



## CS EXECUTIVE

# JURISPRUDENCE, INTERPRETATION AND GENERAL LAWS



**Comprehensive Curriculum Coverage**

Covers every Concept as per the latest ICSI Syllabus



**Strictly Based on ICSI Modules**

All chapters aligned topic-wise with the official Module Sequence



**Theoretical + Case-based Questions**

Includes Past Year Questions & Case-based Questions

### Module 1



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# SOURCES OF LAW

## 1. INTRODUCTION

Defining law precisely is difficult due to its evolving nature and varied perspectives. A universal definition is unrealistic, as its meaning depends on historical context, purpose, and function. However, examining different legal interpretations provides valuable insights into its multifaceted nature.

## 2. MEANING OF LAW

### CONSTITUTION OF INDIA

#### Article - 13(3) Defines 'Law' as

- ◆ Law includes any ordinance, order, bylaws, rules, regulations, customs, or usage in the territory of India

#### Law in Force as

- ◆ Law passed by or made by the legislature or any competent authority in the territory of India (define commencement of constitution and not previously repealed)

To enhance clarity and understanding regarding the essence and meaning of law, we will examine several key definitions, categorized into five main groups.

Ulpine defined Law	→ Art or science of what is equitable & good
Cicero defined Law	→ The highest reason implanted in nature
Justinian's Digest defines Law	→ The standard of what is just & unjust
Salmond defines Law	→ The body of principles recognised and applied by the state in the administration of justice.

## 3. SIGNIFICANCE OF LAW

The legal system, a product of evolution, integrates statutes, precedents, customs, and conventions. Understanding its origins reveals unique attributes. Law is dynamic, adapting to societal changes and reflecting its values and goals. Modern advancements and the rise of materialism and individualism have reshaped the law conceptually and structurally, shifting focus from abstract to social justice. The purpose of law is to establish order and deliver socio-economic justice, addressing inequalities and contributing to constitutional objectives. Law acts as an agent of social change and a catalyst for social justice.

Law is not static

[Law changes with changes in society]

Idea of abstract justice has been replaced by social justice

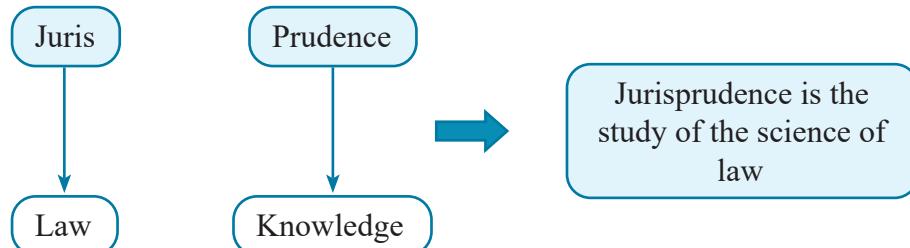
Law is expected to provide socio-economic justice

## 4. RELEVANCE OF LAW TO CIVIL SOCIETY

Law performs various functions to benefit civil society, necessitating clear theoretical and practical distinctions. Failure to differentiate these roles can inadvertently restrict, distort, or suppress civil society's potential. A truly enabling legal environment is essential for civil society to thrive; it should not only promote and defend but also actively support and empower it. Unfortunately, in many parts of civil society, law is viewed negatively due to instances where it obstructs, restricts, and suppresses fundamental freedoms.

## 5. JURISPRUDENCE AND LEGAL THEORY

### 5.1 JURISPRUDENCE - DERIVATION

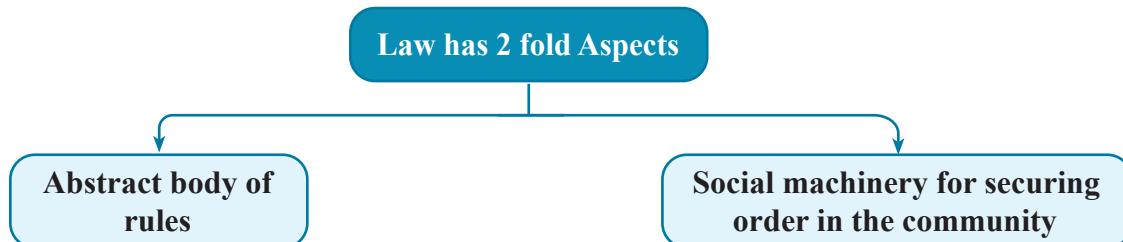


### 5.2 DEFINITION

- Not about any particular law or rule
- It is about law in general, concepts, principles and the philosophies
- It's about analysis of rights, duties, obligations & how they emerge in society

