

# Kathmandu School of Law Review

ISSN 2091-2110

Volume 2

Issue 1

April 2013

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# **The Cabbage We Know as Jurisprudence: A Composition of One Layer upon Another**

**Kamal Raj Thapa<sup>1</sup>**

*This article is a narrative on the scope of jurisprudence, its scope and limitations that have to be analyzed in the light of the divisions and classifications that have penetrated the discipline. It relates the genesis of the confusions and complexities observable in jurisprudence, mostly pertaining to its definition and basic elements in which the former, seemingly, has no consensus. Various intellectuals and schools of thoughts have sought to explain the province of jurisprudence from their own confined approaches, including the popular positivists and naturalists whose idea of law is altogether divergent. Moreover, the historical, sociological, realist and economic schools have both solved and added to the complexities. However, the essence of the article is that jurisprudence, both in its scope and understanding, is extremely broad. Scholars and students in particular, need not confine their understanding to what is postulated earlier as to what jurisprudence means, rather are encouraged to comprehend the layers thoroughly and apply the fundamental tool of science, i.e. logic, and urged not to negate the significance of associating legal theory with social phenomena.*

Inviting the famous author, H. L. A. Hart, to enter the crux of the dispute in jurisprudence: 'Few questions concerning human society have been asked with such persistence and answered by serious thinkers in so many diverse, strange, and even paradoxical ways as the question 'What is law?''<sup>2</sup>

The French term, *la jurisprudence* limits within the case law thus is not attractive. The roman term, *jurisprudentia* denotes knowledge of the law. Semantic meaning of jurisprudence is the knowledge of law. Jurisprudence may be defined as the wisdom of law,

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<sup>1</sup> Adjunct Assistant Professor at Kathmandu School of Law, Nepal.

<sup>2</sup> H. L. A. Hart, *The Concept of Law* (2<sup>nd</sup> edn, Oxford University Press New 2002) 1.

or the understanding of the nature and context of the legal enterprise.<sup>3</sup> It studies the legal concept, subject matter of the law, the nature and the periodic development of the law and extend to emphasize not only the law, but also equally generalize the relatives without which the law and the legal system cannot survive, such as morality, religions, politics, economic values etc. Legal theory encompass the broad philosophy and ideology such as justice, liberty, rights, international regime, to name a few. Some of them are not the concerns of positivist jurists, Austin in particular. Systematic study of law was named jurisprudence since it is entirely a philosophy, includes the concept of law. However, the conventionalism has been abandoned and jurisprudence enjoys the methods as systematic study of the law and the faculties or the ingredients. It is not pure legal as the nature of jurisprudence has been revolutionized and is currently incorporating multidisciplinary approaches such as economic and political analysis of law. For long, jurisprudence was exploited to rule the people, nevertheless, in present world it symbolizes rule of humans, rather than rule by law (rule by qualitative law).

Divergence in the theory is fact, interestingly and equally emphasis has been given to the systematic study or to the methodology. It is a discipline as others with study of the law as the central issue, but is not detached from people and society. To that, a naturalist, Fuller conforms:

The law has indeed been said to be the only human study having no distinctive ends of its own. Where its ends can be regarded as grounded in reason, and not brute expressions of political power, those ends must be derived not from the law itself but from ethics, sociology, and economics. If it is empty of ends, the law can hardly be said to be attractive in the means it employs.<sup>4</sup>

Limitless freedom that depends on the labor and the ability of contributor who can influence jurisprudence has been welcomed since it is based on logic and reasons. Hence it is the science but particularly the science of the logic relating to the legal world. Variety is quite common, hundreds of contributions snitch in the subject. There are conflicts, struggles and quarrels to survive between the groups of jurists. Speaking in a strict and extreme term, jurisprudence comprises of their accounts, verifies, scrutinizes and examines them as well. Putting it simply, jurisprudence means reading thinkers like Aristotle, Cicero, Hart, Fuller, Finnis, Austin, Bentham, Maine, Pound, Holmes and others and in this sense is the thought about thought as Dias affirmed. Jurisprudence, a realm of logics and reasons which culminates in the pick by dominating other, is an endless process by which jurisprudence synthesizes itself. Some related it with Hart-Fuller debate, Holmes-Laski letter and Hart v. Devlin and some stress over Dhyani<sup>5</sup>. Students must pay interest to the ways in which

<sup>3</sup> Wayne Morrison, *Jurisprudence: from the Greeks to post-modernism* (First Indian Reprint, Lawman Private Limited) 2.

