



FACULTY OF JURIDICAL SCIENCES

COURSE: LL.M 1 Year

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GROUP: 1. Constitutional and Administrative Law

2. Corporate and Business Law

3. Criminal and Security Law

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GLOBALISING WORLD

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Lecture-¹³



LECTURE 13: What is Ethics

What is Ethics | Relationship between Jurisprudence and Ethics

What is Ethics

Ethics is the science of human conduct in the society. Ethics in any society deals with the members of any society how they behaved, how they are behaving and how they should behave. It is ethics which provide the rules of best human conduct and is divided into two branches:

1. The ideal moral code
2. The positive moral code

The ideal moral code is conduct is relates with natural law, the law which is not been legislated or manmade but is enshrine in the hearts of people in society which are unchanged and remain true in the future. The positive moral code deals rule of actual conduct as displayed in any society at certain time. Such rules of positive morality, being based on public opinion of a specific society, necessarily change with the men, places in the society.

Jurisprudence and Ethics

What we consider good in any society at certain time it may be bad at another time with the same society or nation. In any society it is not necessary that all people are ideal therefore some laws are required for the enforcement of certain rules of human conduct. Positive ethics is not reliant on volunteer conduct of good people in a society but stands in need of forcible law for the public consciences. Ethical jurisprudence inspects the conduct of human beings and recommends amendments if any required in the present law. So we can easily relate the jurisprudence with positive ethics.

CONCEPT OF ETHICS

Ethics is basically the science of human conduct in the society i.e. the way people behaved, how they are behaving and how they should behave in the society in which they are living. Ethics can be divided into two branches :

The ideal moral code

The positive moral code

The ideal moral code deals with the natural law. Natural law in philosophy, is a system of right or justice held to be common to all humans and derived from nature rather than from the rules of society. It simply means a law which is not legislated or man-made but is purely based on moral principles.

The positive moral code is directly related to the conduct of the society at a given point of time. Such morals are based on public opinion of a specific society and change according to the change in opinion.

JURISPRUDENCE

Jurisprudence is defined as the study of law and the principles upon which law is based. The word jurisprudence is derived from a Latin term juris prudentia, which means “the study, knowledge, or science of law.”

Why there is a need to study jurisprudence?

One of the importance to study jurisprudence is its fundamental value. It mainly involves research which helps in clarifying the basic concepts of law.

The subject is not concerned with the making of new laws but focuses on the existing laws.

It not only focuses on primary legal rules , but also talks about the social impact of these laws.

It provides the rules of interpretation, as a result it becomes important to study the subject to understand the significance of laws passed by the legislators.

CONCEPT OF ETHICAL JURISPRUDENCE

Ethical jurisprudence is a branch of philosophy which studies law based on its ethical or moral significance. How the law should be in an ideal state is dealt by ethical jurisprudence. It investigates the purpose of law and the way in which that purpose should be fulfilled. This area of study brings together morals and legal philosophy. In German, ethical jurisprudence is known as Rechtsphilosophie and in French as philosophie du droit. Legal philosophy must be based on ethical values so that people could be motivated for an up-right living.

The salient features of ethical jurisprudence may briefly be stated as follows:

Law and justice are closely related. When we talk about justice, it has an ethical essence in it, and law is a means to attain the ends of justice. Therefore, the objectives of justice can only be fulfilled by law.

The manner in which law fulfils the purpose of attainment of justice is one of the subject matter of ethical jurisprudence.

The study also differentiates between the domains of law and justice.

It emphasizes upon the ethical significance of legal conceptions.

Immanuel Kant and Hegel are considered to be one of the main exponents of the ethical school of jurisprudence:

Immanuel Kant (1724-1804)- According to him, ethics and law are not one and the same thing. Ethics deals with the inner life of an individual and law on the other hand, regulates his external conduct.

Hegel (1770-1831)- According to him, the purpose of making of law is to reconcile the conflicting egos in the society. He said that various manifestation of social life including law, are nothing but the result of evolutionary dynamic process. This process operates itself in the form of thesis, antithesis and synthesis. The human intellect sets a thesis, which becomes a salient idea with time. In the course of time, this idea is surrounded by criticism, thus setting up an antithesis. As a result of the conflict between the two i.e. thesis and antithesis, a synthesis develops to reconcile them. This process repeats time and again as a historical phenomenon.

MORALS AS THE BASIS OF LAW

In earlier stages, there was no distinction between law and morals. Thus, we can say that law and morals have a common origin but in the course of development they became different concepts. Though law and morals are not the same (which could mean that many things may be immoral yet not necessarily illegal), still the absolute separation of law from morality would be unjustified.

This concept can be explained with the help of a case study:

Queen vs Dudley and Stephens

Facts of the case: The defendants, Mr. Dudley and the victim Mr. Parker along with two other seamen were cast away in a storm on the high seas and were compelled to put into an open boat that had no supply of food and water. After the group had been without food for seven days, and without water for five days, Mr. Dudley and Mr. Stephens (one of the seamen) killed the victim in order to satisfy their hunger. All the seamen fed upon the body of the victim.

Issue raised: Does the defense of necessity permit the killing of one person to save others?

Principle laid down in the judgment: The answer to the issue raised was No! Necessity can never be a defense of murder. No man has a right to take another's life to save his own.

MORALS AS THE TEST OF LAW

It is said that if a law overshadow morality, it is not a good law. This view was very much supported by

Greeks and Romans. In Rome, law to some extent was made to conform to 'natural law' which was based on certain moral principles and as a result 'jus civile' was transformed into 'jus gentium.' Law cannot be completely separated from morals due to many reasons. The conformity of law with morals is a very important factor. When we talk about a community, law plays a very important role and morals have also got an important place. Therefore, law and morals can be considered as the two sides of the same coin.

MORALS AS THE END OF LAW

When we talk about law, one of the most important terms that comes to our mind is 'justice'. Aim of the law is to secure justice and justice is very much based on morals in the form of rationality, equity, etc. Therefore, morals can be considered as the end of law.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	One of the importance to study jurisprudence is its fundamental value. It mainly involves research which helps in clarifying the basic concepts of law.	True	False
2.	In Rome, law to some extent was made to conform to 'natural law' which was based on certain moral principles and as a result 'jus civile' was transformed into 'jus gentium.'	True	False
3.	Law and justice are closely related	True	False
4.	Aim of the law is to secure justice and justice is very much based on morals in the form of rationality, equity, etc	True	False
5.	Ethical jurisprudence is a branch of philosophy which studies law based on its ethical or moral significance	True	False

Answers: 1-(a),2-(a), 3-(a),4-(a),5-(a)