### 5.3 LAWS ARE OF TWO TYPES

Substantive	-	defines our rights/duties
Procedural Law	-	Procedure



### 5.4 VARIOUS SCHOOLS OF JURISPRUDENCE

#### Analytical School of Jurisprudence

- Elements of pure science
- Objectives which will be universally true
- Not shifting in sands of individual preference, of particular ethical or sociological views

## Sociological School of Jurisprudence

Highlights limitations of pure science of law

Furnish answer to social problems

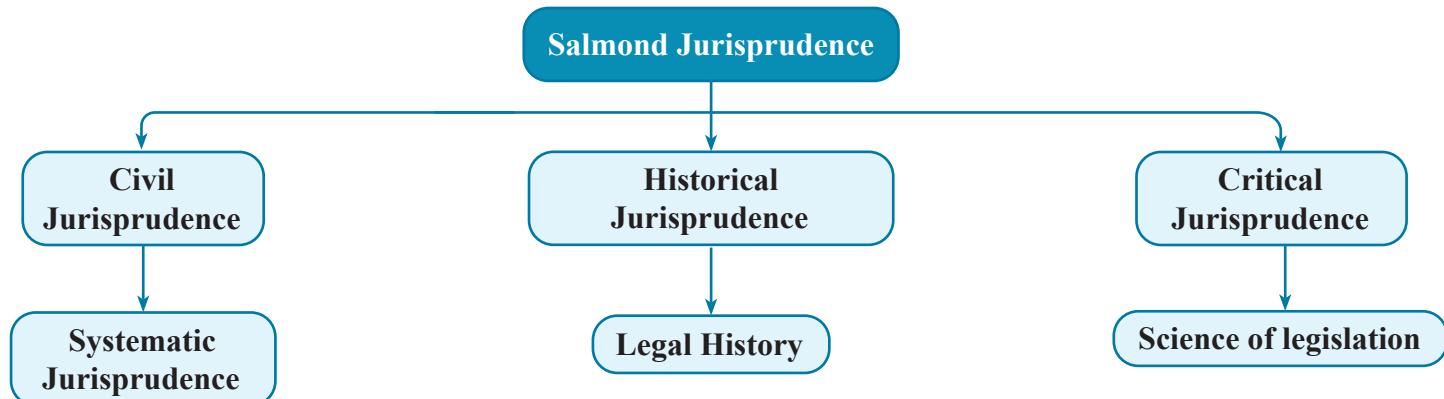
## Teleological School of Jurisprudence

Law is product of human reason & to notion of purpose.

## 5.5 DIFFERENT JURISTS & THEIR VIEW

The term 'jurisprudence' has been defined differently by various legal philosophers throughout history, and its meaning has evolved due to the flexible nature of its scope. This lack of fixed boundaries is a point of significant debate among scholars. In England, the work of early analytical legal thinkers like Bentham and Austin led to 'jurisprudence' being understood primarily as the analysis of law's formal structure and concepts. However, as their view of law faced increasing criticism and alternative perspectives emerged, 'jurisprudence' expanded in meaning, though a definitive boundary for the subject remains difficult to establish.

### 1. Salmond



### 2. Prof. Julius Stone

Defined Jurisprudence as the lawyer's extraversion. Jurisprudence is the lawyer's examination of the ideals & techniques of law derived from present knowledge.

### 3. Prof. G.W. Paton

Jurisprudence is founded on attempting not to find universal principles of law, but to construct a relationship between law, its concepts & life of society.

## 6. LEGAL THEORY

### Legal Theory

#### Normative Legal Theory

Normative legal theories tell us what the law ought to be.

#### Positive Legal Theory

Positive legal theory seeks to explain what the law is and why it is that way, and how laws affect the world.

