1. Describe the idea of natural law as perceived by Stoics, Cicero and St Thomas Aquinas.

Legal Theory:

Legal theory, also known as jurisprudence, is the philosophical study of law, legal system, practices and related issues. It is the study of the nature, purpose, and function of law. It examines fundamental questions about the nature of legal systems, the role of law in society, and the principles underlying legal reasoning.

- The purpose of legal theory or Jurisprudence is to examine the leading legal theories and selected legal concepts and attempt to place them in the context of a legal system.

Major Schools of Thought in Legal Theory:

1. **Natural Law Theory**:

- The most important characteristic of natural law is that it maintains a necessary relationship between law and morality.
- According to this theory, Law should reflect moral principles inherent in human nature and the natural world. It suggests that there are universal moral standards that legal systems should adhere to.

2. **Legal Positivism**:

- According to this theory, Law is a set of rules created by relevant authority within a legal system. It is not necessarily connected to moral principles.
- Legal positivism denies that there is necessary relationship between law and morality. The positivist only recognizes that law as posited. Legal positivists focus on the ways laws are enacted and enforced, rather than their moral content.

3. **Legal Realism**:

- Legal realism was a movement that developed in America in the 1920s.
- According to this theory, the law is shaped by the real-world experiences of judges and other legal actors. Legal realists argue that law is not just a set of abstract rules but is influenced by social and contextual factors.
- They were more interested in the practical effects and consequences of the law.

The idea of natural law According to Stoics, Cicero and St Thomas Aquinas:

1. **Stoics**:
    - **Who they were**:
      The Stoics were ancient Greek philosophers like Epictetus and Marcus Aurelius. The rise in the popularity of natural law theory in ancient Greece can be mainly attributed to the Stoics.
    - **Their idea**:
      For the Stoics, natural law was about living in harmony with nature and reason. They believed that the universe has a rational order, and humans should align their actions with this natural order. Essentially, they thought that by understanding and following nature's rationality, people could live virtuous lives. To them, living according to natural law meant living wisely and justly, as if one were part of a well-ordered cosmic system.

- The idea of universal reason was a major legacy of the Stoics.
- Stoicism was also very influential in Roman thought.

2. **Cicero**:
    - **Who he was**:
      Cicero was a Roman statesman and philosopher and a great Roman orator.
    - **His idea**:
      Cicero saw natural law as a universal code of ethics that transcends human-made laws. He believed that natural law was based on reason and that it's inherent in all people. According to him, this law is a guide for determining what is just and unjust. Cicero argued that true law must align with natural law.
        - Cicero was the first natural lawyer to argue that the natural law should override any contravening positive laws.
        - He argued that it is sin to try to alter the natural law and it is not allowable to attempt to repel any part of it.
3. **St. Thomas Aquinas**:
    - **Who he was**:
      St. Thomas Aquinas was a medieval Christian philosopher and theologian.
    - **His idea**:
        - Aquinas expanded the idea of natural law by integrating it with Christian theology. He believed that natural law is part of God's design for the universe. Aquinas believed that humans have a 'separate intellect' which gives us a power of insight.
        - He also believed that we are able to understand by using our "reasoning" what is good or bad and what should be persued and what should be avoided in life.

      Aquinas distinguished four categories of law:

      1. Lex Aeterna (eternal law)
          - the divine reason only known to God- God's plan for the universe
      2. Lex naturalis (natural law)
          - the participation of the eternal law in rational creatures, discoverable by reason
      3. Lex divina (divine law)
          - revealed in the (Christian) scriptures - God's law for mankind
      4. Lex humana (humanly posited law)
          - To be supported by reason and enacted for the common good.

- According to Aquinas, natural law is a reflection of divine reason, and humans can understand it through their natural ability to reason. For him, natural law is a way for people to discern right from wrong based on rational principles that align with God's will. Aquinas thought that while natural law is accessible through human reason, divine law (revealed through scripture) is needed for full understanding.

In summary:

- **Stoics**: Natural law is about living in harmony with nature's rational order.
- **Cicero**: Natural law is a universal, reason-based ethical standard that should guide human-made laws.
- **St. Thomas Aquinas**: Natural law is part of God's divine plan, accessible through reason, and aligns with Christian teachings.

2. What is Kelsen's Grundnorm and how does it differ to Hart's rule of recognition?

Kelsen's **Grundnorm** and Hart's **Rule of Recognition** are both key concepts in legal theory, but they approach the foundation of legal systems from different perspectives.

Kelsen's:

Hans Kelsen was an Austrian jurist, legal philosopher and political philosopher. He was one of the most prominent positivist theorists of law. He is well-known for describing law as a hierarchy of norms which is called **Kelsen's Grundnorm.** This theory was written in his work "General Theory of Norms".

Kelsen's Grundnorm:

1. **Definition**:
    - The Grundnorm, or "basic norm," is a concept developed by Hans Kelsen in his theory of legal positivism. It refers to a hypothetical, fundamental norm that underlies and justifies the entire legal system.
    - The Grundnorm is a hypothetical or imagined norm that is not itself a specific law but serves as the underlying basis for all other laws in a legal system.
2. **Function**:
    - The Grundnorm provides the foundational basis upon which all other legal norms (laws and rules) are based. It's not itself a law but a presupposed norm that gives legitimacy to the legal system.
    - All laws derive their authority from this basic norm. For instance, in many countries, the constitution might be considered the highest law. Kelsen's Grundnorm would be the assumption that this constitution has legitimate authority and is accepted as the fundamental rule that gives power to other laws.
3. **Nature**:
    - It's a theoretical construct rather than a specific, concrete rule. The Grundnorm is not directly observable or enforceable but is assumed to exist to make sense of the system of laws.
4. **Purpose**:
    - The Grundnorm helps explain the hierarchy of norms in a legal system. All legal norms derive their authority from this basic norm.
    - The Grundnorm helps us understand how legal systems maintain coherence and legitimacy.

HLA Hart:

Herbert Lionel Adolphus Hart was an English legal philosopher. He was one of the most prominent positivist theorists of law. He is considered one of the world's foremost legal philosophers in the twentieth century. His most famous work is ***The Concept of Law***

Hart's Rule of Recognition:

Hart's Rule of Recognition is a key idea in understanding how laws are identified and validated in a legal system. Imagine a big rulebook where not every single rule is written down, but there's a special rule that tells you how to find out which rules are part of the system. This special rule is what Hart calls the "Rule of Recognition."

- According to Hart, the existence and identity of the rule of recognition relies on the attitudes, not only of legal officials but also the attitudes of the private citizens.

Hart stated that law and morality are very close, though not necessarily related

1. **Definition**:
   - The Rule of Recognition is a concept introduced by H.L.A. Hart in his work on legal positivism. It refers to a rule or set of criteria used by legal officials (like judges) to identify what counts as valid law within a particular legal system.
   - In short, Hart's Rule of Recognition is the rule that tells us how to identify and validate the laws that govern us.
2. **Function**:
   - The Rule of Recognition provides a method for determining which norms are legally valid and part of the legal system. It helps in identifying and validating laws by providing criteria that legal officials use to recognize laws.
   - This rule helps officials know which laws to follow and enforce. It acts as a sort of "legal compass" that guides them in recognizing and applying the correct rules.
3. **Nature**:
   - Unlike Kelsen's Grundnorm, the Rule of Recognition is a practical rule observed and used by legal practitioners in the legal system. It's not a hypothetical norm but a real, operative rule within the legal community.

