CHAPTER- 6

Conclusion and Suggestions

The laws and legal method are very important in any society. In modern times, no one can visualize a society without law and a legal system. Law is not only important for a systematic social life but also indispensable for the very survival of mankind. Therefore, it is vital for everyone to understand the meaning of law. In a layman's language, law can be described as' a system of rules and regulations which a country or society recognizes as obligatory on its citizens, which the authorities may implement, and infringement of which attracts penalizing action. These laws are generally enclosed in the constitutions, legislations, judicial decisions etc.

Infact, no human society can survive or exists without law and no nation can continue its existence without a Constitution. Generally, each constitution includes customs, conventions, traditions and expectation of the peoples.

Justice is the ultimate to be achieved by law. Law is a set of universal rule is applied in the administration of justice. In reality, the problem of achieving justice in human associations is the most difficult and fundamental problem of social control through law, and it is one that is by no means inflexible to the method pf rational argument. The use of these method does not require universality in the accomplishment of conclusions concerning the justice of a legal evaluate. Such thoughts and efforts should be deemed sound and beneficial. It is impossible to explain the institution of law in terms of one single, absolute factor or cause.

Researcher would like to submit in her conclusive finding that jurists and legal scholars have not arrived at an identical definition of law. The problem of defining law is not new one as it goes back centuries. Some jurists consider law as a reflection of divine reasons or as unwritten law. Law has also been defined from different angles like philosophical, theological, historical, social and realistic angles. It is because of these different approaches, the different concepts of law and consequently various schools of law have emerged. Jurists hold different opinions of what constitutes the law and legal systems. Researcher has given the brief introduction of the concept of
legal positivism. A legal Positivism jurist governs the enforceability of law and the standard of legal strength extends or confines the power of the political ruler to enforce his willpower through legal pressure. Legal positivists considered law is command of sovereign i.e. law as it is. They are concerned with the law at exist in present not with the past or future. The legal positivism is based on social facts and not on the moral basis.

The concept of natural law is primitive concept. In the primitive times, natural law was known as those unwritten principles and rules of law which are superior to any other law in respect which all other laws should be made. These principles were considered as everlasting and unchangeable. In medieval age, natural law was given a religious touch, having a divine origin. In modern classical era, it occupied non-religious character. Natural law was occupied an invasive role in the realms of moral principles, politics and law is the oldest part of law and belongs to the remotest past. Its pressure has been so immense that it has not only played an important role in practical life but also in scientific theory of law. The American thinking and American institutions were moulded and shaped by the natural law philosophy in the form given into it till the 17th and 18th centuries.

In the 19th century natural law theories suffered a decline. At the end of 18th century and the beginning of the 19th century was marking the beginning of positivist movement. People were looking for definiteness & assurance as to law which was missing in natural law. The problems created by the new changes and developments demanded practical and concentration solutions. The legal positivism analysis the first principle of law as it exists in present in the legal system and does not investigate into what the law ought to be. The natural law theories expose that the concept of natural law has been used to carry different ideologies from time to time. It has been used to support totalitarianism, individualism and has even been used by revolutionists to bring down the government. Researcher has specially focused on the concept of legal positivism in relation to the understanding of the great jurists such as Jeremy Bentham, Austin, Kelsen and H.L.A. Hart. The legal positivism jurists regard law as the deliberate and conscious command of the state. Law is the expression of the absolute sovereignty of the state. This school lays emphasis on legislation as source of law.
The nineteenth century legal theories over and these theories fails to satisfy the aspiration of the people because of their rejection to recognize morality and reasons as essentials of law. In the 20th century, the impact of materialism on the society and the altered socio-political circumstances required legal thinkers to look for some value orientated ideology. This time was search for value conscious legal system. The solution to more and more problem demanded the need for law higher than positive law. The end of later 19th century and 20th century once again witnesses of revival of the natural law in its modified form. Therefore, the modern industrial jurisprudence mostly positivist relies mainly on legislation, also uses the idea of sociological jurisprudence by supplementing the legislation whenever there is a legal vacuum or when compelling social need arises. After research and analysis the fact, the researcher has reached to the conclusion that upkeep of natural law principle in 21st century is of great importance be it for giving judgements or for guiding the basic structure of the Constitution of India and for the welfare of society. These principles of natural law have evolved from time to time according to the changing needs of the society.

