

QUESTION NO 16:-

WHAT ARE THE BASIC NORMS/ GRUNDNORMS AND ITS BASIC CHARACTERISTICS?

1. PREFACE:

The idea pure theory of law is presented by Hans Kelsen. Hans Kelsen's pure theory of law is the most prominent influential legal theory for continental law systems.

2. MEANING OF PURE THEORY OF LAW:

According to Oxford Dictionary:

A form of legal positivism propounded by Austrian theorist Hans Kelsen that seeks to expunge all "impurities" from its "scientific" account of law. Such impurities include psychology, sociology, ethics and political theory.

DEFINITION OF PURE THEORY OF LAW:

According to Black's Law Dictionary:

"The philosophy of Hans Kelsen in which he contends that a legal system must be "pure" that is self-sufficient and not dependent on extra-legal values".

MAIN EXPONENTS:

Hans Kelsen was the main exponent of pure theory of law.

KELSEN'S PURE THEORY OF LAW:

According to Kelsen:

the theory of law should be uniform it should be applicable to all times and all places.

Kelson writes that a theory of law must be free from ethics, politics, history, sociology etc. in other words it must be pure. If a theory is to be general, it has shorn of all variable factors. It is true that Kelson did not deny the values of ethics, politics, history and sociology.

6. **ELEMENTS OF PURE THEORY OF LAW:**

Kelson gave his view under this theory about:

- I. State.
- II. Sovereignty.
- III. Public and Private law.
- IV. Public and Private Rights.
- V. International law private and juristic law.

7. **AIM OF PURE THEORY OF LAW:**

- I. The aim of theory of law is to reduce and multiplicity of utility.
- II. Legal theory is a science and not volition.
- III. It is the knowledge of what law is and not what the law ought to be.
- IV. Law is a normative and not a natural science. As a theory of norms, legal theory is not concerned with the effectiveness of legal norms.

8. **THE BASIC NORMS:**

The view of Kelsen is that in every legal system, no matter with what propositions of law we start, an hierarchy of "oughts" is traceable to some initial or fundamental "ought" from which all others emanate. This is called by him Grundnorm or the base of fundamental norms.

9. **CHARACTERISTICS OF BASIC NORMS:**

- These norms may not be the same in every legal system but it always there.
- It is not necessary that there should be one fundamental law. Every rule of law derives its efficiency from some other rule standing behind it, but grundnorm has no rule behind it.
- The grundnorm is the initial hypothesis upon which the whole systems rest. We cannot account for the system or any part of it to justify the grundnorm.
- Kelsen does not give any criterion by which the minimum effectiveness is to be measured. The effectiveness of the grundnorms depends upon sociological factors which are excluded by Kelsen itself.
- The application of a higher norm involves the creation of new lower norms.
- The application of a general norm may depend upon the act of the parties who may themselves come to some agreement.

10. IMPLICATION OF PURE THEORY:

Kelsen arrived at the following conclusions from his idea of grundnorm:

- There exists no distinction between public and private law. Both of them have their origins from the same grundnorms.
- It is not the idea of right, but the idea of duty that is essential. This is evident in the element of "ought" present in every norm. he conclude that law essentially structures human behaviour and that the idea of duty is essential to fulfill this function the idea of right is only a by-product of legal system.
- Personification is used by law only as a technical device to achieve its goal as a normative science. Thus a distinction between natural person and juristic person is irrelevant for the purpose of studying law.
- The distinction between procedural law and substantive law is relative and procedural law is more significant.
- The distinction between and that of question of fact is relative. Fact is nothing but an assumption of the judge as to what must have happened in order to apply a particular norm.

- Kelsen did not believe in separation of power and argued that all the three legislative, executive and judiciary are essential "norm-creating" agencies.

11. MOST SIGNIFICANT FEATUTRE OF KELSEN'S DOCTERINE:

Most significant feature of Kelsen pure theory of law is the concept of state, sovereignty, private and public law, legal personality, right and duty international law.

12. VIEW OF PROF DIAS ON PURE THEORY OF LAW:

Prof Dias is of the view that with reference to international law, the grundnorm is a pure a supposition unlike that of municipal law.

13. CRITICISM ON KELSEN'S THEROY:

The Kelsen's pure theory of law is criticized by many writers according to them , notwithstanding the logical coherence of Kelsen's structure, he provide no guidance in the actual application of the law. He showed how, in the presence of concretizing the general norms, it may be necessary to make a choice either in decision or interpretation. The judge or the official concerned is already aware of that necessity and his need is for some guidance as to how he should make his choice. The answer is not to be found in the teaching of Kelsen's.

14. FINAL NOTE:

In the last I can say that Hens Kelsen is one of the most influential legal philosophers of the last century have contributed to answering the some basic questions about the law. He considerably influenced the modern legal thoughts. The great contribution of Kelsen's was that he demonstrated the unity of legal system as well as the mechanics of its operation and that was really a valuable contribution.