<sup>4</sup> Lon L. Fuller, *Anatomy of Law* (Penguin Books Ltd 1968) 11.

<sup>5</sup> Which reflects in writing of Dhyani that reads'...of legal scholars are rotting and rotating around such juristic theories knowing not that the law of a society and law of life can neither be logical devoid of

luminaries pose it. Thus, J. M. Kelly offers that jurisprudence is the accumulated wisdom of great thinkers of the past. Jurisprudence is neither limited to the Austinian concept of law nor is bounded within the Holmesian concept of judge made law. It is more than the debate between Hart and Fuller or Hart and Dworkin. In this sense, the matter of jurisprudence is beyond the so-called boundaries and beyond the control of Universities' and Institutions' works on the field. Therefore, jurisprudence is synonymous to reading a bulk of literature which poses both problems of uncertainty and opportunity. Paton has ridiculed it in these words 'The breadth of its scope, covering a voluminous literature written in many tongues, make it a difficult subject to master. There is a danger that excessive learning may obscure the real problems that must be faced<sup>6</sup> while Dias considers it an opportunity as he mentions 'indeed, jurisprudence might well be described as the lifemanship of the law. No one can be a good lawyer who only knows law.'<sup>7</sup>

It is the systematic study of the law and legal system. It invites the social consensus and phenomenon equally<sup>8</sup> and invites natural climate<sup>9</sup> that does not necessarily avoid the political authority. mentioned along with the different notions and thought, carried sufficiently on it which is regarded as the property of jurisprudence. Precisely, it has a shape but indefinable. It has a general framework like a cabbage which has a round shape in general but is composed of layers and layers. A Cabbage is well-known for its layers and its price is determined by its layers. Similarly, jurisprudence is composed of layers in form of its schools of thought, trends and approaches. Even a single layer, for example, positivism is a fabric of hundred of contributors and philosophers such as Bentham and Hart among others.

A famous aphorism states that 'jurisprudence is a word which stinks in the nostrils of a practicing barrister<sup>10</sup> is no longer relevant as it is gradually becoming the equipment of lawyers. 'Jurisprudence ... is best seen in terms of the lawyer's extraversion .It is the lawyer's examination of the precepts, ideas and techniques of the law in the light derived from present knowledge in discipline other than law.'<sup>11</sup>

Professional approaches to jurisprudence in an extent is advanced, as Stone says, and not exactly limited as critically tackled by Dworkin who attempts to postulate a comprehensive semantic theory. Jurisprudence is the general part of adjudication and a silent prologue to

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moral values not can it be shaped as a mechanical process merely be balancing of interest. At the same time a study of jurisprudence cannot be an ivory-tower exercise'. See S N Dhyani, *Fundamentals of Jurisprudence, the Indian Approach* (2<sup>nd</sup> edn, Central Law Agency 1997) 2.

<sup>6</sup> G W Paton, *A Textbook of Jurisprudence* (4<sup>th</sup> edn, Oxford University Press 1972) 1.

<sup>7</sup> R M W Dias, *Jurisprudence* (5<sup>th</sup> edn Aditya Books Private Limited 1994) 15.

<sup>8</sup> At the present as well as at any other time, the center of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision but in society itself.

<sup>9</sup> Fuller claims that he law is like the weather. It is there, you adjust to it, but there is nothing you can do about it except to get under cover when its special kind of lightning strikes. See Fuller (n 1) 12.

<sup>10</sup> Richard A, Cosgrove, *Scholars of the Law* (Universal Law Publishing 1996) 2.