## 6.1 DIFFERENT AUTHORS AND THEORIES

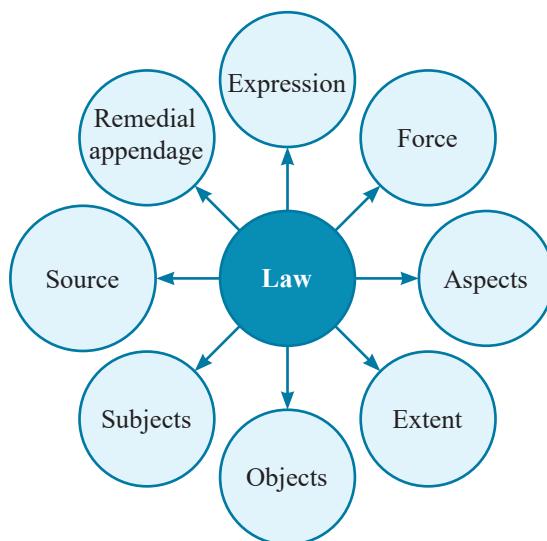
### Jeremy Bentham

Pioneer of analytical jurisprudence in Britain

Law may be defined as assemblage of signs, declarative of volition, conceived or adopted by sovereign in a state

He commanded that nature has placed man under command of two sovereign pain & pleasure

The function of law is to bring maximum happiness to each individual, resulting in happiness for all

