a social wonder. This school studies effect of law and society on each other. According to this school law is the product of general will of the society. The reasons which brought about this kind of approach are many. The historical school, the philosophical movement and the comparative study of legal systems all in different ways contributed in the emergence of this method. Some of the eminent supporters of this view have been discussed below:

##### 2.4.1 Auguste Comte

He was the first individual who used the term "Sociology". His method maybe called as "Scientific Positivism". Coming on to the field of legal theory it was Comte whose ideas inspired Durkheim, and who in his turn, inspired Duguit, a great sociological jurist.

##### 2.4.2 Eugen Ehrlich

The core point of his thesis was that the law of community is to be found in social facts and not in the formal sources of law. According to him 'Living Law' is the fact that governs social life. His use of term 'Sociological Jurisprudence' means that the law in a society should be made and administered with the utmost regard to its requirements.

##### 2.4.3 Roscoe Pound

He is regarded as an 'American leader' in the field of Sociological Jurisprudence. He concentrates more on function aspects of law due to which some writers named his approach a 'functional school'. His main thesis is that the task of law is 'Social Engineering'. Here 'Social Engineering' means a balance between the competing interests in the society.

#### 2.5 Philosophical School

This school is also known as Moral School. The basic aim of this school is that it tries to extract the reasons why which particular law has been established. Immanuel Kant, Hegel and Grotius are some of the eminent law specialists in this School. They basically think that law is the product of human reason and its ultimate aim is to raise and praise human identity. Hegel seems to be the most persuasive scholar of the philosophical school. According to him "The state and law both are developmental". Coming on to Maine, he made a comparative study of legal institution of various communities and laid down a theory of evolution of law.

#### 3. Conclusion

As discussed above Jurisprudence is a systematic study of law. It basically investigates various theories and methods of insight in respect to the Jurisprudence. There was five different schools of jurisprudence, each have their own

philosophy and importance in the field of law. Each have been criticized by many eminent scholars. Practical approach should be taken into consideration while studying law rather than going for a theoretical one. Recently a new approach has been added in same field as School of Contemporary Jurisprudence who has been denied the present Democratic, Judicial, Political, and Social system on valid ground, and made criticise the cardinal principal of present Jurisprudence, political and Judicial System. After analysing of concept of Contemporary Jurisprudence, the change shall be made in nearby Future.

#### 3.1 For considering impact upon Democracy

The Degree of Democracy shall be enhanced due to the present structure of Parliament and legislative assembly shall be changed, the role of politician shall be changed at level of Parliament/Legislative assembly. The election shall be dependent, how much politician are capable to benefit the State, the role of opposition shall be to counter the Govt decisions shall be shifted toward representatives of Society as preventatives of Students, workers, industrialist, and etc, they shall be constitutional empowered to fight for development policies, and Govt shall be bound for implementation of Development policies as per there election manifesto. In that case only capable person to be file their nomination for election, most probably the capitalist funding shall be blacklisted in election or the role of black money shall be ended in the election process.

#### 3.2 For considering impact upon Judiciary

The Bench shall not be supreme for finalise the Judgement, as per theory of Contemporary Jurisprudence, Courts are mentioning as State body not independent Body of State, therefore present trial proceeding and other Cort proceeding has been denied in Contemporary Jurisprudence. The Just in Trial (J.I.T) an innovative Court procedure System has been introduced, which has been claimed as 25 times faster and 20 times more efficient by Deepak Sharma, in which blind review opinion shall be mandatory by Chartered Law officer, whereas Chartered Law officer is being declared as Member of Society, which is more professional in comparison of Bench or Judges. They J.I.T shall be based on Centralised Judiciary System. Therefore, a large level changes are expecting after J.I.T implementation.



Fig 3: Roscoe pound social engineering theory

#### 3.3 An analysis considering impact of Political Structure

As my opinion, the entire political system/Structure shall be changed, because the role of politicians shall be ended. Most probably only the professional person having capability of

to design the development policy towards in welfare of society shall be elected, and to be formed the Govt, where in opposition the representative of Society (representatives of the Student, Worker, industrialists, etc) shall be in the role of opposition for monitor the performance of Govt, corruption, Crime, policy of Govt.

### 3.4 An analysis considering impact of Social Science

After considering the both of Concept in present Scenario, the present Societal divided into Economical Class, Caste, Religion etc shall be more emphasis toward their professional class, as member of Working class, Entrepreneur Class, Professional class, the Contemporary Jurisprudence has been designed to Parliamentary representation of Society, therefore a different race for getting membership by professionalism shall be replace by present Society Shape,

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