<sup>11</sup> Julius Stone, *Legal System and Lawyer's Reasonings* (Universal Law Publishing 2004) 16.

any decision at law.<sup>12</sup> Dworkin concentrates on the interpretative theory, however he proposes a solution for the ground of law as well as the force of law. He says that 'A general theory of law therefore proposes a solution to a complex set of simultaneous equation.'<sup>13</sup>

Jurisprudential study is the 'thought about thought'. Its overall aim is not to teach students what they need to know, but how to think profitably for themselves and to educate and equip to be efficient lawyers<sup>14</sup>. The question to ask is not what is jurisprudence but how to use it.<sup>15</sup> In the words of Gray, the real relation of jurisprudence to law depends not upon what law is treated, but how law is treated.<sup>16</sup> Morrison, recognizing the uncertainty of definition, attempts to explain the wisdom of law, which offers the diversity to understanding of legal issues by telling the truth about law. He lubricates the problems in which jurisprudence poses the question by prescribing self inquiry or reflexivity. In his words, reflexivity is the process whereby the action of the questioner, or the conventions of the tradition in which the questioning takes place in an effort to become more self-conscious. Then obviously it is the process to questioning by which some tries to culminate over other, like legal positivism dominance over natural law and realism. And numbers of methods are utilized to generalize the law and nature of law. The concluded is that jurisprudence is oriented towards clarification, towards making us wiser regarding law and legality, but diversity threatens to creator incoherence and bewilderment.

Jurisprudence is not merely a study of abstract ideals which governed human conduct during different periods or a set of concrete rules based on determinism and induction, it is also a value oriented method to resolve varying social interests which call for legal recognition and enforcement. It is indeed an intellectual inquiry and exercise concerning the nature of law and basic function of law, the relationship between law and justice and law and morals etc.<sup>17</sup>

Jurisprudence as celebrated as the philosophy of law, attempts by theoretical explanation or by reflexive examination to establish the common, reasonable or beneficial or basic legal virtues because philosophy attempt the unanswerable question of human life. Philosophically, it takes place to finds the truths of unresolved question of law, legality and legal phenomenon. Jurisprudence as philosophy of law scopes the knowledge of things diving and human, the knowledge of the just and unjust<sup>18</sup>. As a philosophy, it generalizes, studies and examines it from the different perspectives which offer a coherent and correction to the general understanding of dictionary meaning as widely believed that a

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<sup>12</sup> Ronald Dworkin, *Law's Empire* (Universal Law Publications 2008) 90.

<sup>13</sup> Ibid 110.

<sup>14</sup> Dias (n 7) 5.

<sup>15</sup> Ibid 6.

<sup>16</sup> Ibid 8.

<sup>17</sup> Dhyani (n 5) 1.

<sup>18</sup> Holland, *Jurisprudence* (13<sup>th</sup> edn, Universal Law Publishing 2004) 3.

philosopher, in short, is not simply a reporter of usage but is also often a corrector of usage. The philosopher is concerned with adopting an analysis of a particular legal concept that is as clear as possible, that explains why the concept is used in the way it is, and that meshes in a logically coherent way with other crucial concepts to which the concept in question is systematically related. Dictionary definitions often define a philosophically puzzling term, for reference the *Webster's* definition of law.<sup>19</sup> Defining the jurisprudence is itself a problem, due to differences in application and an attempt to keep it within their interested boundary. Like for positivist jurisprudence is the study of sovereign's law in contrast but for naturalist, it is the study of master rules which dictates the human law.

Lawyer refers to jurisprudence for its established principles. Professor of law believe that it is the philosophy, methodological and substantive facade of law. This signifies that jurisprudence is ultimately a portmanteau term.

Legal Theory as a new phenomenon is associated to jurisprudence, studies about the law in relation with extra legal discipline, to that conventionally, jurisprudence neglected for a long; like politics and law and economic and law and pragmatism, empiricism and so on. As W. Friedmann expresses:

...legal theory is linked at one end with philosophy and, at the other end, with political theory. Sometimes the starting-point is philosophy, and political ideology plays a secondary part—as in the theories of the German classical metaphysicians or the Neo-Kantians. Sometimes the starting-point is political ideology, as in the legal theories of Socialism and Fascism... But all legal theory as must contain elements of philosophy— man's reflections on his position in the universe—the ideas entertained on the best form of society. For all thinking about the end of law is based on conceptions of [person] both as a thinking individual and as a political being.<sup>20</sup>

Without doubt, its scope is not limited to law but the surroundings and machinery by which law exist, holds on and institutionalizes. Law may be an order backed by sanction, as judge says, a custom. But jurisprudence is the human understanding of regulation of entire life, individual as well as social. Somehow it is furnished by logic which is advanced by reasoning. Scarce resources, time and numbers of the pen and paper were and are invested even though they do not settle the crisis of definition of jurisprudence rather contribute to the rivalry.

