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Author:  
Pragyanshu Gautam  
Hidayatullah National Law University  
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**DEFINITIONS AND FUNCTIONS OF LAW IN A SOCIETY: AN  
ANALYTICAL APPROACH**

The core and analytical meaning, **the definition of law** illustrated by Joseph W. Bingham “Law” has various legal meanings but definition of the law is only for the purpose of communicating the ideas and interpreted according to the discussion of its meaning. In this journal article of “What is the law”? the perception and viewpoints from John Austin and Blackstone is mentioned.

John Austin’s definition of law<sup>1</sup>: “law is the aggregate of rules set by men as politically superior, or sovereign, to men as politically subject”. In other words, law is the command of the sovereign. It imposes a duty and is backed by a sanction. Command<sup>2</sup>, duty<sup>3</sup> and sanction<sup>4</sup> are three elements of law. “Law as a rule down for the guidance of the intelligence being having power over him” John Austin’s theory of law or imperative theory of law<sup>5</sup>. According to Austin the positive law has three main features (‘command’ that is laid down by ‘political sovereign’ and if violated then they are met with ‘sanction’) There are commands which are laws and there are commands which are not laws as the command is distinguished from the law by their generality. He further says law is law only if it is effective and it must be generally obeyed (perfect obedience is not necessary). According to him, laws are of two kinds: divine law and human law. Divine law which was given by God to man. Human laws which are set by men for men. He also emphasizes the relationship between law and sovereign. Law is law because it is made by the sovereign and sovereign is law because it makes the law. According to Austin, laws strictly so called are one particular set of rules which are set by members of an independent political party wherein that person or body is sovereign or supreme.

Many attempts have been made to define the field of law in which Blackstone definition was sort of familiar to Thomas Jefferson. Blackstone’s definitions are in the terms of concept of superior and the concept of command. He defines law in a most general and comprehensive sense that law is that rule of action which is prescribed by some superior and which the inferior is bound to obey. With independence of mind and analytical skills John Austin criticised the various points

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<sup>1</sup> Joseph W. Bingham, *What Is the Law?*, 11 MICHIGAN LAW REVIEW.

<sup>2</sup> It is an order in which an apprentice is bound to obey it from their master.

<sup>3</sup> It is a requirement to perform a conduct by law.

<sup>4</sup> It is a punishment given when a person does not obey a law.

<sup>5</sup> VD Mahajan, *The Nature of Law*, in JURISPRUDENCE & LEGAL THEORY 28.

of the Blackstone and also the others that have common faults. The common fault was assumption in the ordinary general meaning “a rule” is an essential pervasive element of its technical meaning and neglect of the varied elements of the field of law. In any such work the more we keep language as an ordinary function to assist thought and communication with efficacy in dispatch, the greater is success in understanding the interrelations. That’s why it is always best to realize the external facts and distinction and make others see them with little stress on technical words of law. As general people are not interested in knowing the depth in meaning of law with technical jargons rather than the various elements in the field of law and their interrelations with other subject matter. In relation to these technical terms we should have the knowledge of the nature of a thing or law to evolve and thorough answers. Therefore, the process of definition often forces us to clarify the conceptions of things that we apply through our verbal knowledge, and this in turn in some cases into the obscure nature of law<sup>6</sup> rather than understanding the meaning of nature of that particular “word” or group of words only.

Common law or unwritten law<sup>7</sup> demands a consideration as a prerequisite to the validity of a simple contract which is not literally present moment unless it is a part of active comprehension, although we may say it is backup for the future arising problem. For that the lawyer studies the law with the external facts and phenomena to determine their cause and effect and forecast sequences of the same sort.

Field of law is also a part of the field of science of law which means that when a thorough knowledge of law is obtained, then application of that law is called the science of law. It is analogous to the authoritative government. A knowledge of concrete government by observation, report, inductive and deductive reasoning and other scientific investigation lead to formation of the rules and principles of law.

Field of law<sup>8</sup> is wider and complex and is a field to scientific study analogous to any other science. For that specific rules and principles have been developed in this. To find the purpose of judicial reasoning, generalization and expressions in cases. For that precedents<sup>9</sup> are given much weightage as the procedure of the court is guided by the judicial expression, preceding the elements of the law which has been already done before. (previous cases concrete question and decisions) Also, the field of law is the field of practical art and of practical application that is science. As there is the causal-effect relationship between the facts and reasoning in the case laws. Law helps in guiding courts in constructing and deciding cases.

Some technical words of the “law” are “that is law” or “that is a law”. This means the expectation by the people from the government machinery on the cases within its scope. When a generalization is referred to “a law” then it uses analogous non-legal connections in the sense of a mental guide. When it is referred to as “law” then it contains both legal generalization and external expression (either in writing or speech to express). Another variant legal use of this word use can be official legislative expression is called “law” or “a law” and non-official repetition is called “law” or “a law” and this non-official repetition and the expression of non-official generalization in that legislative expression had peculiar authoritative force and this

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<sup>6</sup> Nature of law can be descriptive and prescriptive in the context of the society.

<sup>7</sup> It is based on the preceding laws established by the court.

<sup>8</sup> It includes specialization or generalisation on the subject of law, for example: civil law, criminal law, corporate law, banking law and so on.

<sup>9</sup> It is the previous instance of the case which may take an example for deciding present cases which have similar or identical facts.

dictatorial force gives the additional justification of the term “law” because it bring the undeveloped connotation of command.

