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Dr. Venugopal B. S.

Jurisprudence

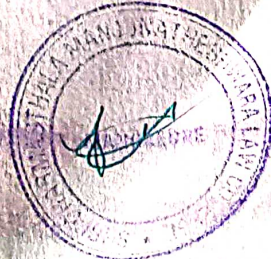
(With an Outline of
Native Indian Jurisprudence)

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Jurisprudence
[With an Outline of Native Indian Jurisprudence]

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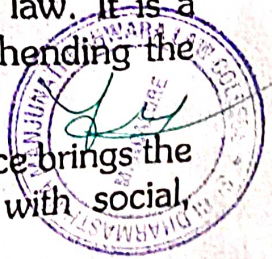


Foreword

Dr. Venugopal B. S. has made an admirable contribution to the study of law through this unique and comprehensive book on Jurisprudence. As an experienced law teacher who taught the subject for several decades, he has written the book from the Indian perspective and made the study of the subject simple, interesting and rewarding. I am happy to subscribe this Foreword to the work and wish all the best for his academic endeavour.

Jurisprudence gives valuable insight and philosophical input about law, legal system, legal institutions, legal concepts and law's relation with society, morality and goal of justice. It enables to understand the wisdom underlying the value system of law. As a science of law, it systematically synthesises essential principles of law and shapes a method of study of law. In the long past study of law was mere preparing for the legal profession by equipping with essential knowledge of law, and study of legal theory or knowledge about law was neglected. Along with realization that a systematic study about law in its theoretical aspects is essential to know the complex functioning of the legal system as related with other social factors, study of 'Jurisprudence' as a subject entered into the legal curriculum. Inter-disciplinary study of law by application of other social sciences such as economics, sociology, political science, anthropology, etc., helped better understanding of legal precepts. The subject of jurisprudence is ever-growing with new ideas, new analysis and newer thoughts as the new schools of thinking and scholars have tried to think about law from the perspectives of changed social conditions. Sociological school, Realism, Critical Legal Studies, Feminism, Racial Studies and Postmodernism have enriched jurisprudence with new thoughts, philosophies and approaches. About the role of law in social transformation, on the concept of justice and methods of attaining it, on empowerment of the vulnerable and law's response to technology and globalization these schools have unravelled new ideas. Regarding the interface with morality, culture and tradition, novel propositions and approaches are offered. Changes in ideologies have also shaped jurisprudential thoughts. The approaches of legal systems about purpose of punishment, goals of administration of justice, concepts like rights, ownership, possession, property, personality and liability have undergone change. Jurisprudence has either initiated or responded to the change process. The changes that have occurred in procedural law expanding the locus standi and streamlining public interest litigation through judicial activism have also jurisprudential basis. Traditional law on precedents - stare decisis - has been relaxed to meet the requirements of dynamic growth of the judicial process. Hence, new books and new editions on Jurisprudence are valuable intellectual resources in learning the law. It is a strength of this book that it has engaged in satisfactorily comprehending the developing aspects of jurisprudence.

The 'jobs' that jurisprudence does are several. First, Jurisprudence brings the advantages of inter-disciplinary study of law. Law's interface with social,



economic, political conditions and the inputs from history, anthropology and psychology expose study of law to pragmatism and experience-based learning. The concepts like manufacturer's liability, approaches to the issues of LGBTQ, moral aspects of reproductive rights, euthanasia, etc., cannot be studied exclusively in a legalistic manner. A study of the positive right to basic necessities of life cannot escape from the study of economics and sociology. Jurisprudence introduces the students to the gains of inter-disciplinary study. To put in the words of William Twining a jurist is a conduit to funnel the social experiences to the domain of law. Secondly, the working theories about law, its institutions and functioning get improved, modified and restated in the light of grass root experiences of legal system's participants. In building big theories, it is a stepping stone. Thirdly, it enables critical analysis of the legal concepts, their application and impact upon the society. It enhances the mental capacity of law students by training in the process of analysis. Its exhortation on justice works as a conscience keeper of workers of law. Finally, by emphasising on ultimate purpose of law it frees the legal system from excessive formalism and blatant injustice. The book by Dr. Venugopal cites historical experiences, modern examples of legal development, literary resources and lessons of daily events in order to give an up-to-date account of Indian jurisprudence. He deals with the issues of homosexuality, adultery and restraints on women's entry to temples from multiple perspectives, and demonstrates how a legal issue should be examined. His point that jurisprudence has educative value is fully convincing.

A unique feature of Dr. Venugopal's book is that it unfolds Indianness of jurisprudence. It is true that jurisprudence has universal values transcending the boundaries of jurisdictions. But its interstices are to be filled with national or local experiences. The author used the Indian case law or statutes in developing the themes of jurisprudence. This is comparable to what eminent authors of Jurisprudence in the West - Salmond, Paton, Holland, Dias, Bodenheimer, Roscoe Pound - have done in explaining the concepts and analysing the issues. Indian examples effectively drive home the points of discussion. He goes one step ahead by including a part "An Outline of Native Indian Jurisprudence". Considering the fact that exposure to rich treasure of knowledge about dharma, law, justice, morality, fair procedure of a legal system flourished in ancient times and continued as inspiring values even today is essential for legal education, due importance given to the topic in the book is highly justified. There is loud thinking about Indianisation of the legal system at the level of policy makers and even in judicial discourse. The National Education Policy 2020 has a clear agenda of introducing the elements of dharma, culture and Indian legal system's features - both ancient and medieval - and upgrading the learning of law by such inclusion. It is not a mere matter of national pride. It is a step of decolonising the mind from the western ideas of materialism and developing indigenous jurisprudence reflecting national aspirations without losing the opportunity to know about alternative ideas and visions. Further, some of the problems faced in India are

