

AN INTRODUCTION TO JURISPRUDENCE (11th ed. 1988). By Dr. B.N. Mani Tripathi. Allahabad Law Agency, 9 University Road, Allahabad. Pp. xvi+367. Price Rs. 50.

THE BOOK under review<sup>1</sup> is on jurisprudence which is an ancient social science but its contents are dynamic and complex in nature. Jurisprudence is of utmost importance and significance for human beings in society. The ambit of jurisprudence has kept changing, for the subject is vast and comprehensive embracing within its ambit politics, sociology, philosophy, political theory and thought, economics, logic, ethics and anthropology. Moreover, the subject of jurisprudence endeavours to make itself as scientific as other physical sciences are supposed to be.

Jurisprudence is a particular method of the study of law; it is not concerned with a specific legal system or law but deals with the general notion of law itself.<sup>2</sup> Jurisprudence as a matter of fact is concerned with thought about law rather than with the knowledge of the law of any particular legal system.<sup>3</sup> A salient feature of the history of jurisprudence is that right from Plato to the nineteenth century roughly up to the time of Hegel, jurisprudence was studied as a part of philosophy.<sup>4</sup> Thus one of the important purposes of the study of jurisprudence is to understand and highlight the basic philosophy of law. Jurisprudence like metaethics is not intended to make recommendations of policy. Its function is to clarify discourse.<sup>5</sup> It is concerned with generalisations about law at the highest level of discourse on the subject.<sup>6</sup> The primary function of jurisprudence is to express and increase the knowledge of law. This increase not merely for itself, but also by its suggestiveness to scholars and lawyers to construct theories about any of the particular fields of law and by a direct contribution to the practice of law.<sup>7</sup>

The complexity and vastness of the subject has always intimidated both students of law and scholars. But Tripathi's work is one of the best books written by an Indian in this complex field. The book is in its 11th edition; and this is testimony to its popularity among the students of law in India. As the author states: "The work is in no way original. However, the conclusions drawn at the end of the chapters or topics are not all traditional and borrowed. At places I have given my own views and latest trends have been pointed out."<sup>8</sup> The author's primary object in writing this book is for the use of LL.B. and LL.M. students of Indian universities. The book is also

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1. B.N.M. Tripathi, *An Introduction to Jurisprudence (Legal Theory)* (1988) hereafter referred to as Tripathi.

2. G.W. Paton and David P. Derham, *A Textbook of Jurisprudence*, 2 (4th ed., 1972).

3. Dias, *Jurisprudence*, 4 (4th ed., 1976).

4. Jerome Hall, *Foundations of Jurisprudence*, 10 (1973).

5. *Id.* at 2.

6. *Id.* at 13.

7. *Id.* at 2.

8. Tripathi at vii.

expected to be useful to students preparing for various competitive examinations for the civil services in India.<sup>9</sup> The scope of the subject is vast and the author has attempted a comprehensive work using western material as well as ancient Hindu law material.

The book is divided into five parts and thirty-five chapters, including seven pages of index at the end of the book. The author claims that the 11th edition is extensively revised. Two new chapters in the first part of the book entitled "Communist Legal Theory" and "Hindu Legal Theory" have been added. The book also contains an excellent foreword by Prof. P.K. Tripathi who has cogently remarked: "The book gives careful and accurate treatment to the various topics discussed in it. This is by no means an insignificant merit for a text-book on the subject of law, especially on jurisprudence, these days in our country; and this should be sufficient, in itself to distinguish this book from others that are being catered to the students."<sup>10</sup> The language and style are simple in keeping with the needs of the Indian student.

Part I of the book is in ten chapters (I to IX-A). In the introduction the author refers to the difficulties in defining the subject.<sup>11</sup> The author refers to some definitions including Ulpian, Blackstone, Bentham, Austin and Holland, but overlooks Julius Stone, a great jurist of the present century, who has given us an ecumenical definition providing a pluralistic and interdisciplinary approach when he states jurisprudence is "the lawyer's extraversion. It is the lawyer's examination of the precepts, ideals and techniques of the law in the light derived from present knowledge in disciplines other than the law."<sup>12</sup> This approach emphasises the importance of all the approaches like natural law, analytical, historical, sociological or philosophical jurisprudence.