     - Rule of recognition is the fundamental source of all things legal. The existence or identity of the rule of recognition relies on the assumptions and attitudes of legal officials. The officials recognize the rule which in turn recognizes them as officials.

4. **Purpose**:
   - The Rule of Recognition serves as the foundation for legal validity and helps in resolving disputes about what constitutes valid law. It essentially tells legal officials how to recognize and apply legal norms within the system.

Key Differences:

1. **Conceptual vs. Practical**:
   - **Grundnorm**: A theoretical construct that underlies the entire legal system.
   - **Rule of Recognition**: A practical rule used by legal officials to identify valid laws.

2. **Nature**:
    - **Grundnorm**: Hypothetical; not directly observable or enforceable.
    - **Rule of Recognition**: Real; actively used in legal practice.
3. **Role**:
    - **Grundnorm**: Provides a foundational basis for the legitimacy of all laws.
    - **Rule of Recognition**: Provides criteria for recognizing and validating laws.
4. **Existence**:
    - **Grundnorm**: Assumed to exist for theoretical consistency, but not explicitly stated.
    - **Rule of Recognition**: Explicitly practiced and observed within the legal system.
5. **Application**:
    - **Grundnorm**: Not directly applied or referred to by legal officials.
    - **Rule of Recognition**: Actively used by legal officials to determine legal validity.
6. **Theoretical Basis**:
    - **Grundnorm**: Part of Kelsen's Pure Theory of Law, focusing on legal legitimacy.
    - **Rule of Recognition**: Part of Hart's descriptive approach to understanding legal systems.
7. **Function**:
    - **Grundnorm**: Explains the legitimacy of the entire legal system.
    - **Rule of Recognition**: Defines how to recognize and apply valid laws.
8. **Hierarchy**:
    - **Grundnorm**: Situated at the top of a hierarchy of norms, underpinning all other norms.
    - **Rule of Recognition**: Operates within the existing legal hierarchy to validate laws.
9. **Origin**:
    - **Grundnorm**: Theoretical construct derived from Kelsen's view of law as a system of norms.
    - **Rule of Recognition**: Observed and used by legal practitioners and institutions.
10. **Visibility**:
    - **Grundnorm**: Not directly visible or discussed in everyday legal processes.
    - **Rule of Recognition**: Directly visible in the way laws are applied and interpreted.
11. **Modification**:
    - **Grundnorm**: Remains constant in Kelsen's theory and is not subject to change.
    - **Rule of Recognition**: Can evolve and change as legal practices and criteria shift.
12. **Source of Authority**:
    - **Grundnorm**: Provides the ultimate source of authority for all legal norms.
    - **Rule of Recognition**: Provides practical criteria for identifying which norms are authoritative.
13. **Function in Theory**:
    - **Grundnorm**: Serves a theoretical function to explain legal coherence.
    - **Rule of Recognition**: Serves a practical function in legal decision-making and validation.
14. **Perception**:
    - **Grundnorm**: Perceived as an abstract foundation of the legal system.
    - **Rule of Recognition**: Perceived as an actionable rule used by legal officials.
15. **Acceptance**:
    - **Grundnorm**: Accepted as a theoretical necessity for a coherent legal system.

    - **Rule of Recognition**: Accepted as a practical tool used in everyday legal operations.
16. **Connection to Law**:
    - **Grundnorm**: Connects to the overall legitimacy of the legal system.
    - **Rule of Recognition**: Connects to specific legal processes and practices.
17. **Legal System Dependency**:
    - **Grundnorm**: Depends on the assumption that a basic norm underlies the entire system.
    - **Rule of Recognition**: Depends on the practical criteria used by officials to identify valid laws.
18. **Legal Realism**:
    - **Grundnorm**: More abstract and less concerned with real-world legal application.
    - **Rule of Recognition**: More practical and directly related to the operation of the legal system.
19. **Theoretical Impact**:
    - **Grundnorm**: Influences the theoretical understanding of legal systems as a whole.
    - **Rule of Recognition**: Influences practical aspects of law enforcement and interpretation.
20. **Jurisdiction**:
    - **Grundnorm**: Applies to the entire legal system conceptually.
    - **Rule of Recognition**: Applies to specific legal systems and jurisdictions practically.

In summary, while both concepts deal with the foundations of legal systems, Kelsen's Grundnorm is a theoretical basis for the legitimacy of legal norms, whereas Hart's Rule of Recognition is a practical rule that helps legal officials determine which norms are valid in a legal system.

3. What is legal positivism? What are the elements found in Bentham's definition of law? How do the positivist theories of Bentham and Austin differ from each other?

legal positivism:

- Legal positivism is a theory of law that says that legal systems are posited and created by legal authority.
- Positivists emphasize that the law of legal systems is created by human acts, posited or imposed by people.

- According to this theory, Law as it is rather than thinking what the law should be. According to this theory, Law is a set of rules created by relevant authority within a legal system. It is not necessarily connected to moral principles.
- Legal positivism denies that there is necessary relationship between law and morality. The positivist only recognizes that law as posited. Legal positivists focus on the ways laws are enacted and enforced, rather than their moral content.

Important Features of Legal Positivism:

1. Law is created by Human beings or legal authority.
2. There is no necessary connection between law and morality.
3. Law is simply a posited system.
4. Law may not accord with moral standards.
5. Law is separated from other societal norms.
6. Legal positivism emphasizes the importance of written statutes, regulations, and judicial decisions.

Bentham's definition of law:

- Jeremy Bentham was a prominent legal theorist and utilitarian philosopher in England. He plays the vital role in reforming the English common law system.

- Jeremy Bentham defined law "as an assemblage of signs declarative of a volition conceived or adopted by the Sovereign in a State, concerning the conduct to be observed in a certain case by a certain person or class of persons, who in the case in question are or are supposed to be subject to his power; such volition trusting for its accomplishment to the expectation of certain events which it is intended such declaration should upon occasion be a means of bringing to pass, and the prospect of which it is intended should act as a motive upon those whose conduct is in question".

- law is a collection of signs or expressions that represent the will of the sovereign authority in a state. This will dictate how specific individuals or groups should act in particular situations.

Elements of Bentham's definition of law:

- Six elements-

1. **Assemblage of Signs**: Law is composed of signs or expressions, such as written or spoken words, that communicate the will of the sovereign.
2. **Declaratory of Volition**
3. **Adopted by Sovereign**: The law reflects the will, intent, or decision of the sovereign authority in the state, who has the power to create and enforce laws.
4. **Conduct to be Observed**: The law prescribes specific behavior or conduct that certain individuals or groups are expected to follow in given situations.
5. **Expectation of Events**: The law is designed with the expectation that certain consequences will follow if the prescribed conduct is observed or not.
6. **Motivation through Consequences**: The law relies on the prospect of these consequences as a means to motivate compliance. The anticipated outcomes, whether rewards or punishments, are intended to influence the behavior of those subject to the law.

John Austin's definition of law:

- John Austin is considered as the *"Father of English Jurisprudence"*. He is the founder of the Analytical school. He was greatly influenced by the scientific treatment of the Roman law and, therefore, he started scientific arrangement of the English law too.
- The school founded by Austin is variously called *"analytical"*, *"positivism"*, "*analytical positivism"*, etc.
- Austin believed that *"law"* is only an aggregate of individual laws. In his view, all laws are rules the majority of which regulate behaviour.

