



Preface

The Importance of Legal Theory:

One may recall what Francis Bacon said many years ago: “Reading makes a Full Man; Conference a Ready Man and Writing an Exact Man”. I would like to take the liberty to slightly modify this hallowed statement by making it applicable to the legal profession in the modern context by stating, L.L.B. Degree makes a full person; the calling for profession a ready person and knowledge of legal theory an exact person.

There is a common feeling amongst the practitioners of legal profession that, what really matters for them in the routine of the practice of law is the statutory provisions, the rules of procedure and the decided case law. They further tend to believe that theory and especially the philosophy of law which we have come to accept as legal theory has no much relevance and use in their day to day busy schedule. It is submitted that this notion is highly erroneous. It is legal theory that is at the foundation of any legislation and every such legislation can be sustained in a court of law if it has a strong basic support of theory which is further backed by social acceptance. Also legal theory or jurisprudence as a subject of study has been prescribed in the syllabi in most of the Universities in the Common Wealth Countries as part of the L.L.B. curricula which further reinforces the arguments in support of the importance of the subject and with the additional expectation that, a deeper study of it will help create accomplished professionals. However,

it is observed that lack of relevant and authoritative material which is presented in a simple and easily understandable language and with appropriate illustrations, has discouraged some students to stay away from taking interest in this subject. It must be impressed and without any hesitation that knowledge of legal theory will greatly help the students of law as well as professionals to attain capabilities for a critical analysis of the legal provisions when they are put into application. Only deeper knowledge of theory will take a person to higher levels of attainment which will further help in obtaining recognition and respect in one's professional career. In this connection one may quote with approval the opinion expressed by Kahn Freund many years back, but highly relevant today's world that, 'any serious academic discipline must entail instilling in the student a capacity for critical thought'¹ and he further states that, legal education must be combined with other disciplines and that law must be taught in its context, social, political and theoretical².

The Role Played by the Bar Council of India

During the last three decades, the Bar Council of India has made a very strong and appreciable attempt to introduce and nurture a highly professional Five Year L.L.B. Degree programme and has prescribed for study in the law syllabi, courses in Sociology, Political Science, Economics History and Languages, just to ensure that law should be studied and understood in its context just as Kahn Freund has suggested. This further provides a challenge to Legal Theory as a subject of study to evolve an interdisciplinary approach and thus provide a foundation for linking law with other disciplines like Sociology, Political Science, Economics, History and Languages. This again will tend towards creation of theoretical and critical linkages with the above disciplines and thus further help in the process of interpretation and the application of the law. Today, students are

1. *Reflections on Legal Education*, (1966) 29 M.L.R. 121.

2. *Ibid.*, 123.

required to study many modern and challenging subjects like, Taxation, Corporate Law, International Trade Law, Intellectual Property Rights, Competition Law, etc. hence the justification for adopting interdisciplinary approach and for achieving which, Legal Theory will have to play a pivotal role. It is for this reason that any reformulation of Legal Theory today must not only acquaint the students with its theoretical background, but also show how this has been applied in this dynamic and fast changing world of today. In these Lectures, an attempt has been made to connect Legal Theory to the real situation, that is, the law in society context. This approach will be useful for the professionals as well as to the students studying law and help them to understand the fundamentals of the legal system and at the same time acquaint them with its operation in a given society.

Legal Theory Incorporates the Philosophy of Law

The study of legal theory it is said, involves the study of general theoretical questions about the nature of laws and legal systems, about the relationship of law to justice and morality and about the social nature of law. It is also said that it involves a proper discussion on questions such as those which involve the understanding and use of philosophical and sociological theories and their application to law. A study of jurisprudence should encourage the student to question assumptions and to develop a wider understanding of the nature and working of law³. Hence, for the students of law, who are required to study legal theory as a subject, it should not be made to appear that the subject is only a collection of the wisdom and thinking of persons who lived in the past. The center of focus for the study should be the contemporary law and the manner in which it is applied and interpreted in our society today. There have been very enlightened judgments delivered by the Supreme Court of India and the High Court in each State, as also the House of

3. Lloyd's, *Introduction to Jurisprudence*, 9th Edn., 4.

Lords in England and the Supreme Court of USA. It is essential that we analyze these judgments from their theoretical point of view and place them before the student community for their enlightenment and critical application. This approach will lead to animated discussion and critical analysis of issues involved and not merely accepting the proposition as it is. This would also make a student arrive at definite and confident conclusions regarding the veracity of the stated theoretical propositions, regarding their relevance to society and their futuristic applications. This approach will make the students take deeper interest in the subject and it will also further hold them in good stead when they take up matters before the courts and tribunals as professionals.

The Purpose of Publishing these Lectures

*In publishing these Lectures, it will be the endeavour of this author to ensure that there is a proper amalgam of philosophical considerations, theoretical applications and the practical solutions that would be required to be considered for the proper application of legal theory to different situations. It is hoped that this approach will be appreciated by all concerned, that is, the teachers teaching the subject, students of law and the professionals. Further, this exercise is undertaken at the request of **TAXMANN** Publications who have readily agreed to publish the same with the larger objective of making the learning of Law easy for students.*

A Tribute to late Professor Surya Prakash Sinha

While serving as the Principal, University Law College, Bangalore, and involved in the teaching of Jurisprudence, this author had the privilege to communicate with late Professor Surya Prakash Sinha of Pace University, New York, USA. We appreciated and greatly valued the book he wrote on Jurisprudence, Legal Philosophy (In a Nut Shell) as very useful to those teaching jurisprudence and specially to the students

studying law. When we conveyed our appreciation to him, he was pleased to learn about our views and it was decided to jointly write a book on Legal Theory which would greatly help the modern day Indian students of law. That was in the late nineties of the last century. In the year 2002, this author had to take up the post of Vice Chancellor of Gulbarga University, Karnataka State, and the busy schedule there somehow created a break in the communication. On return to Bangalore in 2006, after completing the assignment, it was learnt to one's great sorrow and dismay that Professor S.P. Sinha was no more. In preparing these lectures, much inspiration has been drawn from his above mentioned work, have made profuse references to it and gratefully acknowledging the same. This work is devoted to his cherished memory. If he was with us today, he would have happily collaborated in this work as was decided when he was alive. It is hoped this will help keep his memory alive and also make the readers refer to his original work to appreciate the scholarly contribution he made to the subject of Jurisprudence.

The Role of Teachers Teaching Legal Theory

Every teacher teaching Legal Theory subject faces the problem of summarizing the vast material available on the subject. They also have the task of completing the syllabus within a definite time frame. In view of this, they must rather rely on the intelligence of the modern-day students by directing them to the vast reservoirs of knowledge that are available on the subject and which have been subjected to critical analysis and documented. Students should be guided by their teachers to drink deep of the available literature and return to them to discuss the issues involved. It is a happy augury that, over the last four decades students have appreciated and gratefully acknowledged the method adopted by this author for teaching this subject. Their persistent request for a book to be written on the subject could not materialized due to heavy administrative

responsibilities entrusted along with the teaching schedule. It is hoped that this work will come up to the expectations of the present-day generation of students. To inculcate greater interest and to inspire them for research, questions have been added at the end of each Lecture as exercises to be done. The students can write out their answers and submit them to their respective teachers for evaluation. This exercise will greatly help them to acquire confidence in the subject and face the examinations successfully. I wish them the very best in the pursuit of acquiring knowledge which will help them to excel in whatever field they undertake.

Last but not the least, my special thanks are due to Ms. Nethra M.R., for meticulously doing the data operation work by working beyond the normal hours of duty and also patiently looking after the other details.

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