Other major definitions of law:

According to Jeremy Bentham: “Law or the law, taken indefinitely, is an abstract or collective term, when it means anything, can mean neither more or less than the sum total of a number of individual laws taken together.

John Salmond defines law as “the body of principles recognized and applied by the State in the administration of justice”.

Friedrich Carl von Savigny says that law is “the rule whereby the invisible borderline is fixed within which the being and the activity of each individual obtains a secure and free space”.

**The Functions of law in society** can be used in many senses or have many elements of it<sup>10</sup>. It is only a matter of patience and observation, to separate the essential from the accidental in as far as one knows is inconsistent use of a common word. Every use of a common word “law” implies two elements : compulsion and order. The word “law” in English and kindred (one’s family and relation) languages is closely associated with the compulsion. The rule of conduct of law is that it is bound, fixed and cannot change its position, or at least there can be some correction. If the law in the physical world does not operate then it is not said to be disobeyed but it does not exist that there has been a mistaken inference. Such laws are found to be frequently broken. With a sanction (some penalty) a law breaker is punished or can be put in an unpleasant condition.

The other essential element in the notion or idea of the law is “order” not used in the negative sense (physical violence or something) but in the positive way in the sense of harmony. This is probably correct that this seems to be so comprehensive, and therefore hard to define was its origin physically. A very clear intention of this idea is in the idea of straight conduct and right angle. These two elements of the law compulsion and order are perfectly united and both are inseparable as they are interdependent. This science consists in discovering its laws and art to adapt in human conduct. If man will thoroughly understand and conform the laws of the physical universe say on the subject of physical health, all illness and there much evil will disappear. The problem is that even if the man understands the laws but would not conform to the law. For example, if the law of nutrition were completely known by everybody, but still they would violate them and suffer from indigestion.

Thus we come to know about the difference of the law of the jurist from the law of the material universe. The law of the jurist in all the intents and purpose, a rule of conduct enforced by the state and law of the universe which remains constant and is nature made. It is an attempt to prevent the individual encroaching on the interests of his fellows. That the object of the law is regulation of the social conduct, so then the social element comes into existence. For example, theologian and judge deals with man as an individual ; the lawgiver and the judge as a member of a social group. On the scope of their function, comes the two roots element of the law that is previously written compulsion and order. It is the idea of the compulsion which first attract the

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<sup>10</sup> Edward Jenks, *The Function of Law in Society* 5 JOURNAL OF COMPARITIVE LEGISLATION AND INTERNATIONAL LAW

mind of primitive man<sup>11</sup> and further affected by the taboos (social or religious practice forbidding to form an association with a particular person). Thus the social element comes in. Control of the Man over material resources leads to the appearance of the economic arts like agriculture and simple handicrafts and this aspect of law becomes more and more prominent. This development of the economic change is associated with the change in the organization of the society. In the earlier change this was personal and autocratic living under both the religion and social organization with the establishment of fixed agriculture settlement. It becomes the custom of the country.

Functions of law in general and relations with morality<sup>12</sup>.

1. Through law the information is passed regarding the system of the country to the citizens.
2. It maintains the law and order in the society.
3. It balances the four pillars of human development that is equality, sustainability, productivity and empowerment.
4. Maintain the current existing affairs of the country as well as prediction of the future uncertain events.
5. They help in keeping the moral standard in the country as well as promoting social justice.
6. It provides a framework (private arrangement between individuals) for rules and regulations which resolves in settling the disputes.
7. It protects the individual and civil liberties of the individual.
8. It prevents the undesirable behavior and securing desirable behavior which is found in criminal and tort laws.
9. It provides provision for services of the equitable distribution of goods found in legal system.
10. Secondary features include changing the procedure of the law and regulation of the operation of law applying organs.

Relations with morality in functioning of law. As morals are part of law and inseparable from it. It involves the skilled application of the principles to legal rules, the judicial process distils a moral content out of the legal order. Moral is the path of development of the law and acts as an extra legal pressure. It may fill the gap and choice to be determined in one way rather than another. Positivists insist that once the rule is laid down, it cannot cease to be law if it is shown to be in conflict with morality. Also, as no legislation will dare to make a law which is against the moral of the society. It helps in interpreting the law and exercising judicial discretion. All relations and human conduct cannot be only regulated by law but many relations are left to be regulated by morals. If the law remains closely related to the lives of the people, then morals should follow side by side.

Coming to the elements of the law, unlike the elements of the law that is compulsion and order, it does not appear to have an original element in the idea of the law. With the tests of “law” there is the varying uncertainty in the future event. Also, the law is a social memory which links the nerve of consciousness which links one generation to another in the same society. In our system where precedent contributes even more than the legislation to the structure of the legal body, it

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<sup>11</sup> A person who belongs to an early age of civilisation.

<sup>12</sup> VD Mahajan, *The Nature of Law*, in JURISPRUDENCE & LEGAL THEORY 93.

seems that there may be some ground on the right line of search. If this is correct, then the previous judges have played a part in cementing the social life, the importance of which is not sufficiently realized. This is certainly inspired by the process of attraction and developments, from the solution arrived by the problems of practical life and through social force. With non-tiring, the quality of being clever and lots of labour woven into the national that is the political life of the community that instills justice and respect ethical consideration. Idea of connecting mankind towards the pursuit of justice that is the true function of law in building up the society.



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