- He attributes 1. Command, 2. Sanction 3. Duty, and 4. Sovereignty as the four essential characteristics of positive law. He distinguished positive law from positive morality.
- Austin describes positive law as "the aggregate of rules set by men politically superior to men as politically inferior subjects'.
- Austin difined law as "a rule laid down for the guidance of an intelligent being by an intelligent being having power over him". He has divided law into two parts-

1. Laws made by God for men- divine law
2. Laws made by Men for men- Human law

- According to Austin, "Every law is command, imposing a duty, enforced by a sanction".

Difference between the positivist theories of Bentham and Austin:

The positivist theories of Jeremy Bentham and John Austin are closely related, but there are important differences between their approaches. Here are highlighting the distinctions:

1. Concept of Law:

- **Bentham**: Law is seen as an "assemblage of signs" reflecting the sovereign's will, with a focus on the expression of volition and the expectation of consequences.
- **Austin**: Law is a "command" from the sovereign, emphasizing the authoritative nature of the law and the necessity of sanctions for enforcement.

2. Nature of Law:

- **Bentham**: Bentham views law as a communicative process involving declarations, emphasizing the role of language and signs.
- **Austin**: Austin sees law more strictly as commands, underscoring the imperative nature of legal rules.

3. Role of the Sovereign:

- **Bentham**: His idea of sovereignty was more complex than Austin. His concept of sovereignty predicted modern nation states like Australia where government power is constitutionally limited. The sovereign is important as the source of law but is viewed within a broader context of governance and social utility.
- **Austin**: The sovereign is central and absolute, with law defined as whatever the sovereign commands, provided it is backed by sanctions.

4. Utility and Purpose:

- **Bentham**: Bentham's theory is grounded in utilitarianism, where laws should promote the greatest happiness of the greatest number.
- **Austin**: Austin's approach is more formalistic and less concerned with the utilitarian outcomes of laws; his focus is on the structure and authority of legal rules.

5. Sanctions:

- **Bentham**: Sanctions play a less prominent role in Banthams theory of law than they do in Austin`s. Sanctions are one part of how laws motivate behavior, but the emphasis is also on the expectation of consequences as a form of motivation.
- **Austin**: Sanctions are central; without a threat of punishment, a command cannot be considered law.

6. Definition Scope:

- **Bentham**: His definition includes the broader process of lawmaking, including the communication of laws and the anticipated reactions.
- **Austin**: His definition is narrower, focusing on the command and the necessity of sanctions.

7. Legal Positivism:

- **Bentham**: Bentham is considered the precursor of legal positivism, introducing the idea that law is distinct from morality but emphasizing its utilitarian purpose.
- **Austin**: Austin further refines legal positivism by explicitly separating law from morality and focusing on the mechanics of legal authority.

8. Moral Considerations:

- **Bentham**: While Bentham separates law from morality, he still ties the legitimacy of law to its ability to produce utility (happiness or benefit).
- **Austin**: Austin maintains a strict separation between law and morality, arguing that a law's validity is not dependent on its moral content.

9. Focus on Compliance:

- **Bentham**: He emphasizes compliance based on understanding the consequences and expectations communicated by the law.
- **Austin**: He focuses on compliance as a result of the coercive power of the sovereign through sanctions.

10. Legal System:

- **Bentham**: Bentham views the legal system as a tool for achieving social goals, particularly the promotion of general welfare.
- **Austin**: Austin views the legal system as a hierarchy of commands issued by a sovereign, focusing on the structure and enforceability of law.

11. Purpose of Law:

- **Bentham**: The purpose of law is to achieve the greatest happiness for society, aligning law with the principle of utility.
- **Austin**: The purpose of law is to regulate behavior through commands, irrespective of whether those commands are beneficial or not.

12. Theory of Sovereignty:

- **Bentham**: Bentham's concept of sovereignty is somewhat flexible, considering the practical implications and the role of public opinion.
- **Austin**: Austin's concept of sovereignty is more rigid, defining it strictly as the entity that is habitually obeyed by the majority of the society.

13. Role of Precedent:

- **Bentham**: Bentham was critical of common law and the role of precedent, advocating for codified laws that are clear and accessible.
- **Austin**: Austin acknowledges the role of precedent but sees it as subordinate to the commands of the sovereign.

14. Law as Social Fact:

- **Bentham**: Law is seen as a social fact tied to the sovereign's will, but also connected to the social utility it produces.
- **Austin**: Law is viewed as a social fact purely in terms of commands and sanctions, with less emphasis on social utility.

15. Legislative Focus:

- **Bentham**: Bentham emphasizes legislative reform and the codification of laws to ensure clarity and utility.
- **Austin**: Austin focuses on the analysis of existing laws rather than proposing reforms, concerned more with understanding the nature of law as it is.

16. Public vs. Private Law:

- **Bentham**: Bentham's approach applies to both public and private law, emphasizing the overall utility of the legal system.
- **Austin**: Austin's theory is more concerned with public law, particularly the relationship between the sovereign and subjects.

17. Role of Custom:

- **Bentham**: Bentham is skeptical of customary law, preferring written laws that can be clearly communicated and understood.
- **Austin**: Austin acknowledges custom but insists that it becomes law only when adopted by the sovereign as a command.

18. Legal Reform:

- **Bentham**: Bentham was an advocate for legal reform, seeking to align laws more closely with utilitarian principles.
- **Austin**: Austin was less concerned with reform and more with providing a clear theoretical framework for understanding law as it exists.
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19. Analytical Approach:

- **Bentham**: Bentham's approach is more practical, focusing on how laws function within society to produce desired outcomes.
- **Austin**: Austin's approach is more analytical and theoretical, concentrating on defining the nature of law itself.

20. Impact and Influence:

- **Bentham**: Bentham's work laid the groundwork for modern legal positivism and had a profound influence on law reform movements.
- **Austin**: Austin's work provided the first systematic exposition of legal positivism, influencing later jurists like H.L.A. Hart.

4. Do you agree with Wacks that “moral questions invade the law at every turn”? Explore the broad questions of the relationship between law and morality. Describe Hart - Fuller debate over law and morality.

Introduction:

- Different legal theorists examine the relationship between law and morality from different points of views. The natural lawyers think that there is a necessary connection between law and morality, while the positivist lawyers believe that there is no necessary connection between the two. Thus the question of, whether there is relationship between law and morality or not is in indefinite conclusion. Though the various theories of law have given different responses to the question of what is the relationship between law and morality I think there is a necessary relationship between the two.

My points in agreement with the statement of Wacks:

The phrase "moral questions invade the law at every turn" is attributed to the legal scholar and philosopher Bernard Wacks. He discusses this idea in his book titled *"The Moral and Legal Status of the Human Embryo."* Wacks explores how legal systems often grapple with moral issues. He showed that law and morality are deeply interconnected and that legal decisions frequently reflect underlying moral values.

I support the idea of Wacks about the **relationship between law and morality. Here some arguments are discussed below-**

1. Interconnection of Law and Morality: Wacks points out that laws often arise from moral judgments or societal values. For instance, laws on issues like abortion, euthanasia, and criminal justice are deeply rooted in moral perspectives about right and wrong.

2. **Legal Decision-Making:** Judges and legislators frequently face moral questions when interpreting and applying the law. Their decisions often reflect their personal or societal moral beliefs, which can influence how laws are enforced and developed.

3. **Legal Reforms and Debates:** Many legal reforms are driven by shifts in societal morals and ethics. Changes in laws regarding marriage, gender equality, and human rights often correspond with evolving moral views within a society.