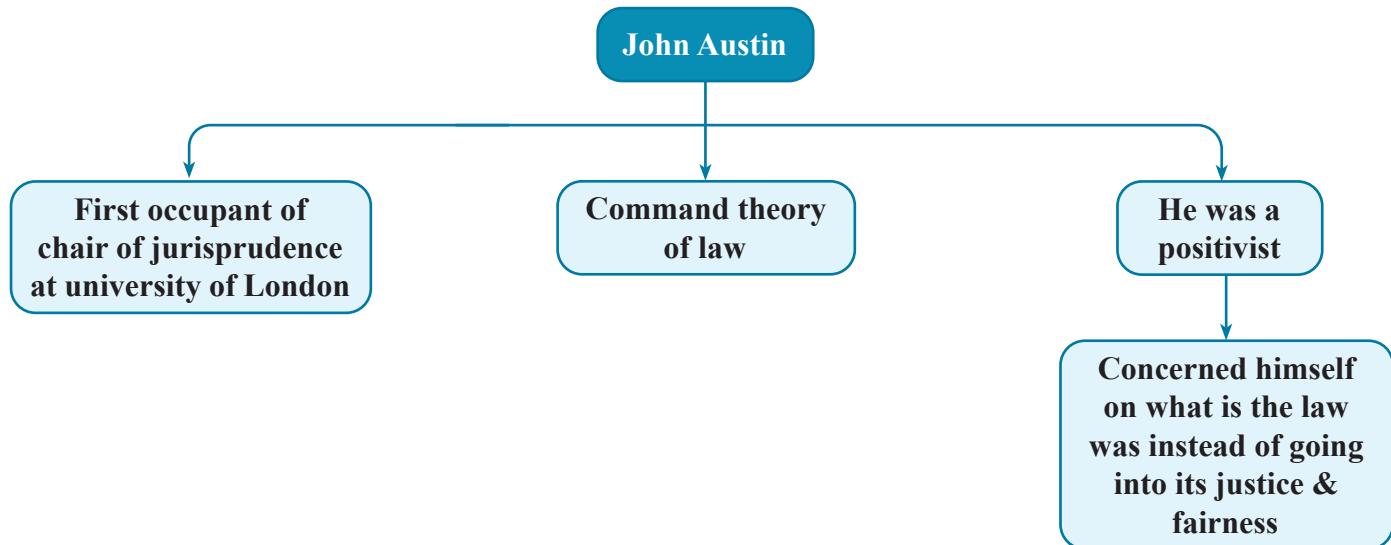


**Complete law should have features of integrity and unity** - Law is complete in expression, connection & design.

### Criticism of Bentham's theory of Law

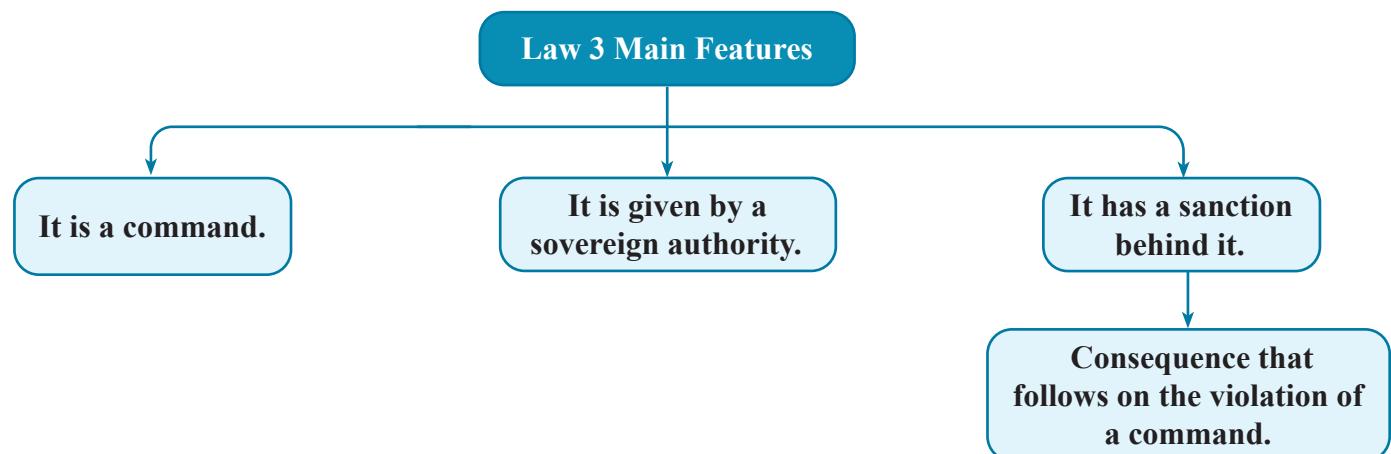
- (i) Straight-Jacketing of law into an imperative theory - (All laws are either a command or a permission.)
- (ii) He did not give fair treatment to customs as a source of law.
- (iii) Did not allow judge-made law.
- (iv) Theory did not provide a subjective criterion of pain & pleasure.
- (v) It is not always true that an increase in happiness of a certain segment of society will lead to.

## John Austin



**“Law properly so called”** - General Command

**“Law improperly so called”** - Given by a political superior to political inferiors



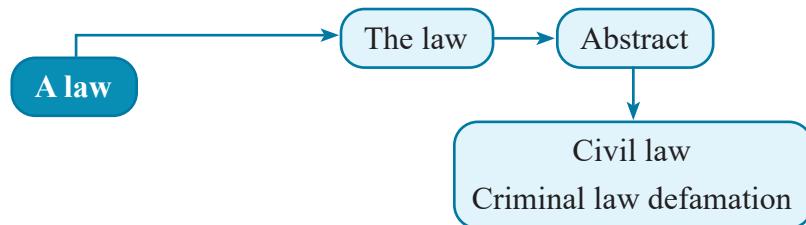
## 6.2 CRITICISM OF AUSTIN'S COMMAND THEORY OF LAW

- ◆ The state passes a number of social legislations that do not command people
  - ↓
  - Gives them rights & benefits
- ◆ Sovereign does not have to obey anyone
- ◆ Does not provide for judge-made laws
- ◆ The presence of a sovereign is a prerequisite for a proposition (law), but it failed to recognize international laws.

## John William Salmond

- ◆ Law Professor.
- ◆ Judge of the Supreme Court of New Zealand.



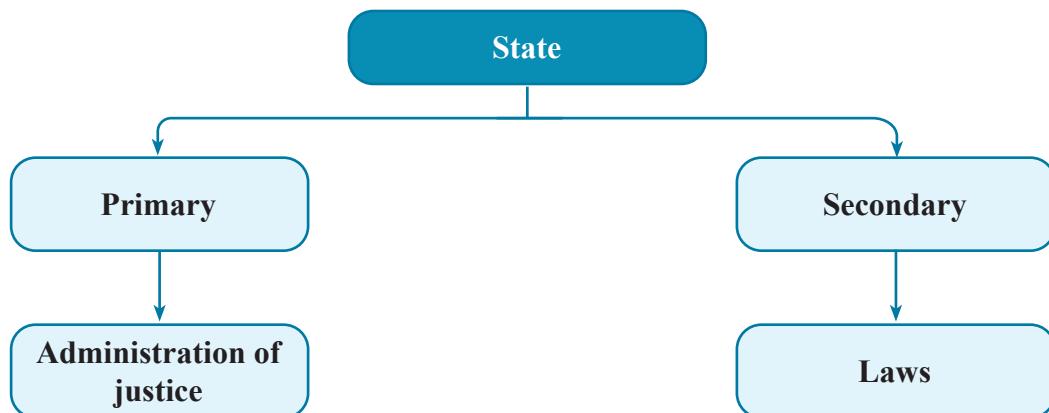


### 6.3 FURTHER, SALMOND STATES

Made it clear that some compulsion is required to maintain justice

Men can not be left to do what they believe is right in their eyes

Administration of justice by state (maintenance of right with political community by means of physical force of state)



Laws are pre-established & authoritative rules are applied in the administration of justice.

