Are Philosophies of Law Still Valid in The Modern World?

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Abstract- ***The nature of law and its role in social organizations are matters regarding which there has been a diversity of views throughout civilization. The philosophy of law has been evolving from ancient times which fall into different schools of thought such as natural law, analytical positivism, the sociological school, and the historical school. The aim of the study was to determine whether the different philosophies of law are still valid in the current world. Based on a review of extant literature, it was found that all the philosophies of law are still valid, and they are applied in the formation of laws within the legal systems of countries.***

Indexed Terms- Philosophy of Law, Jurisprudence, Natural Law, Analytical Positivism, Sociological School, Historical School.

I. INTRODUCTION

The nature of law and its role in social organizations are matters regarding which there has been a diversity of views throughout civilization. The philosophy of law has been evolving from ancient times which fall into different schools of thought such as natural law, analytical positivism, the sociological school, and the historical school. Therefore, to arrive at a complete understanding of the current context of law, it is necessary to achieve an understanding of the different perspectives from which laws and legal systems were interpreted down the ages and their applicability and validity in the contemporary cultures. Thus, the problem of this study was to determine whether the different perspectives that has been evolved in the discipline of law are still valid and applied in the current world. The aim of this study was to review the extant literature to address this problem.

II. REVIEW OF LITERATURE

- Natural Law

Natural law is the oldest of the established schools of jurisprudence which is based on the moral and ethical dimensions of human experience. People's pulses and reactions to the regulation of their lives by normative rules are inextricably linked with notions of right and wrong. In this sense, there is an indispensable correlation between law and justice. The overlap between the two notions can never be complete because of human frailty and imperfection. The law which owes its origin to human ingenuity can never contain the distilled essence of justice in an absolute form. However, the source of all intellectual movements directed towards the refining and improvement of the law is the awareness that a gap will always remain between law and justice. Western classical culture consistently used different expressions to describe the notions of law and justice. There was no total fusion or identification of these concepts, one with the other. In Latin 'Lex' denoted the law, while justice was represented by the word 'Justice'. Similarly, as inherent discrepancy was recognized by the Greek language between the law and justice. While this difference is intrinsically unbridgeable, the law will remain wholesome and responsive to the needs of the community, only if a continuing effort is made to remove its blemishes in earnest, and to re-structure its content to narrow down as much as is humanly possible, the gulf which separates man-made law from the inspiring ideal of justice. There is evidence throughout the history for the central role of natural law tradition in all law reform movements. Thus, the value of natural law in the modern world is self-evident despite some criticisms. Consequently, the natural law tradition has a continuing practical justification in modern jurisprudence.

Article 6 of the International Covenant on Civil and Political Rights (ICCPR) states that: "Every human being has the inherent right to life," and that "no one shall be arbitrarily deprived of his life." pp.197.

According to Garrett, Jakubow, & Desai (2017) the decline in death sentencing is international and not limited to the United States. The finding of this study reflect that the countries are more concerned about following the principles of natural law in the current environment. Schabas (2019) also supported this argument claiming that there is a considerable shift in imposing death penalty partly because of the high concern on moral and ethical principles in imposing death punishment.

- Analytical Positivism

The approach to the analytical positivism is best understood in relation to the work of several writers whose names are prominently associated with this school of jurisprudence. Bentham firmly believed that the sole legitimate objective of law was the promotion of the greatest happiness of the greatest number of persons. The law was morally desirable if it augmented satisfaction and reduced pain or suffering. Austin viewed law basically as a command. It is of the essence of a command that it should be addressed by a political superior (sovereign) to a political inferior (people subject to superior's rule). According to Austin, the law is obeyed essentially because it reflects the will of the sovereign. The sovereign holds out the threat that any violation of the law would be accompanied by the imposition of penalties. Austin's belief was that the primary motivation of enjoining obedience to law was the fear of sanctions which would be visited upon any delinquent who defies the sovereigns will as reflected in the laws emanating from him. Professor Ronald Dworkin, Professor of Jurisprudence in the University of Oxford, is probably the best known among contemporary positivists. In his recent work on 'Law's Empire', he assesses the overall strength of the positivist tradition in contemporary jurisprudence. He makes the point that the positivist tradition has elements of validity in many branches of law and is worthy of recognition as a distinct juristic tradition.