4. **Ethical Dilemmas:** The law often deals with ethical dilemmas where the right course of action is not always clear-cut. For example, balancing individual rights with public safety can involve complex moral considerations.

5. **Judicial Interpretation**: Judges frequently rely on moral reasoning when interpreting laws, especially in cases where the law is ambiguous or silent on a particular issue. Concepts like fairness, justice, and equity often guide judicial decisions.

6. Public Policy: Legal decisions are sometimes influenced by broader social values and moral considerations, particularly in cases involving issues like human rights, environmental protection, and social justice.

7. Legal Philosophy: Theories like natural law posit that there is a moral foundation to all law, suggesting that law is inherently tied to moral principles.

8. Validity of the law: If one disallowed the legal enforcement of moral standards, then most criminal law, tort law, contract law and indeed most of the legal system would be considered improper. If we couldn't enforce moral standard then most law would be unenforceable.

The Hart/Fuller Debate:

The Hart/Fuller Debate is a famous discussion in legal philosophy that centers on the relationship between law and morality. It took place between two prominent legal theorists, H.L.A. Hart and Lon L. Fuller, during the mid-20th century. Their debate addresses fundamental questions about the nature of law, its connection to morality, and how legal systems function. Here's an overview of their differing positions:

H.L.A. Harts Position: Hart was a leading figure in legal positivism, which holds that the validity of a law is not necessarily related to its moral content. According to Hart, law is a system of rules that derive their authority from social practices and institutions rather than from moral considerations.

Lon Fuller Position: Fuller, a natural lawyer, was a proponent of the "inner morality of law," which asserts that law and morality are inherently connected. He believed that a legal system must adhere to certain moral principles to be effective and legitimate.

The Debate

- The Hart/ Fuller debate is about whether or not the test of legal validity can be decided solely on the basis of moral criteria. Hart believed that low con not be decided only with reference to moral values.
- Fuller, on the other hand, believed that morality can be the single determinant for law.
- Perhaps the most fundamental characteristic of legal positivism is its adherence to the separation thesis: the thesis that there is no necessary connection between law and morality.
- Lon Fuller attacked the positivist separation thesis in his book entitled, The Morality of Low which prompted the following debate with Hart.
- The Hart Fuller debate was over a case concerning events which occurred during WWII, but which was decided after the war in a West German court.

- The facts of the case were that in 1944 under the Third Reich, a German woman who wanted to get rid of her husband decided to tell the authorities about some critical remarks that her husband had made about Hitler's conduct of the war. Her actions led to him being tried and sentenced to death by the Nazis although his sentence was commuted to armed service on the Russian front. After the war, in 1949, the wife was prosecuted for procuring her husband's loss of liberty. She made the defense that her husband had committed a crime under a Nazi statute. Notwithstanding her defense, the court convicted her on the basis that the Nazi statute which she relied on for her defense was contrary to the 'sound conscience and sense of justice of all decent human beings".
- Hart argued in relation to this case that the court's reasoning was wrong and that the Nazi law should have been recognized as valid law since it fulfilled the requirements of the rule of recognition.
- Fuller, on the other hand believed that the Nazi statute was so immoral that it could not be reasonably considered to be valid law and so he supported the court's decision.

It is obvious that the legal enforcement of morality is a necessary aspect of government.

5. What is American legal realism? What are the nine basic tenets of Legal realism provided by Llewellyn? How did Justice Holmes define laws?

Legal Realism can only be described as a movement and a series of criticism of the common law orthodoxy. It does not attempt to construct a general theory of law as did the positivists and natural layers.

Legal Realism:

- Legal realism was a movement that developed in America in the 1920s.
- According to this theory, the law is shaped by the real-world experiences of judges and other legal actors. Legal realists argue that law is not just a set of abstract rules but is influenced by social and contextual factors.
- They were more interested in the practical effects and consequences of the law.
- Legal realism actually consists of two distinct schools of thought.
- One originated in the United States and the other in Scandinavian which was very influential in Sweden and Norway.

American legal realism:

- American Legal Realism is one of the greatest paradoxes of modern jurisprudence. No other jurisprudential tendency of the twentieth century has exerted such a powerful influence in the legal thinking.
- Realists believe that the law is often too vague to decide cases definitively on its own. Instead, they focus on understanding what actually influences judicial decisions. They argue that factors beyond legal rules often affect case outcomes.

- American legal realism is a movement in legal thought that emerged in the early 20th century, primarily in the United States. It represents a significant departure from the formalist and theoretical approaches to law that were prevalent at the time. Legal realists argue that the law should be understood not just as a set of abstract rules or principles, but as it is actually applied in practice.

Here are some key aspects of American legal realism:

1. **Focus on Actual Practice**: Legal realists emphasize examining how laws are applied in real-world situations rather than relying solely on theoretical or doctrinal analysis. They argue that the actual behavior of judges, the impact of legal rules, and the practical consequences of legal decisions should be the primary focus.

    - Legal concepts such as 'commands', 'rules' and 'norms' were rejected by the realists.

2. **Judicial Behavior**: Realists are interested in how judges make decisions and how their personal biases, social backgrounds, and other extralegal factors influence their rulings. They believe that legal decisions are not made in a vacuum but are influenced by a variety of contextual factors.
3. **Law as a Living Process**: They view the law as a dynamic and evolving system, rather than a static set of rules. Legal realists argue that the law should adapt to changing social conditions and needs.
4. **Critique of Formalism**: Legal realism critiques the formalist view that legal reasoning can be purely objective and mechanical. Formalists argue that legal rules can be applied logically and predictably, but realists challenge this by showing that real-world outcomes often reflect broader social and political influences.
5. **Influence on Legal Scholarship**: Legal realism had a significant impact on legal education and scholarship, leading to a greater focus on empirical research and interdisciplinary approaches. It also paved the way for later movements, such as critical legal studies and law and economics.

- ✓ Notable figures in American legal realism include Jerome Frank, Karl Llewellyn, and Oliver Wendell Holmes Jr. Their work helped to shift the focus of legal analysis from abstract reasoning to a more pragmatic understanding of how the law functions in practice.

Karl Llewellyn:

Karl Llewellyn, one of the prominent figures in American legal realism, articulated several key tenets that help define the movement.

- ➢ Llewellyn provided a general position that could be attributed to legal realism by stating nine basic tenets.

- While Llewellyn did not provide a formal list of "nine basic tenets," his writings and ideas can be distilled into a set of core principles that outline the essence of legal realism.

Here's a summary of these principles based on Llewellyn's work:

1. The conception of Law is in flux and constantly changing and created by judicial decisions.
2. The conception of Law as a means of social ends, not an end in itself (Law serves social purposes, rather than being a goal in itself)
3. The conception of Society in flux, faster than the law.
4. Temporary separation of 'is' and 'ought' for the purpose of study.
5. Distrust about traditional legal rules and concepts, Law is what court or people actually do.
6. Doubt that traditional rule formulations are the main factor in producing court decisions.
7. Grouping cases and legal situations into specific or narrower categories.
8. Evaluating law in terms of its effects.
9. A practical approach to addressing the problems of law.