Administration of justice is possible without law, but it is not desirable.

### 6.4 CRITICISM OF SALMOND'S THEORY OF LAW

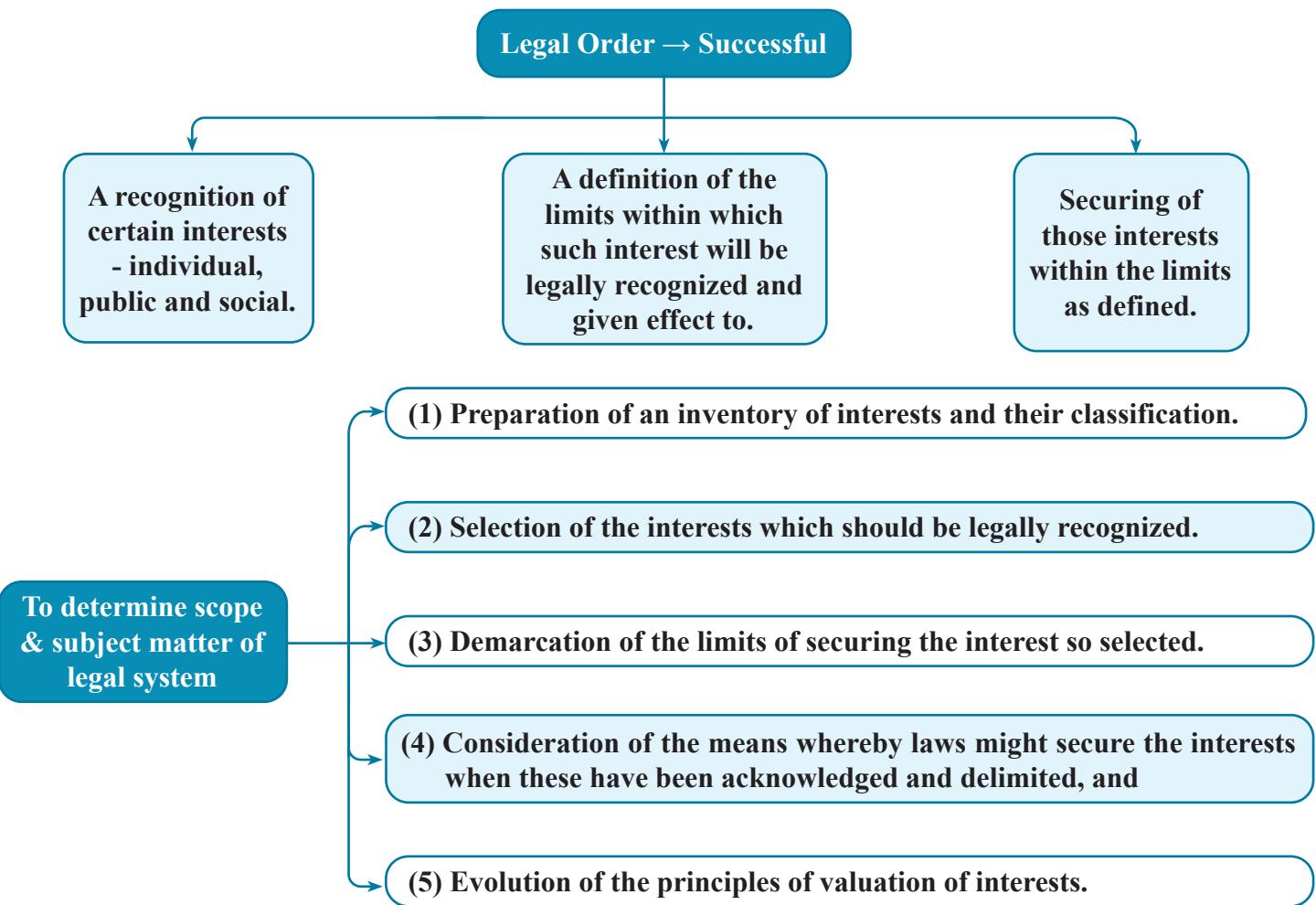
- ◆ Justice is the end & law is the medium to realize it.
- ◆ Pursuit of justice is not the only purpose of law.
- ◆ Justice is a universal concept.