Methodologically, jurisprudence is a formal science of law because it is based on the fact as foundation and method. In this regard, Austin is a champion as he defined jurisprudence in this war 'The word Jurisprudence itself is not free from ambiguity; it has been used to

<sup>19</sup> Jeffrie G. Murphy & Jules L. Coleman, *Philosophy of Law, An Introduction to Jurisprudence* (Oxford India Paperbacks Oxford University Press 2004) 3.

<sup>20</sup> W. Friedmann, *Legal Theory* (5<sup>th</sup> edn , Universal Law Publishing) 3.



denote— The knowledge of Law as a science, combined with the art of practical habit or skill of applying it; or, secondly, Legislation,—the science of what ought to be done towards making good laws, combined with the art of doing it.<sup>21</sup>

The realization of jurisprudence varies. Jurisprudence is not *a priori* science of legal relations but is abstracted as *a posteriori* from such relation, clothed with a legal character in actual systems, that is to say, emanating from law which has actually been imposed, i.e. positive law.<sup>22</sup> Holland conclude that the term is wrongly applied to actual systems of law, or to current views of law ... This science is a formal, or analytical, rather than a material one. It is the science of actual, or positive, law. It is wrongly divided into ‘general’ and ‘particular’, or into ‘philosophical’ and ‘historical’. It may therefore be defined ... as the formal science of positive law.<sup>23</sup> Science is the name of systematic generalization which may be derived from observation extending over a limited area and holds relevance everywhere; assuming that object matter of the science is to possess the same characteristics everywhere. As Holland furnishes, the example of Geology, based on English data, can be applied everywhere to the particular environment as same circumstance. Lastly he sum up that jurisprudence as a science is a formal or analytical rather than a material. It is the science of actual or positive law.

Jurisprudence is an inquiry based on the methods to generalize the legal consequences and social pressure to law and legal institution. They are relative, adducing jurisprudence itself mean inviting the society and its economic, political, religious values and morality. Society institutionalizes the law as an instrument to regulate, facilitate and guide the society in totality but law is not extra-social. Social development always has a long course; there are constituting and influential factors and law cannot be observed in isolation of such totality, for example, western civilization and legal development cannot be fully understand without religious influence and its impact on the legal development.

Paton prescribed the term jurisprudence as the synonym of law and a method of study of positive law and law as social mechanism. According to him, law has a twofold aspect: it is an abstract body of rules and also a social machinery for securing order in the community. The sensible approach is to admit that both must be considered. Clearly, if jurisprudence is merely considered theoretical rules of the books, the outcome will be very different from the objective of jurisprudence to study law in action.<sup>24</sup> If we consider jurisprudence as the method to study the law then obviously question, what is law, must arise. Consequently,

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<sup>21</sup> Austin opined that ...the various principles common to mature systems are the subject of an extensive science: which science has been named General Jurisprudence, or the philosophy of positive law... by general jurisprudence, the science concerned with the exposition of the principles, notions, and distinctions which are common to systems of law: ... See J. Austin, *The Province of Jurisprudence Determined* (Indian Economic Reprint, Universal Law Publishing 2010) 372.

<sup>22</sup> Holland (n 18) 9.

<sup>23</sup> Ibid 12 - 13.

<sup>24</sup> Paton (n 6) 2.

jurisprudence is rich in the verities and methods. Therefore the possibility of uniformity is very less and that jurisprudence is a portmanteau<sup>25</sup> is not incorrect.

