

AMERICAN LEGAL REALISM

Introduction:

Legal realism (the doctrine that the law is better understood by analysis of judges rather than the judgements given) is a naturalist philosophy to law. It is of the perspective that jurisprudence should imitate (copy) the natural science methodologies, that is, relying on empirical evidence (observative and experimental). Legal realists conclude that legal science can analyze law exclusively (only source) through natural science's value-free (freely used) tools, rather than by metaphysical inquiry into the essence (concentrate) and purpose of the law, which is different and distinct from the law. The realist (a person who understands what is real and possible) approach in the field of jurisprudence is a comparatively modern one. Its primary home is the US. The idea of realists is based on the notion: **"Law is what the judges decide."** They emphasize the element of uncertainty in law and part played by the personal characteristics of the judge. It is mix approach of analytical and sociological school.

Meaning of realism:

- Relating to the world as actually it operates.
- This school is named as a 'realist' because this approach studies law as it is in actual working and its effect.
- According to Llewellyn, "Realism is not a school but it can be called as a branch of sociological School.' it concentrates on the actual working and effect of law and is, therefore, called the realist school.

Reasons for the establishment of realist schools:

There are mainly three reasons for the establishment of the Realist School of law, as follows;

- The first reason is that it was established as a reaction again the sociological jurists who were emphasizing the social effect of law.
- The second reason was that it was established to ignore the theory of interest as given by the Ihering and the theory of Social Engineering as advocated by Pound.
- The third and main reason is that this school was established to point out the importance of Courts and the importance of judges, the human factor is the judges and the lawyers.

Types of the Legal realist schools:

There are two types of the Legal Realist School.

- American Realist School
- Scandinavian Realist School

Main proponent of American Realist School:

- Holmes,
- Gray, and
- Jerome Frank
- Karl N. Llewellyn

ORIGIN AND HISTORY OF THE AMERICAN REALIST SCHOOL:

Realist thinking was introduced to American jurisprudence by Oliver Wendell Holmes. Oliver Holmes has been described as the spiritual father of the American realist movement. Holmes was doubting of the ability of general rules to provide the solution to particular cases and gave acceptance to the role of extra-legal factors in judicial decision-making. Holmes gave the first and classic exposition of the court focused approach in 1897, sowing the seeds for realism, in a paper called The Path of the Law.

Main jurists of American realist school & their theories:

Justice Holmes's View: (Bad Man Theory)

Justice Holmes was the first to introduce the concept of realism. He said that Law is not like mathematics. Law is nothing but a prediction. According to him, law is **logic** as well as **experience**.

The real nature of the law cannot be explained by excluding logic. Judges make their decisions based on their own sense of what is right. In order to see what the law is in reality, he gave a hypothetical 'Bad man' facing trial. Therefore, his theory is known as Bad Man Theory. This theory says that a bad man successfully predicts the actual law than other people.

Holmes said that law should be looked from bad man's perspective. On the basis of this prediction Holmes defined the law as, "Prophecies (ability to predict) of what the court will do in fact and nothing more pretentious."

Thus, according to Holmes, the Law is what courts (or other officials) do, not what they say. Until a court has passed judgment on certain facts, there is no law on the subject yet in existence, for opinions of a lawyer is only a guess as to what the court will decide.

Justice Gray's view:

Another pioneer of American realist school was Grey, who made a distinction between the law and source of law. He is of the view that all laws are judge made laws. His approach was certainly as court-oriented as the realists.

For Gray the law was simply what the court decided. Everything else including statutes, were simply sources of law. He said, "It is the courts that put life into the dead words of the statutes".

Frank's view: (Fathers' Symbol Theory)

Frank observes that a judge's decisions are the outcome of his entire life history. His friends, his family, vocations, schools, religion, all these factors are influential. Frank has given the Fathers' Symbol Theory. The child puts his trust in the power and wisdom of his father to provide an atmosphere of security. Frank suggested that the quest (search) for certainty in law is in effect a search for a 'father-symbol' to provide a feeling of security, and although he attributed great prominence to this factor.

In his book titled '**Law and the Modern Mind (1930)**' Frank explained his theory of law and jurisprudence. His entire thesis is centered on one point which is "**Law is uncertain and the certainty of law is the legal myth**".

Frank insists that there are two groups of realists, 'rule skeptics' and 'fact skeptics.' The '**rule skeptics**' rejected legal rules which providing the uniformity in law and tried instead to find uniformity in rules evolved out of psychology, sociology, economics and politics etc. The '**fact skeptics**' think that the unpredictability of the court decision resides primarily in the elusiveness (indefinability) of facts.

Karl N. Llewellyn's view: (A Law Jobs Theory)

Karl Llewellyn was a professor of law at the Columbia University. According to Llewellyn realism means a movement in thought and work about law. Karl Llewellyn outlined the principle features of the realist approach which are as follows:

- There has to be a conception of law in flux and of the judicial creation of law.
- Society changes faster than law, so there is a constant need to improve the law.
- There has to be a temporary separation between is and ought for the purpose of study.

Karl Llewellyn described Law is an '**institution**' which is necessary in society and which is comprised not only of rules but also contains an 'ideology and a body of pervasive (universal) and powerful ideals which are largely unspoken, largely implicit, and which pass unmentioned in the books'.

He also said that, law is little more than putty in the hand of judge who is able to shape the outcome of a case based on his personal biases.

CRITICISM OF AMERICAN REALIST SCHOOL:

1. The realist approach to jurisprudence also criticizes by many jurists. The critics claim that the advocates of realist school have completely ignored the importance of rules and legal principles and treated law as a collection of court decisions. Undoubtedly, judges do contribute to law-making to a certain extent but it cannot be forgotten that their main function is to interpret the law.
2. Another criticism against realists is that they have totally neglected that part of law which never comes before the court. Therefore it is mistaken to think that law evolves and develops only through court decisions. In fact a great part of the law enacted by legislature never comes before the court.
3. The supporters of realist theory undermine the authority of the precedent and argue that case law is often made 'in haste', without regard to wider implications.
4. Realist school has exaggerated (represented as better) the role of human factor in judicial decisions. It is not correct to say that judicial judgments are the outcome of personality and behavior of the judges. There are a variety of other factors as well which has to take into consideration while reaching his decisions.
5. The realist theory is confined to local judicial setting of United States and has no universal application in other parts of the world like other schools of jurisprudence.

CONCLUSION

It cannot be denied that the realist movement has made very valuable contributions to jurisprudence. Their approach to law is in a positive spirit and they are not concerned with any theory of justice or natural law. They say that 'certainty of law' is a myth. They plead (beg) for a comprehensive approach and examination of all the factors that lead to reaching a decision.