Purpose of law → administration of justice to study first principles of law, which should not be constrained by rational boundaries.

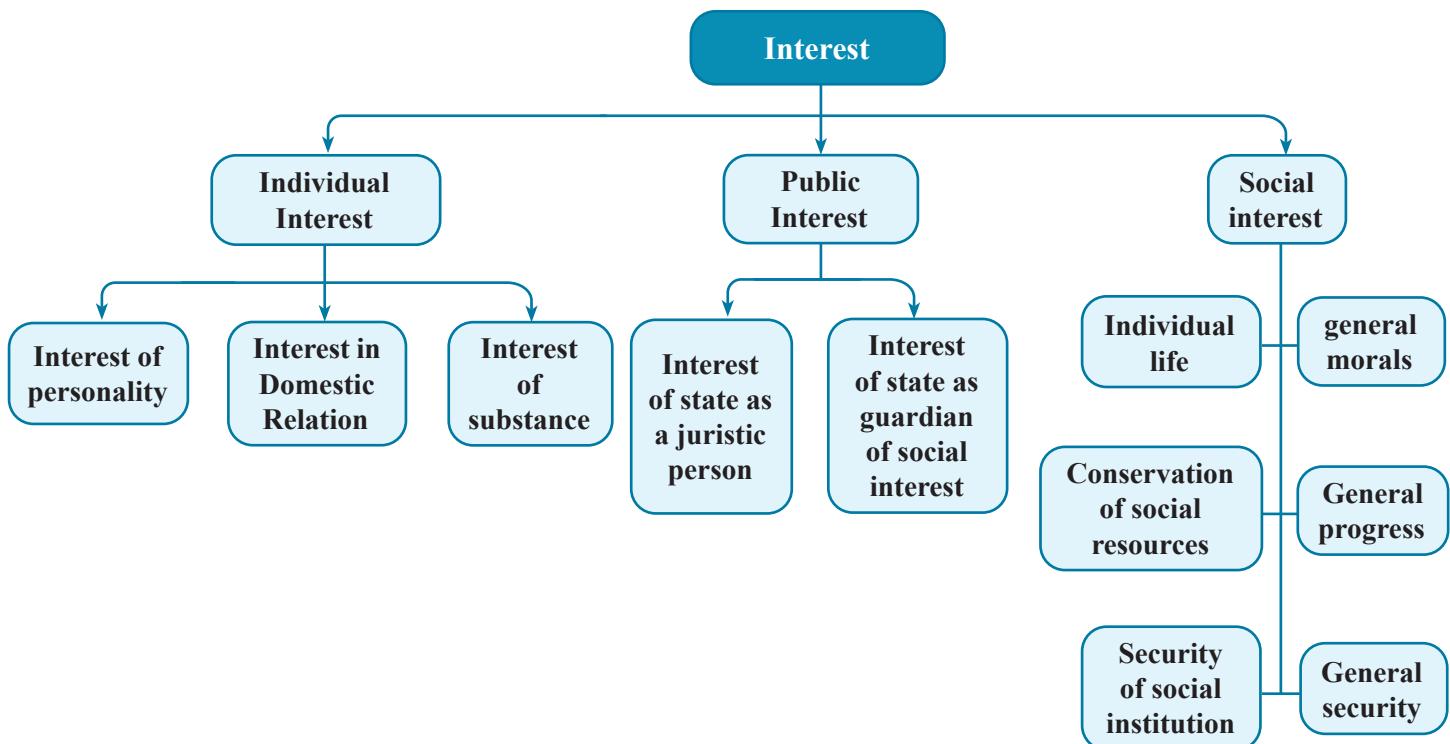
### ROSCOE POUND - American Legal Scholar

Engineer and lawyer = social engineering

Good → build a structure of society where max. Satisfaction of wants can be achieved with a minimum of function & waste