Or

1. **Law in Action vs. Law in Books**: There is a distinction between what the law says (law in books) and how it is actually applied in practice (law in action). Realists focus on how laws are implemented and interpreted in real-life situations.
2. **Importance of Judicial Behavior**: The behavior and decisions of judges play a crucial role in shaping the law. Realists argue that judicial decisions are influenced by factors beyond strict legal rules, including personal biases and social context.
3. **Role of Social and Economic Context**: Legal decisions are not made in isolation but are influenced by the broader social and economic environment. Realists examine how social conditions and economic factors impact legal outcomes.
4. **Dynamic Nature of Law**: The law is a living, evolving entity. It changes in response to new circumstances, societal needs, and shifting values. Realists advocate for a flexible and adaptable view of the law.
5. **Indeterminacy of Law**: Legal rules and doctrines are often indeterminate, meaning that they can be interpreted in multiple ways. Realists argue that legal outcomes are not always predictable and can vary depending on the context and the decision-maker.
6. **Focus on Empirical Research**: Legal realism emphasizes empirical research and the study of real-world legal practices. This involves examining how laws are actually applied and what effects they produce, rather than relying solely on abstract theorizing.
7. **Critique of Formalism**: Formalist approaches, which view legal reasoning as purely mechanical and objective, are critiqued by realists. They argue that such approaches fail to account for the complexities and nuances of real-world legal practice.
8. **Recognition of Judicial Discretion**: Judges exercise discretion in interpreting and applying the law. Realists acknowledge that judicial discretion is an inherent part of the legal process and that this discretion can influence legal outcomes.
9. **Pragmatic Approach**: Legal realism advocates for a pragmatic approach to understanding and reforming the law. It focuses on the practical effects of legal rules and decisions, aiming to improve the law's functionality and responsiveness to societal needs.

These principles collectively represent the legal realist perspective, which seeks to understand and address the law as it operates in practice, rather than as a set of abstract principles.

Justice Oliver Wendell Holmes Jr:

Justice Oliver Wendell Holmes Jr. is known for his pragmatic and influential views on law, particularly his perspective on how laws function and should be understood. Holmes' definition of law and his approach to legal theory can be summarized through several key ideas:

1. **Law as Predictive of Behavior**: Holmes famously defined law in terms of its practical effects on behavior. In his view, the law is essentially a prediction of how courts will respond to specific actions. Holmes believed that understanding the law involves anticipating how legal disputes will be resolved by judges.
2. **Legal Realism and Practical Consequences**: Holmes emphasized the practical consequences of legal rules. He argued that the real meaning of a law is found not just in its written text but in how it is actually applied and enforced.

3. **"The Life of the Law"**: In his famous essay "The Common Law" (1881), Holmes argued that the law evolves over time based on the needs and experiences of society. Holmes asserted that "the life of the law has not been logic; it has been experience."
4. **Skepticism About Absolute Principles**: Holmes was skeptical of the notion that the law could be derived from absolute or immutable principles. He believed that legal reasoning is deeply influenced by the context and the practical needs of society, rather than being based on universal truths.
5. **Judicial Decision-Making**: Holmes acknowledged that judges play a significant role in shaping the law through their decisions. He believed that judicial decisions are influenced by a variety of factors, including the social and political context, and that these decisions help to shape the development of the law over time.
6. **Law as a Social Science**: Holmes saw law as a social science rather than a purely logical or philosophical discipline. He believed that studying the law involves understanding the social forces and human behaviors that drive legal development and enforcement.

Holmes' approach to law was instrumental in shaping the development of legal realism and continues to influence legal thought today. His focus on the practical, real-world implications of legal rules.

6. What are the different sources of law? Explain the doctrine of stare decisis. Describe why precedent is important in common law system.

Sources of law refer to the origins or authorities from which legal rules and principles derive. They provide the framework for the legal system and guide how laws are made, interpreted, and applied. The main sources of law can be divided into different streams-

1. **Constitutional Law:**
    - **Constitutions**: The supreme law of a country, outlining the structure of government, the division of powers, and fundamental rights and freedoms. Constitutions set the legal foundation for all other laws and often take precedence over other sources of law.
2. **Legislation:**
    - **Statutes**: Laws enacted by legislative bodies such as parliaments or congresses. Statutes are formal written laws that govern various aspects of society and are a primary source of law.
    - **Acts and Codes**: Comprehensive statutes covering specific areas of law, such as criminal codes or civil codes.
3. **Regulations and Administrative Law:**
    - **Regulations**: Rules made by executive agencies or government departments based on statutes. Regulations have the force of law and provide detailed guidelines on how statutes are to be implemented.
    - **Administrative Orders**: Directives issued by administrative bodies or officials that have legal effect within their jurisdictions.
4. **Judicial Decisions (Case Law):**
    - **Precedents**: Judicial decisions from higher courts that establish legal principles and rules. These decisions serve as guidance for lower courts and influence future cases. The doctrine of stare decisis (the principle of adhering to precedent) is central to common law systems.
5. **Customary Law:**
    - **Customs and Traditions**: Practices and norms that have developed over time and are recognized as binding legal standards in certain contexts. Customary law is particularly significant in areas where formal legislation is minimal or absent.
6. **International Law:**
    - **Treaties and Conventions**: Agreements between countries that establish international legal obligations. Treaties and conventions are binding on the parties that ratify them and can influence domestic law.
    - **International Customs**: Practices and norms accepted as legally binding in the international community, even if not formalized in treaties.
7. **Secondary Sources of Law:**
    - **Legal Commentary and Textbooks**: Scholarly writings and analyses by legal experts that interpret and explain legal principles and statutes. While not legally binding, these sources can influence judicial decisions and legislative development.
    - **Legal Encyclopedias and Reports**: Comprehensive references that provide summaries and analyses of legal principles and case law.

- Each of these sources plays a role in shaping the legal landscape and ensuring that laws are consistent, fair, and applicable.

The doctrine of stare decisis:

The term "stare decisis" comes from the Latin phrase "stare decisis et non quieta movere," which means "to stand by decisions and not disturb the settled." The doctrine of **stare decisis** is a fundamental principle in common law systems that emphasizes the importance of precedent in judicial decision-making.

- The doctrine of stare decisis is one of the cardinal principles on which the common law system rests.
- According to this doctrine, In a common law system, once a court has made a decision on a particular legal issue, that decision becomes binding on other courts when they encounter similar issues in future cases.

- **It lays down three principles:**

1. Each court is bound by the decisions of the courts superior to it.
2. The relevant judgement of any other court other than the superior court has persuasive value.
3. Only the “ratio decidendi” (meaning the principle underlying the decision or the reason for the decision) of the case has the force of law and not its “obiter dictum” (is a statement of law).

Key Aspects of Stare Decisis:

1. **Binding Precedent:**
   - When a higher court (such as a supreme or appellate court) makes a ruling on a legal issue, that decision becomes a binding precedent for lower courts in future cases. Lower courts are expected to follow the legal principles established by the higher court's ruling.
2. **Consistency and Predictability:**
   - The doctrine ensures that similar cases are decided in a consistent manner, promoting fairness and predictability in the law. It helps individuals and entities anticipate how courts are likely to rule on legal matters based on established precedents.
3. **Vertical and Horizontal Stare Decisis:**
   - **Vertical Stare Decisis:** This refers to the obligation of lower courts to follow the precedents set by higher courts within the same judicial system.
   - **Horizontal Stare Decisis:** This refers to a court's adherence to its own prior decisions. While not always mandatory, higher courts generally follow their previous rulings to maintain consistency.
4. **Overruling Precedents:**
   - Higher courts have the authority to overturn or modify their previous decisions. When this happens, the new ruling becomes the new precedent, which lower courts must follow. This allows the law to evolve and adapt to changing societal values and circumstances.