The tendency of common law and the civil law is quite different in various aspects of law-teaching, law-applying and legal institutions as well. Additionally multi-disciplinary approach is trying to create a link between jurisprudence and other field of study, such as sociology, psychology, economic, anthropology etc, which could contribute substantially to the understanding of law as opined by Lord Radcliffe ‘You will not mistake my meaning or suppose that I deprecate one of the great human studies if I say that we cannot learn law by learning law. If it is to be anything more than just a technique, it is to be so much more than itself: a part of history, a part of economics and sociology, a part of ethics and philosophy of life<sup>26</sup>. Simultaneously there are some modern influences that are shaping the shape of jurisprudence. First, there has been a valuable revival of analytical jurisprudence. Very influentially the debate between the soft case and the hard case are overcoming in jurisprudence which is not only the task of sociologist and naturalist but equally of and even more interestingly addressed by positivist such as Hart and Dworkin. However their focus differs, while Hart focuses on the penumbra and Dworkin focuses on the hard case. Some positivist devote many ink bottles to convince that judges do not make the rules but simply exercise the choices from existed sources. Students are allowed to dislike the debate but not allowed to escape from it. Positive law has tried to remove the ineffective and shortcomings of the study of ordinary language from the preexisting rules. Second, the sociological jurisprudence contributes by inquiring the relationship between law and socio-economic order that places the law in action. Third, there is a spurt in growth of normative jurisprudence, which invites a strong position of justice, rights, liberty, equality, morality. Law and legal theory are being influence by post modernism, feminism and the critics. And finally, an avenue has opened by the revival of natural law posing a debate with positivism. These all are the concerns of the jurisprudence, thus referring to the conceptualization of Freeman ‘Jurisprudence 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.’

Without offering the limitation or puzzle of definition, some clarification about the jurisprudence are: First, it has developed as the discipline of the study, which obviously invites varieties of methods basically traceable in heading of the historical, analytical, comparative and other schools of thoughts which have their own techniques for analysis and the processing of jurisprudential matters, but have the common object that they attempt to understanding the law. So primarily, jurisprudence is the discipline of law. Second, it studies the relatives of law which are society, morality, politics, economics, religion to name a few. This is the ultimate fact, without which no jurisprudence can mature. Of

<sup>25</sup> See Hilaire McCoubrey & Nigel D. White, *Textbook on Jurisprudence* (3<sup>rd</sup> edn, Blackstone Press Limited 1999)

<sup>26</sup> Lord Radcliff, *The Law and Its Compass* (1961) in M D A. Freeman (ed), *Lloyd's Introduction To Jurisprudence* (7<sup>th</sup> edn, Sweet and Maxwell) 1.



course, the approaches are different, for example a positivist studies the morality as secondary, to show that there is no moral obligation and moral judgment. But a naturalist argues to rationalize it as the content of jurisprudence. Positivist study to deny it but sociologist and realist schools have acknowledged it and concluded that jurisprudence is not a super-power guided by God, rather it is the human study, inquiry and knowledge relating to the cause and consequences of legal system, human behavior or the social phenomenon called law. Hence, detachment between law and society is futile. Third, regardless of the influences upon each other, some consciousness of human are true even for jurisprudence, those being liberty, justice, rights and equality among others. These are becoming dominant issues of the jurisprudence, but Austin considered none of them as his business. Notwithstanding this, the agenda of the multidisciplinary approach opens the novel avenue for legal study as sociological jurisprudence is blossoming into an advanced level. For that reason, some positivists are called liberal, soft or social positivists that travel within an Austinian-restricted area.

'Law course is jurisprudence', says Simpson.<sup>27</sup> The saying carries two distinct notions: first, it concerns with general inquiries to legal phenomenon and on the other hand it concerns with obligation or duty. Mainly, it is a theoretical analysis of law.

That jurisprudence is the learning about law is not an ambiguity. It has developed as discipline, moreover is fundamental in subject and does not define any rule or statute or part of it. There is a debate over the realm or scope of jurisprudence as well. For example, Austin limits the scope of law to sovereign law which different from Holmes' postulation of 'judge made law' and together they are different from the 'good law' argument of Fuller and 'rule of economics' conception of Posner. This shows that jurisprudence flourishes on justification and enjoys popularity due to its ability of convincing and captivating just like a movie that become widely acclaimed by the public at large; and sometimes, social behavior demonstrates the authority towards globalization and law, comparable to music, a faculty where acceptance and taste are highly objective. One is a singer and one's composition is a song in one's view, whether the genre is classical, modern, rock etc, but someone else might reject the genre or the song, as a matter of relativity. The scenario within jurisprudence is similar; there is no uniformity due to competitive arguments and criticisms which a law student attempts to comprehend and when he/she is able to comprehend it, naturally, adds his/her own criticisms or makes a new argument altogether.