Today almost every democratic country in the world is a welfare state. The tasks of the government are widespread and diversified in a welfare state. Earlier the concept of state was something different, it meant a police state. The primary accountability of the government was to make certain the safety and protection of its people. Democracy has changed the functions and role of government. Democracy has been redefined with the establishment of welfare state. A welfare state takes care of its poor, unemployed, sick, disabled and other demoralized group of people. It provides health care, social insurance, education, housing, and old age pensions in order to eliminate economic and social inequalities. Unemployed people also get unemployment compensations from the government. America, Canada, Australia and most of the European democratic countries are welfare states. Every state irrespective of its political or administrative systems has been endeavoring to achieve the goal of welfare state, India being no exception. The constitutional principles of welfare state have its root in our effort for independence against the British rule (Austin Positivism). The nationalist leaders were fully aware of the obstacles in the way of fulfillment of the visualization of the society devoid of exploitation of man by man. So keeping in mind, the framers of Constitution of India required a middle path by
establishing a welfare state by combining democracy with socialism. Under the Constitution, the concept of welfare state would mean intervention of all three wings of the government i.e. Legislature, Executive and Judiciary at every state to bring a comprehensive social security instrument so that every citizen is able to protect the minimum utilization requirements for better life.

Welfare State is a concept of government where the state plays a significant role in protecting and promoting the economic and social welfare of its people. Welfare state is different from a police state. Basically it is a government or a state which aims at the welfare of people. It is based on the principles of equality of opportunity, equitable distribution of wealth and public accountability for the people who are unable to afford minimum provisions to live a good life. The government can assist its deprived people by providing them either money or services. Cash payments, concessions, subsidies, public distributions and grants all come under welfare. Therefore, welfare state recognizes wider role of government activities in socio economic area than a police state.

With the adoption of the Constitution in 1950, Indian legal theory and legal philosophy acquired new aspect with Freedom, Liberty, Equality and Social justice as signature tune of the Indian Constitutional jurisprudence. India there is very important need complying with Austinian positivism. The Indian Parliament accordingly embarked on ambitious legislative policies to give fair deal to weaker strata and suppressed masses of the society. According to Austin “Law was a command of sovereign backed by sanction”. The theory of Legal Positivism has been used by the judiciary in India while deciding landmark cases. Therefore, there have been cases in India where the judiciary has been influenced by the legal positivist school while giving the judgement such as A. K. Gopalan v. State of Madras. But with the change in the social needs and moral values of the peoples, legal positivism is insufficient to fulfill the aspiration of the people which led to the development of combination of sociological jurisprudence, natural law and legal positivism in the present century. However, the present time, the legal system gravity shifted from the statue law to the judgement law, but still the judges interpreted the statutory laws in a manner to fulfill the needs of society.
Researcher has done analytical study on Legal Positivism and Indian Constitution. In the present study, the researcher stated the work with these hypotheses: The first point of the hypothesis is that initial interpretation of Constitution was influenced by legal positivism. This point has been totally proved by the researcher. This is because of the reason that initial interpretation of Indian Constitution was influenced by legal positivism as decided in State of Madras vs. Srimathi Champakam Dorairajan, A. K. Gopalan v. State of Madras. After 1967 legal positivism is converted into judicial positivism and it subscribed to natural law school thought by adopting the natural law principles. With the developing trends of social justice, equality and fairness as decided in Maneka Gandhi Case, the strict legal positivistic approach has hardly place in Indian legal system. The second point of the hypothesis is that Objective of the welfare state can be achieved by emphasizing on positivist and rigid interpretation of the Constitution. Objective of the welfare state can not be achieved by emphasizing on positivist and rigid interpretation of the Constitution. This point of the hypothesis has been totally disproved. After undergone an in-depth analysis the concept of legal positivism and the concept of natural law, researcher has proved that the natural law is indeed the basis of the Constitution. Further, the Indian constitution is designed with the object to set up a social welfare state and the elements if natural law is present in the Indian Constitution in the form of doctrine of basic structure.

So it becomes the primary duty of the government to secure the welfare of the people of India. Undoubtedly, welfare rights discussed above are safeguarded is accordance with the welfare policies and programmes of the government and are not unreasonable hampered with. There is nothing wrong to say that to promote democracy and unity, it is essential to maintain balance between liberty, freedom and social justice. To contribute to true welfare state, the state trying to meet need that arises under the conditions of exploitation and inequality. The numerous judgements pronounced by various courts which show that the fundamental rights enshrined in the Indian Constitution are in line with the objective of welfare state.