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5. **Persuasive Precedents:**
    - While binding precedents must be followed, courts may also consider "persuasive precedents" from other jurisdictions or lower courts. These precedents are not binding but may influence a court's decision if they are deemed relevant and well-reasoned.

➢ Operation of stare decisis in England:

1. All the courts are bound by the decisions of the Supreme court (previously known as House of Lords.) Until 1940s House of Lords was bound by its previous decision according to London Street Tramway Co vs London County Council (1898). Later after the ruling in Young vs Bristol Aero plane Co Ltd. (1944) case, the House of Lords changed their position.

2. In 1962, The House of Lords gave an observation that in three classes the House can question its previous decision:

✓ Where it is obscure, or
✓ Where the decision itself is out of line
✓ Where it is much wider than was necessary for the decision.

3. The Court of Appeal binds all the courts by the decisions in the hierarchy except the Supreme court (previously known as House of Lords)
4. The civil division of the Court of Appeal (until 19405) was bound by its previous decisions
5. Later the civil division of the Court of Appeal changed their position
6. The Criminal Division of the Court of Appeal is not bound try its own decision where this would cause injustice to the appellant.
7. in civil matters the divisional courts of Queen's Bench Division are bound by its previous decisions
8. In criminal matters, the divisional courts of Queen's Bench Division are not bound by its own decision where this would cause injustice to the appellant.
9. The other courts do not create binding precedent.

➢ Operation of stare decisis in Bangladesh:

1. Only the Supreme Court of Bangladesh can create binding precedent.
2. The Appellate Divisions decisions are binding to all of its inferior courts.
3. The High Court Division binds all the courts by its decisions in the hierarchy except the Appellate Division of the Supreme court.
4. The other courts do not create binding precedent.

• Limitations and Criticisms:

- **Rigidity:** Critics argue that stare decisis can lead to rigid adherence to outdated or incorrect legal principles, potentially perpetuating past errors.
- **Judicial Activism:** Some view the doctrine as hindering judicial activism and the ability of courts to address novel legal issues in a more progressive manner.

➢ Precedent as a source of law:

1. Judicial precedents are an important source of law.
2. They have enjoyed high authority at all times and in all countries.
3. Particularly in England and in the common law family.

➢ **There are three Kinas or precedents**

✓ Authoritative,
✓ Persuasive and
✓ Declaratory**.**

Authoritative precedents are those which judges must follow whether they approve those or not. Authoritative precedents can be Absolute and Conditional.
Persuasive precedents are those where the judges are under no obligation to follow
Declaratory precedents are the declaration of already existing precedents where the original precedents declare new future rule.

Causes of importance of Precedence as a source of Law:

- A precedent is presumed to be correct. Which is delivered must be taken for established truth.
- It is expedient that it should be held to be true. It creates confidence in the minds of the litigants. Law becomes more certain.
- Administration of justice becomes even handed and fair, Decisions are given by the experts.
- Article 111 of BD constitution.

1. Consistency and Predictability:
2. Efficiency in Legal Decision-Making:
3. Fairness and Equality:
4. Guidance for Lower Courts:
5. Development and Evolution of the Law:
6. Judicial Accountability:
7. Encouragement of Legal Research and Scholarly Analysis:

In summary, precedent is vital in the common law system because it promotes consistency, predictability, fairness, and efficiency. It provides clear guidance for lower courts, facilitates incremental legal development, and ensures judicial accountability. Through the careful application and evolution of precedents, the common law system maintains a balanced and adaptive legal framework.

7. How can you define 'person'? Illustrate different kinds of legal persons. How does corporation differ from legal/natural persons?

Person:

The word 'person' is derived from the Latin word 'persona'. This term has a long history.

- To begin with, it simply meant a mask.
- Later on, it was used to denote the part played by a man in life.
- After that, it was used in the sense of the man who played the part.
- In later Roman law, the term became synonymous with caput. A slave had an imperfect persona.
- Last of all, the term is used in the sense of a being who is capable of sustaining rights and duties

Many definitions of persons have been given by various writers.

- According to the German writers, "will is the essence of a personality. A legal person is one who is capable of will".
- Zitelmann writes: "Personality is the legal capacity of will. The bodiliness of men is for their personality a wholly irrelevant attribute."
- A person is not necessarily a human being. There may be human beings who are not persons. (Slaves)
- In the same way, there may be persons who are not human beings, e.g., a corporation.
- The term personality has a wider significance than humanity. Under the BD Penal Code(sec-11), the word person includes any company or association, or body of persons, whether incorporated or not.
- According to Salmond: "A person is any being whom the law regards as capable of rights or duties. Any being that is so capable is a person, whether a human being or not and no being that is not so capable is a person, even though he be a man. Persons are the substances of which rights and duties are the attributes. It is only in this respect that persons possess juridical significance and this is the exclusive point of view from which personality receives legal recognition"

Kinds of Persons:

- Two kinds of persons are recognized by law.
    1. Natural persons and
    2. legal persons (Legal persons are also known as artificial, juristic or fictitious persons).
        1. **Natural persons**
- According to Holland, a natural person is "such a human being as is regarded by the law as capable of rights and duties in the language of Roman law, as having a status."

- According to another writer, natural persons are "living human beings recognized as persons by the State".
- The first requisite of a normal human being is that he must be recognized as possessing a sufficient status to enable him to possess rights and duties. A slave in Roman law did not possess a personality sufficient to sustain legal rights and duties.
    - Natural persons are born with legal capacity, which means they can enter into contracts, own property, and be subject to legal obligations and protections. Legal rights and duties apply to them from birth until death.

2. legal persons

- Legal persons are real or imaginary beings to whom personality is attributed by law by way of fiction where it does not exist in fact.

- A **legal person** is an entity recognized by law as having rights and responsibilities similar to those of a natural person. Legal persons can enter into contracts, sue and be sued, and own property, among other legal capacities. They are distinct from natural persons, who are individual human beings.

Types of Legal Persons:

- There are three kinds of legal persons:

1. corporations,
2. institutions and
3. fund or estate.

1. A corporation is an artificial or fictitious person constituted by the personification of a group or a series of individuals. The individuals forming the corpus of the corporation are called its members. Corporations are of two kinds-

I. corporation aggregate and
II. corporation sole.

A corporation aggregate is a collection of individuals united into one body.

A corporation sole is an example of dual personality. The King of England exercises the function of the Crown and in his capacity as the constitutional head. The same is the case with the President of Bangladesh.

Three conditions are necessary for the existence of a corporation.

a. There must be a group or body of human beings associated for certain purposes.
b. There must be organs through which the body or the group acts.
c. A will is attributed to a corporation by a legal fiction. The corporation is distinguished from the individuals who constitute the corporation. A corporation can sue and be sued.

2. An institution in legal terms, can be recognized as a legal person if it is an entity established and governed by law, with rights and responsibilities similar to those of natural persons. This concept allows institutions to function effectively within the legal system, manage assets, and carry out their missions.

- In some cases, the corpus or the object personified is not a group or succession of individuals but an institution itself.
- Examples of institutions are a college, church, library, mosque, hospital, an idol, etc.

Examples of Institutions as Legal Persons:

1. Educational Institutions:
   - Schools and Universities:
2. Financial Institutions:
   - Banks and Credit Unions:
3. Charitable Organizations:
   - Non-Profits and Foundations:
4. Religious Institutions:
   - Churches and Temples:
5. Government Agencies:
   - Public Sector Institutions:

3. A fund or estate in legal terms, a fund or estate can be recognized as a legal person, which means it can have rights and responsibilities similar to those of a natural person. This recognition allows funds and estates to operate independently in legal and financial matters.