## 6.5 ROSCOE POUND'S CLASSIFICATION OF INTERESTS ARE AS FOLLOWS

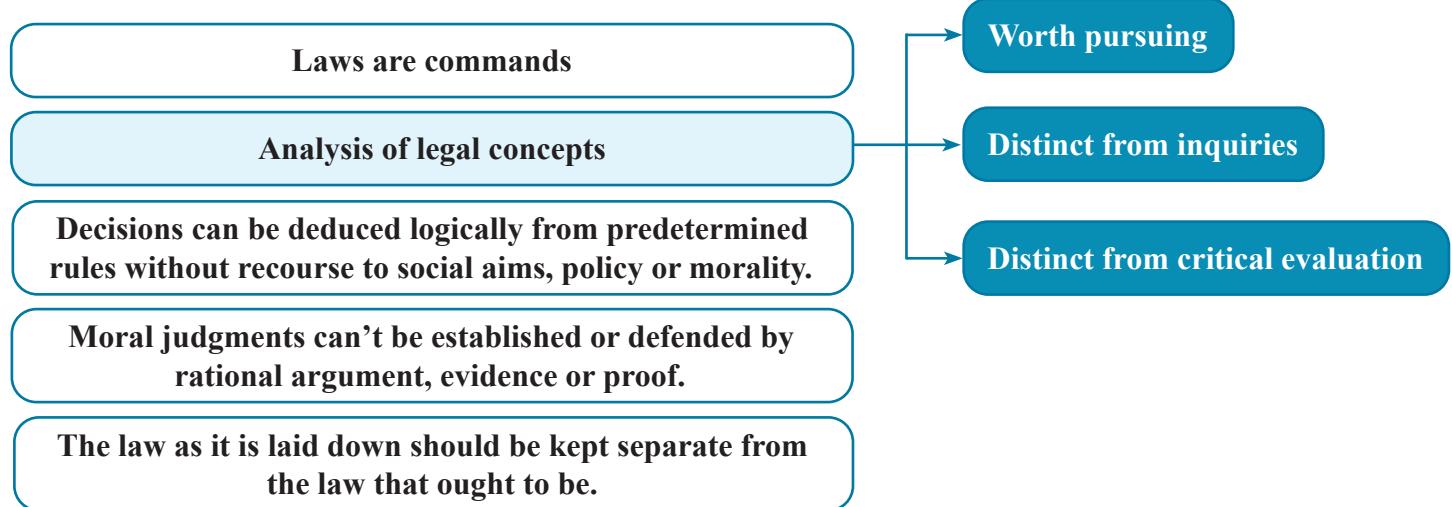


## 6.6 CRITICISM OF ROSCOE POUND'S THEORY OF LAW

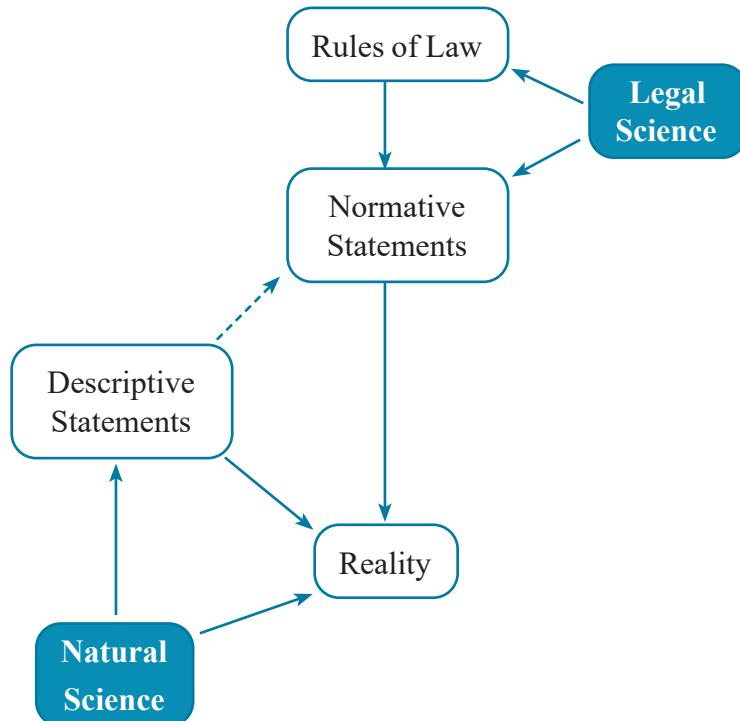
- ◆ Pre-existing law & legal system should have a balance (due to a lot of interest)
- ◆ Does not provide any criteria for the evaluation of interest
- ◆ Judges translate the activity in terms of interest
- ◆ Distinctions are doubtful
- ◆ Recognition of new interests is a matter of policy.