legal personality of idol or deity do not find parallel in other systems. Dr. Venugopal has done an excellent task of not only by explaining the ancient Indian legal system but also by discussing the progressive development of Indian law in modern times. Public Interest Litigation, legal aid, human rights jurisprudence, feminist jurisprudence and criminal law reforms have been showcased to demonstrate the dynamic character of Indian legal system in a befitting manner. It is creditworthy achievement of Indian judiciary and the legal system that unique principles such as basic structure doctrine, PIL, positive rights, cooperative federalism and grass root democracy have been evolved with great imagination falsifying the allegations of imitation. Dr. Venugopal has good justification to state, "The Indian judiciary through judicial activism has put a robust foundation for the development of Indian jurisprudence on progressive lines." The ethos and spirit of the legal system can be understood by the readers only with an exposure to these discussions. Dr. Venugopal's exposition of schools of law is exhaustive and in-depth but not unduly elaborate. His simple and clear discussion will enable the readers to appreciate better the core philosophy of each school and their relevance for India.

The discussion on relation between law and culture is another place where the Indianness of the legal system and issues relating to law and morality are discussed. In a multicultural society like India with diverse traditions and cultural practices, the challenges relating to conservation of culture and social reforms are to be responded in a pragmatic manner. The author refers to the trajectory of cultural developments through Bhakti, Sufi, Ball and Reform traditions and points out the inclination for social harmony and human rights. Law is part of culture and reflects culture. Stripping of faults of culture and developing legal culture are the challenges faced by the society. Some insights can be found in this analysis. Use of ancient resources in interpretation of law and the Constitution reflects judiciary's orientation to culture. The chapter on 'Law and morality' addresses the traditional debates on role of law in the moral spheres. His classification of law is systematic and comprehensive. His explanations are up-to-date.

While discussing about legislation as a source of law, Dr. Venugopal touches on the creative role of legislature, merits and demerits of codification, principles of interpretation and place of legislation in the legal system in bringing social changes. His discussion on precedents encompasses both the English and Indian law of precedents. The discussion on Article 141 of the Constitution is illuminating. In discussing about custom as a source of law he takes the readers to constitutional and social dimensions of customs.

The discussion on legal concepts is the subject matter of the final part of this work. In the chapter on 'Persons' discussion ranges from entities of legal personality and theories of recognition to legal person to the issues of corporate personality and unincorporated associations. The discussion on lower animals, unborn persons and idols throws light on legal position and problems in India.



The author engages with a very exhaustive discussion on concept of legal right, Hohfeldian relations, kinds and characteristics of rights. Discussion on Titles, Ownership and Possession is enlightening with illustrations through interesting case law. The author brings out the Indian development of right to property in the light of repeal of property right from the chapter on Fundamental Rights along with discussion about the basis of property right, the power of the State in the matter of property and various theories about property. The chapter on Liability has a special focus on the Indian concept of absolute liability in circumstances of environmental pollution, which dispenses with the requirement of fault. The chapter on procedural law discusses the growth of procedural fairness as a concept and a human right requirement from the distant past to the present.

The style of writing in this book is attractive as it is simple, lucid and elegant. The illustrations and explanations are student-friendly. The level of discussion is on higher plane. The coverage is exhaustive and suits the requirement of new syllabus under NEP 2020. No other book on Jurisprudence is providing so much of elements of Indianness as this book does. But as a text book it is to be supplemented by reference works. I am wholeheartedly congratulating Dr. Venugopal B. S. for using his superannuation days creatively and producing an excellent work which fills the gap at present. I wish him all the best in his endeavours and recommend the book to law teachers, legal education centres and students for receiving it as a valuable resource for the study of this fascinating subject. I have no scruple to say that this book is helpful to law students at graduate level, post-graduate level and the general public.

Ishwara Bhat

Date: 07-04-2022

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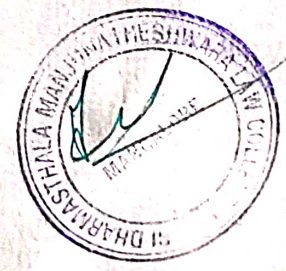
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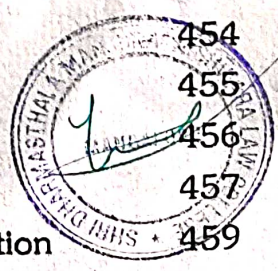


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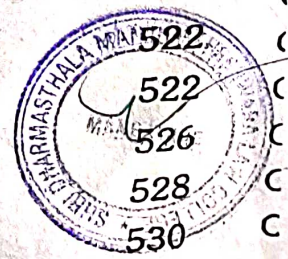
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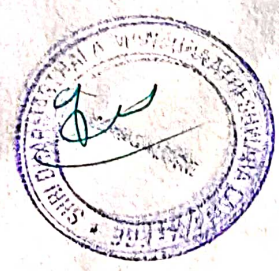


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