- In some cases, the corpus or the object personified is some fund or estate reserved for a particular purpose.
- Examples of this kind of legal persons are the property of a dead man, the estate of an insolvent, a fund for charity, an estate under a trust, etc.
- According to Roman law, the estate of a dead person was regarded as having a legal personality till it was vested in the legal heirs. Likewise, the Stiftung, an unincorporated fund for charitable purposes, was vested with rights and duties and was itself personified

- ✓ **Funds as Legal Persons: A fund** is a pool of resources, often financial, collected for a specific purpose or managed according to a particular investment strategy. When a fund is recognized as a legal person, it is typically in the form of an investment vehicle or a trust with its own legal identity.

Example:

- Investment Funds:
  - Mutual Funds and Hedge Funds:
- Trust Funds:
  - Charitable Trusts:
  - Family Trusts:

- ✓ **Estates as Legal Persons: An estate** refers to the assets and liabilities of a deceased person that are managed and distributed according to their will or the laws of intestacy. An estate can be considered a legal person during the probate process.

  Example:

- **Estate of a Deceased Person:**
  - **Probate Estates:** During the probate process, the estate of a deceased person is treated as a legal person.
  - **Trust Estates:** When assets are held in a trust, the trust estate is recognized as a legal person.
  -

➢ How does corporations differ from Natural Persons:

1. Even if the members of a corporation die, the corporation continues.
2. A corporation is recognized by law as a permanent and continuous legal entity.
3. It is not affected by the deaths of its members.
4. A corporation can enter into contracts with its members as it has a personality distinct from that of the members.
5. A corporation can have property and rights and duties. Unlike natural persons, a corporation can act only through its agents.
6. It does not die in the way natural persons die.
7. Law provides special procedure for the winding up of a corporation.

8. What do you understand by the term 'models of criminal justice'? Describe the different models of Criminal justice. How useful are these models of criminal justice?

Introduction:

- Models of criminal justice are essentially different perspectives on, or different ways of looking at criminal justice system. The idea of "Models of criminal justice" has been derived from the work of different writers from a variety of legal, sociological, or administrative backgrounds. They provide a way of looking at criminal justice in terms of some general characteristics, principles or themes of a system.

Models of criminal justice:

- "Models of criminal justice" refer to various frameworks or approaches used to understand, analyze, and structure the criminal justice system. These models often guide how laws are enforced, how justice is administered, and how various actors within the system interact.

Different models of Criminal justice:

There are 8 models-

- Herbert Packer first identified two alternative models of criminal justice in 1968-
- Michael King later outlined six such models in 1981.

1. Due process model:

- The first model, originally developed by Packer, is the **due process model.** This model represents an idealized version of how the system should work in the rule of law. It encompasses the principles of the defendant's rights such as the presumption of innocence, the defendant's right to a fair trial, equality before the law and that justice should be seen to be done. They protect defendants in order that the innocent may be acquitted and only the guilty convicted.

- **Focus:** Protecting individual rights and ensuring fair treatment.
- **Key Features:**
  - Emphasizes the legal rights of defendants and procedural safeguards.
  - Aims to prevent wrongful convictions and ensure that justice is administered impartially.
  - Prioritizes fairness in legal procedures, including the right to a fair trial, the presumption of innocence, and protection against wrongful detention.
  -

2. Crime control model:

- The second model is the **crime control model**. This stresses the role of the system in reducing, preventing and curbing crime by prosecuting and punishing those who are guilty of offences. It also stresses the importance of protecting citizens and serving the public by crime reduction. Thus the police and prosecution agencies may interpret their role primarily as crime fighters responsible for ensuring that the guilty are brought to justice. However, problems arise if this aim is pursued regardless of rules protecting the rights of the suspect. Fabricating evidence or neglecting to use search warrants could be seen as justifiable in order to ensure that an offender whom the police 'know' to be guilty is found guilty.

- **Focus:** Efficiently controlling and reducing crime.
- **Key Features:**
  - Emphasizes the importance of law enforcement and maintaining public order.
  - Prioritizes the swift and effective apprehension, prosecution, and punishment of offenders.
  - Often supports strong law enforcement measures and policies aimed at deterring crime and incapacitating offenders.

3. Rehabilitation model:

- This model was outlined by King, which has affected many parts of the criminal justice process. Under this model one of the major considerations at each stage is how best to deal with the individual offender, assuming that their criminality can be reduced by taking a rehabilitative approach. Thus it might be more desirable for the police to divert some offenders, especially young offenders, from the system, in circumstances where they feel that no benefit will be served by prosecution.
- The police have powers to caution offenders and refer them to social work agencies which may also help adult offenders.
- Social workers and probation officers become involved at the sentencing stage, by preparing pre-sentence reports on the offender's circumstances and outlining sentencing options, which may involve counselling and treatment rather than punishment.
- Rehabilitation therefore individualizes decisions, requiring that the needs of the offender be taken into account.
- It gives all agencies far greater amounts of discretion.

- **Focus:** Reforming offenders to prevent future criminal behavior.
- **Key Features:**
  - Emphasizes the potential for offenders to change and reintegrate into society.
  - Supports programs and interventions aimed at addressing underlying issues such as addiction, mental health, and lack of education.

4. Bureaucratic efficiency model:

- **King's fourth model** is bureaucratic efficiency model which reflects the pressure on criminal justice officials to implement rules and procedures within the limited resources and public pressure to solve crimes. Agencies must therefore establish measures of bureaucratic efficiency.
- They must ensure that defendants are tried and sentenced as speedily and efficiently as possible.
- If defendants spend too long in prison before they come to trial, if trials take too long and are too costly, or if it is argued that too many defendants are acquitted or that there are miscarriages of justice, agencies and courts will come under considerable criticism.
- Balancing the interests of due process with those of crime control and bureaucratic efficiency is not always easy.
- But the question of this model is that how many defendants should be acquitted? How many should be tried rather than plead guilty? There are no straightforward answers to these questions no yardstick against which to assess the efficiency of the system. Indeed, in some instances the interests of justice may conflict with those of efficiency as can be seen in the example of not guilty pleas.
- If the defendant pleads not guilty, the prosecution and the defense have to prepare a case which may involve collecting evidence, summoning witnesses and preparing the many documents involved in a trial. If the defendant pleads guilty, much of this work can be avoided.
- Guilty pleas are, therefore, cost-effective and save the time of victims, witnesses, police, courts and the Crown Prosecution Service.
- But any pressure on defendants to plead guilty could deprive them of their right to trial.

5. The denunciation and degradation model:

- The fifth model identified by King is **the denunciation and degradation model.**
- In this model, public trial and punishment are necessary to underline the law-abiding values of the community.
- Some sociologists have argued that the criminal justice system serves an important social function in reinforcing social values. While this may conflict with the aims of rehabilitation, it can be argued that such public punishment and expression of society's disapproval can in itself be rehabilitative, as it may induce feelings of shame in offenders' prerequisite for rehabilitation.
- Shaming offenders should feel ashamed of their offences but shaming should not be so extreme that it stigmatizes offenders to a point where they cannot be reintegrated into the community.

6. The power model:

- King's in sixth model, the power model argued that criminal justice systems essentially reinforce the role of the powerful those who make the laws and who are served by the many agencies of the system.