After discussing the problems of definition and the nature of the subject the author briefly discusses various schools of law including Analytical School, Historical School, the Sociological School, the Realist School, the Pure Theory of Law, the Natural Law, the Hindu legal theory and the Communist legal theory. The brevity and simplicity in dealing with the subject in this part will ease the burden of learning of students.

Part II of the book deals with the concept of law, kinds of law, the relationship between law and morals, the definition and elements of a state and the theories of the origin of the state, the concept of sovereignty and the administration of justice.<sup>13</sup> In this part Chapter XVI on the administration of justice is well written but very scanty material is presented on the theories of the origin of state and the concept of sovereignty.

The best part of the book is Part III which comprehensively discusses the sources of law. In Chapter XVIII the author discusses customs as a source of law and lucidly describes the origin and the nature of custom, its importance,

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9. *Ibid.*

10. *Id.* at v.

11. *Id.* at 1-3.

12. Julius Stone, *Legal System and Lawyer's Reasonings*, 16.

13. Tripathi at 71-121

reasons for its recognition, its classification, and the essentials of a valid custom. Apart from discussing the western views about custom he incorporates the Hindu law view about custom which educative and refreshing to an Indian reader. The Hindu law view is given in its original Sanskrit along with English translation. The importance and utility of custom is well recognised under the Hindu law. For instance Manu says: "One should follow the righteous path that has been followed by one's ancestors. By following that path, one does not suffer." And according to Narada: "Usage is indeed powerful. It overrides the law."<sup>14</sup> Such views rightly and vehemently describe custom as a source of law. Moreover, it becomes amply clear that the Hindu view of custom that it overrides the enacted law is still the accepted notion, and even western jurisprudence acknowledges custom as the best source of law.

Chapters XIX to XXI deal with precedent as a source of law. Here the author cogently discusses the importance of precedent as a source of law, both from the western and the Indian points of view. He describes two positions on the question: Do judges make law? With the help of Indian materials, including Supreme Court judgments, he rightly opines that "both the views [that they do and do not make law] regarding the function of judges contain only partial truth. Whether judges make or declare law depends on the nature of the particular legal system."<sup>15</sup> Chapter XXII deals with legislation as a source of law. In this chapter he points out the reasons and the necessity for delegated legislation, and the dangers it poses. The author ably points out that in India parliamentary control over delegated legislation has not been effective whereas the judiciary exercises effective control.<sup>16</sup> The author further discusses statutory interpretation as a source of law.<sup>17</sup> Here, apart from the general rules of interpretation which are presently applied by the courts, he has also highlighted the importance of *Mimansa* rules of interpretation as applied in ancient Hindu law.

Part IV of the book discusses concepts of the law like, Rights and Duties, Persons, Possession, Ownership, Liability and Property as is generally done in many other books on jurisprudence. The author claims to have discussed 'New Developments: Socio-Economic Philosophy'<sup>18</sup> in Part V of the book. But this part merely contains some extracts from the Constitution of India, various amendments of the Constitution, and extracts from the reports of the Legal Aid Committees. It is therefore more in the nature of an appendix than a discussion.

With the shortcomings that are bound to be part of any comprehensive work in so vast a field, this is a welcome work, and will definitely prove useful to students of law. The printing leaves much to be desired, but there is some

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14. *Id.* at 127-28.

15. *Id.* at 169.

16. *Id.* at 184.

17. *Id.* Chapter XXIII.

18. *Id.* at 304-60.

compensation in the moderate cost at which this publication is priced, making it accessible to the student community.

*Harish Chander\**

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\* B.A.(Hons.), M.A. (Social Work), LL.B. (Delhi) Academic Post-graduate Diploma in Law (London), LL.M. (London). Reader in Law, Law Centre II, Faculty of Law, University of Delhi, Delhi.