

**Course Name- B.A.LLB 6<sup>th</sup> sem**  
**Subject- Jurisprudence**  
**Teacher- Mrs. Aakanksha**  
**Concept- Analytical**  
**school/Austin's theory of law**

# ANALYTICAL SCHOOL

- Main exponents of this school are
  - Bentham
  - Austin
  - Holland
  - Gray
  - Salmond
  - Kelson
  - Hart.

# LAW

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graph TD; LAW --> L1[LAWS PROPERLY SO CALLED]; LAW --> L2[LAWS IMPROPERLY SO CALLED]; L1 --> L1a[LAWS SET BY GOD TO MEN]; L1 --> L1b[LAWS SET BY MEN TO MEN]; L1b --> L1b1[LAWS SET BY MEN TO MEN AS POLITICAL SUPERIOR OR IN PURSUANCE OF A RIGHT CONFERRED IN SUCH SUPERIOR [POSITIVE LAW]]; L1b --> L1b2[LAWS SET BY MEN, NOT AS POLITICAL SUPERIOR]; L2 --> L2a[LAWS BY ANALOGY]; L2 --> L2b[LAWS BY METAPHOR]; L1b2 --> PM[POSITIVE MORALITY];
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**LAWS PROPERLY SO CALLED**

**LAWS IMPROPERLY SO CALLED**

**LAWS SET BY GOD TO MEN**

**LAWS SET BY MEN TO MEN**

**LAWS BY ANALOGY**

**LAWS BY METAPHOR**

**LAWS SET BY MEN TO MEN AS POLITICAL SUPERIOR OR IN PURSUANCE OF A RIGHT CONFERRED IN SUCH SUPERIOR [POSITIVE LAW]**

**LAWS SET BY MEN, NOT AS POLITICAL SUPERIOR**

**POSITIVE MORALITY**

# ANALYTICAL SCHOOL

- ALSO KNOWN AS ENGLISH SCHOOL
- IMPERATIVE SCHOOL – C. K. ALLEN
- GUN MAN THEORY – H.L.A HART
- POSITIVE SCHOOL OF LAW.
- SYSTEMATIC JURISPRUDENCE – SALMOND.

- The Analytical school was perhaps, the reaction against the Natural Law Theory, which was based on morality and ethics.
- During the 19<sup>th</sup> century Natural Law Theory was no more considered to be significant.
- The main reason for this was:  
Influence of scientific methods upon social sciences including Jurisprudence.

It was Sir Henry Maine who coined this  
School as Analytical School.

# JOHN AUSTIN [1790-1859]

- John Austin – wrongly titled as the – Father of English Jurisprudence.
- Born in 1790.
- Early age entered in army – served for 5 years.
- He was called to the Bar in 1818 – began practicing.
- In 1826 he was appointed to the chair of Jurisprudence in the University of London.
- Immediately he left for Heidelberg and proceeded to Germany to have first hand knowledge of German Law.

- In 1829 he returned to England and delivered series of lectures on jurisprudence .
- In 1832 he published the volume entitled "The Province of Jurisprudence Determined".
- He died in 1859.
- Like his master Bentham, he reacted mainly to the reform of English law.



- Starting point of Austin theory is his definition of **independent and politically organized society and sovereign.**
- He said , **'If a determinate human superior, not in a habit of obedience to a like superior, commands habitual obedience from a bulk of a society, such a society is politically organised and independent.'**

- Austin never said that all societies are of this kind or description or that all societies should be so organized or that such a society is better than others he only said that he is interested in the laws of such societies.

- He defined Law as:
- **“A rule laid down for the intelligent being by an intelligent being having power over him”.**
- If we analyze the content of the positive law we find the following characteristics:
  5. Law is a command
  6. Only general law is command
  7. Sovereign is the main source of law
  8. There is sanction to enforce the law
  9. There is clear cut separation of law and morals.

- Law as command
- The notion law in command was advanced by Bodin and Hobbs.
- It is said that Austin theory is based on this idea.
- Command – different from request and wishes.
- It has a element of Fear.
- Penalty for disobedience.

- Two kinds of Commands:

1. General Command – are issued for the guidance of a whole community.
  2. Particular command are issued for the guidance of a particular community/individual.
- Only general commands are law .
  - General commands must also be continuous and lawful.

- Sanction for Enforcement
- Sanction is absolutely necessary to enforce law.
- Sanction is the sole crux of Positive law.
- It denotes the fear of punishment in case of disobedience of the laws.
- There is no sanction behind the International law therefore Austin called it as a positive morality.

# CRITICISM

- Sovereign is not only the source of law.
- Theory ignores custom.
- No Place for Judge made laws.
- It cannot be applied in the area of civil law.