- Thus criminal law and its enforcement are influenced by the interests of dominant classes, elites, races or gender, depending on the particular version of domination used.
- The state is regarded in this model as acting in the interest of the dominant group who use the criminal law to further these interests. Advocates of this approach point to the over-representation of those from poorer sections of the community as defendants in the criminal justice system.

7. The just deserts model.

- This model Combines the elements of retribution for offenders with a notion of proper respect for the treatment of the accused or defendant.
- This model stresses the importance of punishing offenders in terms of their blameworthiness and the seriousness of their offence, not through crude revenge or incapacitation, but in response to the wrongfulness of their act.
- This brings together the principles of respect for the offender as a human being with certain rights, one is the need to establish the offender's culpability for the offence so as to punish only the guilty, and the other is the right of society to exact retribution from those who have done wrong.
- This links punishment and crime to issues of morality and control.

8. Managing offender behavior model:

- The eighth model is the **managing offender behavior** model which recognizes the focus on the offender strategies that are broader than rehabilitation. This model encompasses the efforts to change behavior, monitor and control criminals depending on the level of risk and record of offending.
- Intensive supervision and surveillance programmes for juveniles and electronically monitored curfews are examples of a strategy of intervention that relies on surveillance and supervision to reduce crime.

Here we see the crime control model being extended beyond policing into the correctional stage, blending rehabilitative practice with surveillance and control.

How useful are these models of criminal justise:

- Models of criminal justice are quite useful in several ways, though their effectiveness and applicability can vary depending on the context
- The different models of criminal justice illustrate different ways of looking at the system and indicate very different influences on policy and practice.
- Most of these models have been developed by different academic disciplines such as criminology, sociology or law and, more recently, from systems analysis utilized by experts in management and auditing techniques.
- Lawyers focus mainly on procedures before and during trial.

- Sociologists put emphasis on the informal influences that can lead to inequalities and injustice.
- Criminologists focus on crime statistics and explanations of crime.
- Systems analysts trace the aggregate flow of cases through the system, management consultants look at problems of accountability and effectiveness, while accountants examine the cost effectiveness of the entire system and agencies within it. This has led to the development of management by objectives and the use of auditing techniques in the criminal justice system.
- These different models reflect the many different influences that come to shape practice and policy in criminal justice.

- They help guide policy, influence reforms, and shape public debates about the criminal justice system. Balancing elements from multiple models can lead to a more nuanced and effective approach to justice that addresses both individual and societal needs.
- Other usefulness--
- **Efficiency**
- **Deterrence**
- **Public Confidence**
- **Fairness**
- **Innocence Protection**
- **Trust**
- **Healing**
- **Rehabilitation**
- **Community Involvement**
- **Legitimacy**
- **Awareness**:
- **Public Cooperation**
- **Social Justice**
- **Systemic Integrity**
- **Comprehensive Reforms**

Conclusion:

- Each model offers a different perspective on balancing the goals of the criminal justice system, such as maintaining order, protecting rights, ensuring fairness, and promoting rehabilitation. These models can influence policy decisions, legal practices, and the overall approach to justice in a given society.

9. What do you understand by the term 'Community Policing'? Explain the SARA model as a problem solving approach of community policing.

Introduction:

"Community policing" is a policing strategy that emphasizes building positive relationships and partnerships between police officers and the communities they serve. The goal is to enhance public safety and improve the quality of life by fostering trust, collaboration, and mutual respect.

Community Policing

- The United States of America, Department of Justice defines community policing by stating that "it is a philosophy that promotes organizational strategies, which support the systematic use of partnerships and problem-solving techniques, to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime."
- Community policing, also called community- oriented policing, is a strategy that involves a working relationship between the police and the community.
- It is a policing style that emphasizes the idea that the public should play a more active role in crime control and prevention.
- Community policing is a collaborative partnership between the community, the local government, and the police.
- This approach involves proactive problem solving and community involvement to address the causes of crime, the fear of crime, and community quality of life issues. The four major elements of community policing are:

Community policing in Bangladesh:

- This approach become an integral part of BD Police since 1990s.
- A dedicated section has been created at the Police Headquarters with an AIG to monitor the programme.
- Executive and advisory committees have been formed at all Metropolitan, District and Police Stations.
- Community Policing Forum (CPF) has also been formed at UP level.
- A Community Policing officer has been appointed at every police stations.

Core Principles of Community Policing:

1. **Community Involvement**:
    - Officers work closely with community members to identify and address local concerns and priorities. This involves regular interactions, attending community meetings, and collaborating on problem-solving.
    - The approach often involves empowering community members to take an active role in crime prevention and community well-being.

2. **Decentralization**:
    - Unlike traditional policing models that often rely on a top-down approach, community policing encourages decision-making at the local level. This allows for more tailored responses to specific community issues.
    - Resources are allocated based on community needs and priorities, rather than solely focusing on crime statistics.
3. **Prevention of crime**:
    - The strategy focuses on preventing crime and addressing the root causes of criminal behavior rather than just responding to incidents after they occur.
    - Officers work with other local agencies, organizations, and stakeholders to address social problems such as drug abuse, youth violence, and homelessness.
4. **Building Trust and Legitimacy**:
    - Open communication and transparency between the police and the community help build trust and ensure that policing practices are understood and accepted.
    - Officers are encouraged to treat community members with respect and fairness, which helps improve public perception of the police and enhances community cooperation.
5. **Problem solving:**
    - A major part of community oriented policing is that of problem solving.
    - Problem solving is the process of engaging in a proactive and systematic examination in order to identify problems and evaluate effective ways of dealing with them.
    - Police agencies have to develop new and innovative ways to approach community problems that affect public safety.

➢ Benefits of Community Policing:

1. Organize community-based crime prevention.
2. Direct and reorient patrol activities to emphasize non-emergency service to the community.
3. Increase police accountability to the local communities.
4. Decentralize the command structure of police departments to allow for lower- level decision making.
5. This strategy is one of the most proactive ways that a police department can operate
6. It is a proven way to increase public support and cooperation.
7. Open up more positive interaction there is between the police and the public.
8. In neighborhoods in particular, the more people begin to trust the police and become a part of the crime solution.
9. Instead of responding to crime after it occurs (reactive policing), community policing encourages agencies to proactively develop solutions to the immediate underlying conditions that are contributing to and causing public safety problems.

SARA Model:

- **SARA** (Scanning, Analysis, Response, and Assessment) is a problem-solving model that is used by many police agencies, especially in community policing in Bangladesh.

- **Scanning:** Identifying and prioritizing problems. Problems can be a type of behavior, a place, a person(s), a special event or time, or any combination of these. The police, with input from the community, should identify and prioritize these concerns**.**
- **Analysis:** Researching what is known about the problem. Analysis is the heart of the problem-solving process. It is here that an understanding of the problem is developed.
- **Response:** Developing solutions to bring about lasting reductions in the number and extent of the problems. This is where the police and the community work together to find and implement solutions to the problem.
- **Assessment:** Evaluating the success of the responses.
- This requires follow up by the police to determine if the response had the desired effect and was successful.

Problem Analysis Triangle:

- To understand a problem, many problem solvers have found it useful to visualize links between the victim, offender, and location (the crime triangle) and those aspects that could have an impact on them;

Conclusion:

Community policing represents a shift towards a more collaborative and preventive approach to law enforcement, aiming to create safer and more cohesive communities by working together with residents to address their concerns and needs.