Ng (2017) argues that we should consider seriously these new findings about moral psychology in the conceptualization of law in analytical jurisprudence. Morality, if it is an unreliable source of good conscience, cannot and should not be used to provide laws with the normative force it needs to justify the imposition of obligations or to govern with legitimate authority. Muslihun (2018) by examining the positivism of Islamic law claimed that the legislation of Islamic law is embedded into the state legal system. This study argues that morale, ethics, or norms derived from religion and customs are accepted to the state law.

- The Social School

This is one of the most popular approaches to jurisprudence in the contemporary world. The essence of the sociological analysis is that law is the product of social forces and that its binding quality can be explained only in relation to the factors which mould it in society. Exponents of this philosophy believe that, while the content of a legal system is influenced by a variety of considerations including ethical values and historical circumstances, nevertheless the essential foundation of law is an understanding of the society in the setting of which the law has its application. There is no doubt that the sociological analysis is one of the most influential approaches to law in modern times. Its value lies in its potential to explain the attitudes of lawyers and judges as answers to burning social questions of the day. Thus, the aim of the legal system is to identify the requirements which are crucial to the development of a society and to nurture the interests identified in such a manner as to ensure the improvement of social conditions across the spectrum. There is every indication that the sociological school of jurisprudence has made a thorough and penetrating impact upon the way difficult legal problems are dealt with today by the courts of modern states.

Most people think theft is wrong most of the time. And most people would desist from stealing where doing so would directly harm another, even though it is unlikely that the victim would engage in self-help. Thus, for example, most of us would not consider taking a frail elderly person's wallet even when that person would not notice and no one else was looking. But in other contexts, more people are tempted to steal, and threatened punishment successfully helps people resist temptation, perhaps even most of the time. Many people are tempted to steal when it would not directly harm another individual, such as taking and eating candy from the bulk bin of a large corporate food market, and it is mostly the threat of legal sanctions that stops these people from stealing under these circumstances (Nadler, 2017).

- Historical School

The historical school represented a reaction to the incurable vagueness of the natural law tradition. The chief inspiration of the historical school of jurisprudence was the conviction that the character of law, and the content of the legal system required far more precise definition than was possible in keeping with natural law postulates. The adherence of the historical school believed that a national focus is essential for exposition of the nature of law and, consequently that the law of a given country is not convincingly explicable in isolation from the historical and cultural environment in which national development has taken place. Emphasis on the history, conventions, the religious, moral, familial and societal mores of the community in question gave the historical analysis of law, a specificity and clarity which presented a refreshing contrast with the nebulous idealism of the natural law ideology. The origins of the historical tradition are discernible in the 18th century when national sentiment was rapidly emerging as a powerful motivating force. Spiritual values, cultural heritage, and pristine tradition are among the factors which determine the collective consciousness of a community. Therefore, a legal system eminently suited to one community may be wholly inappropriate to the needs of another. These distinctions are not explicable by reference to ethical ideas of right and wrong. Thus, the identity and pervasive character of a country's legal system is not capable of proper analysis in isolation from matters rooted in historical development. For example, Holden (2020) proposed that the cultural values shape the jurisprudence. This view was further supported by Meloney (2020) who claimed that the historical school of jurisprudence is a dominant part of the contemporary historical jurisprudence.

CONCLUSION

This study was conducted with the aim of determining the validity of the major schools of jurisprudence in the current context. The extant review of literature revealed that all the schools of jurisprudence are still valid in the legal systems of any country context. However, the way of applying these philosophies of laws is different in the different country contexts since there are differences between countries in terms of traditions, beliefs, attitudes, norms and the traditions.

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