JURISPRUDENCE
ANALYTICAL POSITIVISM

By:
NEELAM KUMARI
Assistant Professor (Guest)-Law
Patna Law College, PU, Patna
SCHOOLS OF JURISPRUDENCE

- As we have already discussed contents of jurisprudence in our previous session. Legal theory is one of the three main components of jurisprudence.

- Legal theory is the study of philosophical notion of law. It reflects the struggle of law between tradition and progress, stability and change, certainty and flexibility.

- The word “legal theory” was coined by Dr. W. Friedmann in 1945.

- Philosophers of legal theory have been categorized into different schools of thoughts on the basis of their approach to law.

- Basically jurisprudence is divided into five major schools of thoughts.
SCHOOLS OF JURISPRUDENCE

- Natural Law School
- Analytical School
- Historical School
- Sociological School
- Realistic School

CONTINUE . . .
Analytical positivism is an important school of thought in jurisprudence.

Sir Henry Maine was one who coined the word “Analytical” and this school as “Analytical school”.

The positivist movement started at the beginning of the 19th century because during 19th century Natural Law Theory was no more considered to be significant due to influence of scientific methods upon social sciences including jurisprudence.

Jurist of this school emphasis on the analysis of positive law means law ‘as it is’ not ‘as it ought to be’. Thus, this school is known as ‘positivist school of jurisprudence’ and their jurist came to be called “positivists” or “analysts”.
The analytical school is positive in its approach. The jurists of the school consider that the most important aspect of law is its relation to the state. Law is treated as command of Sovereign. That is why this school is also known as the imperative school.

Jeremy Bentham is the founder of the Analytical School.

John Austin is considered as the father of this school and also known as father of English Jurisprudence.

As this approach is established by John Austin. So, this school also known as the Austinian school.
The term “positivism” was coined by Auguste Comte, a French thinker.

According to Professor H.L.A. Hart the term “positivism” has many meanings. He gives five fold meaning of positivism:

1. The laws are commands.
2. The analysis of legal concept has no relation with sociological and historical inquiries and critical evaluation.
3. Decision can be deduced logically from pre-determined without recourse to social aims, policy or morality.
4. The moral judgements cannot be established or defended by rational arguments.
5. Law as it is has to be kept separate from that ought to be.
Aims of Analytical School

- The main task of the analytical school is the lucid and systematic exposition of the legal ideas.
- To analyze the first principle of law without referring historical development or ethical validity.
- To gain an accurate and intimate understanding of the fundamental working concepts of all legal reasoning.
SOME EXPONENTS OF ANALYTICAL SCHOOL

JEREMY BENTHAM
JOHN AUSTIN
HOLLAND
SALMOND
H L A HART
HANS KELSON
IN NEXT SESSION WE WILL DISCUSS CHIEF EXPONENTS OF ANALYTICAL SCHOOL AND THEIR THEORIES.