In brief it can be concluded that the theory of legal positivism is separate law from morality. This theory is quite relevant in the contemporary society but its roots are continuously fading because the reason that law is just, wise, reasonable, or prudent but doesn’t give an ample justification for considering it to be the actual law. There
are certain provisions in the constitution which include the principle of legal positivism.

**SUGGESTIONS**

The researcher has put forth few suggestive measures as follows:

1. It is submitted that according to Austin jurisprudence, the scope of courts command was not wider. It merely to assert the pre-existing law i.e. as it is. The courts can not declare a law of Parliament void. But the courts have extended their jurisdiction through interpretation by means of applied doctrine of natural justice. It is realized by the researcher that in the 22nd century that Austin’s definition of law as a command of political sovereign was insufficient to meet the ominous requirements of society.

2. It is submitted that the Fundamental Rights enshrined in Part –III in the Constitution of India, Part- IV deals with Directive Principles of State Policy, Basic Structure Doctrine and Rule of Law are in the row with the principle of welfare state and embodies principle of natural law. Law, Morality and religion co-existed. There is need of the time to the harmonious construction made between is and ought.

3. The concept of welfare state is based upon the accomplishment of certain objectives which can be provided in the provisions of the Constitution’s of India’s Part- IV and in Preamble. There is require of the time that more severe efforts made by the state to implement that objective.

4. It is submitted that legal positivism was unable to fulfill the aspirations of the society; there is need of the time that the legal system should be interpreted according to the needs of the society. For example Article 21 of the Constitution of India.

5. It could be said that legal positivism is basically an evaluative principle gives little importance to the moral principles. The state provides facilities for the enjoyment of the rights by the individual and its limitations are determined by the law. But it could be seen that the ultimate ends to achieve welfare goals as determined by the Constitution cannot be associated from political organizations.
6. With the changing socio-political conditions of India, legal system is to fulfill the needs of the people rather than being treated as command of the sovereign.

7. It is submitted that Austin’s theory did not applicable in present time because the concept of sovereignty is under restraint which is not similar to the Austin concept of sovereignty. Austin given unrestrained supremacy to the sovereign authority is unsuitable in the Indian set up or for any democratic state. In modern times, political superior does not have authority to command anything that they are desires. They are bound by set of laws and regulations embodied in the Indian Constitution and any other laws time being implement in India. All laws made by the legislature are bound by the Constitution of India and the court has power to check the validity of all laws, Acts made by the legislature. Because of this reason, Austin’s concept of sovereignty that all laws made by the superior may be true hypothetically but same is not accurate practically.

8. It could be said that the parliament’s superiority of amended the Indian constitution as only to extent provided by the Constitution of India.

9. It is submitted that the positive morality has also considered as a part of law while making a law by sovereign. The principles of ‘Justice, Equity and Good Conscience’ are based on natural law ideas.

10. Constitution of India is supreme law of the land and embodied the principles on which whole the legal system of the country will depend. Therefore, it is need of the time each and every organ of state shall be run according to the provision of the Constitution.

11. It is submitted that the law made by the legislature and its delegates always with the explicit purpose to serve i.e. to fulfill the certain social & economic requirements of the society.

12. It is the necessity of protecting the citizens from the disposition of the state and to establish rule of law.

13. It could be said that the law made by the sovereign must be equally applicable against the sovereign authority.
14. It is essential to maintain the independence of the judiciary in order to – protect the right of the individual against the state and to prevent and punish arbitrary actions of the legislature and executive.

15. It could be said that rule of law and democracy are interrelated with each other. Urgent steps are needed to establish a rule of law society in India, without which our fundamental credentials as a democracy will be seriously damaged.

16. It is submitted that law made by the legislature in accordance with the intention of the framers who adopted a written constitution for the country.

In brief, it can be concluded that with the adoption of the Constitution of India, the influence of legal Positivism which was infused in the Indian legal system by the British colonial rulers is now reduce gradually and the law is being looked as an effective instrument of social change for the welfare of the society. Far from being treated as a command of the sovereign, law has to play a functional role in the present time to serve the vulnerable Indian masses.