Most of the scholars do not discuss about the jurisprudence outside the box of limited text book designed for the law student. Thus, it is not too complex a task for law students to

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<sup>27</sup> Simpson has said, 'The subject which features in law course as 'Jurisprudence', or sometimes 'Legal Philosophy' or Legal Theory', mainly consists in either defenses of the ideal as both desirable and in principle attainable, or in claims that it is both pernicious, and impossible.' See A. W. B. Simpson, *Invitation to Law* (Blackwell Publishers Ltd 1988) 51.

understand jurisprudence since they are offered to understand the legal conception at first and override them later.

### **Problems Encountered while Defining Jurisprudence**

The attempt to define the term jurisprudence clearly reflects its indefinable character. It remains shapeless while various predictions were and are made, all personalized or heavily discredited.

There is a pattern, nevertheless. Defining 'Jurisprudence as the name of law course, learning about the law, or skill of law and so on' is problematic since it is just a dictionary meaning. Nevertheless, a course of university seeks to encompass and scrutinize the entire machinery of law or legal system, its rationality and validity. There is a great tension and debate between philosophers regarding its approaches, limitation, process and content. Meanwhile, it expands to cover politics and economics as well. At present, the term jurisprudence is an umbrella under which issues of politics, economic, science, sociology and ethics have gained shelter too. The 'master science' of law is becoming rather shapeless and limitless due to this expansion. While there is no entity such as a 'censor board' that is entasked with setting standards and limits on jurisprudence, it is not necessary to set an entity or boundary as regards jurisprudence since the limitation is impractical, and this idea has been supported by Dworkin when he says 'old paradigms are broken and new paradigms emerge.'

Some significant and considerable issues are present within the body of jurisprudence which pose problems to its definition. Referring to Dias, First, contextual applicable of the notion, on which the intention of the speaker or author is valuable; Second, some words have more than singular meanings and equally carry the human emotion, e. g. justice, liberty and so on; Third, the discipline contains abstract words that need to be closely investigated; fourth, there is a need to differentiate between the facts and values and fifth, jurisprudential issues are beyond verification.

L. B. Curzon<sup>28</sup> vastly affirms the crisis of definition having following consequences: a) numbers of terms belonging to jurisprudence lack the precise definition in nature; b) dynamism of the surrounding and context frequently changes the aspect and meanings of the legal terms; c) similar or grammatically synonymous words are unavailable and d) personalization of values or norms have caused uncertainty and complexity.

Foremost, if jurisprudence is the study of or about the law, divisions can be made within it, however the even the divisions gives place to paradoxical thesis or understanding of law, for example, the concerns of various schools whether law is 'what it is' or 'what it ought to be' between and among the naturalists and positivists. Not a single issue within jurisprudence is free from debate and controversy, which makes supposition of uniformity

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<sup>28</sup> See generally L. B. Curzon, *Jurisprudence* (Cavendish Publishing Limited 1993).

highly improbable. Hence, subsequent divisions such as general jurisprudence, particular, normative jurisprudence, historical jurisprudence, sociological jurisprudence to name a few attempt to define law in their own terms and thus supply plurality to jurisprudence, simply due to no unison on its definition, to which Hart reasons that 'All of us are sometimes in this predicament: it is fundamentally that of the [person] who says, 'I can recognize an elephant when I see one but I cannot define it.' The same predicament is expressed by St Augustine in his widely referred quote on the notion of time, 'What then is time? If no one asks me I know: if I wish to explain it to one that asks I know not.' In this way, even the skilled lawyers have felt that although they know the law, there is much about law and its relations to other things that they cannot explain and do not fully understand.<sup>29</sup>

The value-laden issue of justice, freedom, liberty, rights, duty and so forth attempt to redefine the jurisprudential content in a discreet but influential fashion. Personal perceptions of normative philosophers are becoming the assets and attraction of jurisprudence such as Kant's theory of morality, Mill's theory of liberty, Rawl's theory of justice and Marx's theory of state. Their broader content have added multidisciplinary approach to the discipline as confirmed by Cordin's explanation of jurial relations and their justifications, reading 'pain and pleasure, emotions and desires are always individual...rules of law are made for individuals ... socialism is always some form of individualism, some combination of individual relation.'