### PROF. HLA HART

British legal philosopher listed many meanings associated with the term 'positivism' as follows:



👉 **HANS KELSEN** - Law is a preliminary norm which stipulates sanctions.



Grundnorms are foundational norms upon which superior norms are based. Superior norms are laws that govern subordinate laws, positioning them below the grundnorm but above subordinate legislation. Subordinate norms are derived from and intended to support superior norms, drawing their legitimacy from them.

3. **Renaissance Theory:** This theory is marked by rationalism. Reason is the main foundation of this theory. It has two distinct features –

- 👉 More secular, political, and was founded on human reasons
- 👉 It advocates the natural rights of a man and the state.

4. **Modern Theory:** Contemporary jurisprudence discards earlier theoretical frameworks, representing a resurgence of Natural Law principles. This revival emerged as a response to positivist and historical legal philosophies, albeit in a reformed state. Prominent proponents of this theory include Stammller, Rawls, and Fuller.

## 7.2 THE SCHOOL OF LAW INCLUDES THE FOLLOWING THEORIES, AS GIVEN BELOW

Theory	Key Thinkers	Definition/Key Points	Essentials/Characteristics
<b>Analytical School of Law</b>	John Austin	Law is “command of the sovereign” – set by a politically superior over political subjects.	<ul style="list-style-type: none"> <li>◆ Command</li> <li>◆ Duty</li> <li>◆ Sanction</li> </ul>
	Hans Kelsen	Law is a “normative science” concerned with ‘what ought to be’. Not descriptive like natural sciences.	<ul style="list-style-type: none"> <li>◆ Normative nature</li> <li>◆ Hierarchy of norms</li> <li>◆ Ultimate norm is Grundnorm</li> </ul>
<b>Historical School of Law</b>	Savigny	Law grows organically with the people’s customs and culture (Volkgeist). Law is found, not made.	<ul style="list-style-type: none"> <li>◆ Law arises from custom</li> <li>◆ Not universal</li> <li>◆ Law reflects people’s common consciousness</li> <li>◆ Legislation is the final stage</li> </ul>

Sir Henry Maine

Law has come to us in close connection with 2 conditions

Order

Force

### Sociological School of Law

Treats Law as Social Phenomenon

Dugist

Law is a social fact and evolves from society.

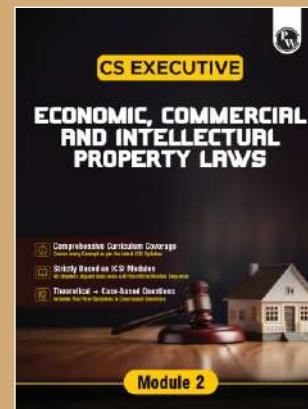
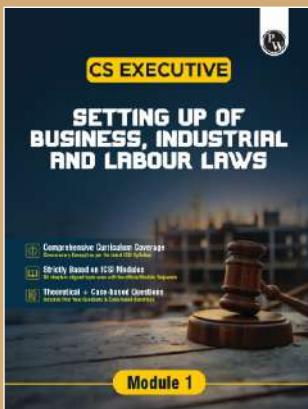
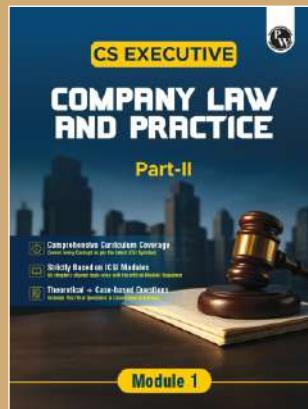
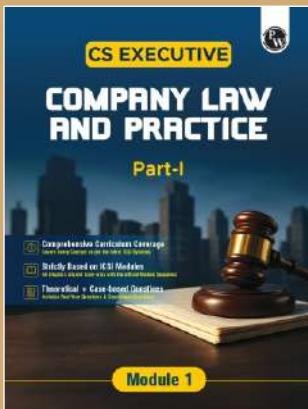
Inering

Law guarantees life's conditions through coercion by the State.

Roscoe Pound

Law is a tool of social engineering to balance diverse interests in society.

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