Summing up, defining jurisprudence may need a comprehensive understanding of its content and scope but we hardly evince our interest on such approach. An offer of definition is euphonic, which helps the student to view jurisprudence in a single approach that may negate and ignore the available numbers of approaches. Thus we cannot tight in an approach that has already been abandoned. Today, jurisprudence is the understanding about the law and its phenomenon by varieties of approaches because it has developed as a discipline, hence the presence of methods of studying or learning law notwithstanding the obstinate question- what is law?

### **The Nature of Jurisprudence**

The dictionary meaning of jurisprudence is resourceful for gaining knowledge of law, but is not enough. The search or inquiry is a continuum, additionally debatable, complex and pervasive, resulting in the absence of certainty and simplicity since the scope of jurisprudence's content and issues are broader than were in past. Today, there are hundreds of Austin, Bentham, Holmes, Pound, Marx, Aristotle, Cicero, Fuller, Aquinas Maine and others celebrated jurists. Research on a selective area has also offered plurality; owing to this reason, a method quite helpful in one aspect is not applicable or acceptable in another. Therefore, jurisprudence, in modern time, appears in fewer boundaries and less censorship. Its scope and content are not determined and perhaps, a scholar who attempts to do so

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<sup>29</sup> Hart (n 2) 14.

clearly must be a cynic, as later on confessed by Holmes himself. This again adds a reason to conclude that attempts to rationalize the synthesis in the jurisprudence leads to controversial rather than consensus. The umbrella sense of jurisprudence leads to less controversy. In this purview, its minimum characteristics could be:

*a) Varieties*

W L Twining has said, 'It would be crying for the moon to expect a general consensus at this level.'<sup>30</sup> Certainly, jurisprudence studies about law but complexities lie in the method, technique or approach of study or inquiry and the perception of law. Researchers are convinced that there is no uniformity in understanding of law<sup>31</sup> which has resulted in differences or varieties within jurisprudence<sup>32</sup> evidenced as the schools of jurisprudence. The positivists, likes Bentham, Austin and Kelsen propose that authoritative law is distinct from social behaviors and morality. Bentham made an attempt to separate law from natural rationalities leading to the deduction that the sources of law must be sovereign with the ambition of utility. Austin, within the same school argued that sovereign order is positive law. That is quite different from the Kelsenian theory of law that 'Law is primary norms which stipulate the sanction.' These three different notions of law within a single school are sufficient to render jurisprudence an anthology of different thoughts.

Apparently, naturalist likes Cicero, Aristotle, Grotius, Fuller and Finnis among others viewed that the qualities of law as 'good and rational law is law'. The proposal sharply negated positivism. Holmes and other realists neither demonstrate enough respect to 'sovereign' nor care about 'good law', instead recognized the judge's activity as law. For them, law is the word of the judge, regardless of legislation and ultimate law of nature.

This is not acceptable to other groups composed of sociologist likes Ehrlich and Pound. They put emphasis on law of the society attributable to the social norm, morality, interest and value. They posit that neither the sovereign nor the judiciary can provide service alone. They believe that law is a product of social behaviors that are interwoven. To sum up Maine, a custom is law since it develops simultaneously with human habit and is not given by an outsider (such as a sovereign). This is in fact what historical school concisely represents.

On the other hand, thoughts like postmodernism, feminism and other critical approaches uphold the law and its constituting element *albeit* in an unconventional manner that may be alien to and strange for the existed legal study but are undoubtedly accommodated in the expanded scope of jurisprudence. The new series of economics, political thought and globalization equally influence legal conception and system.

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<sup>30</sup> W. L. Twining, *Some Jobs for Jurisprudence* (1974) in Lloyd (n 26) 23.

<sup>31</sup> Julius Stone attempts to frame such a vast differentiate in seven steps. See Stone (n 12) 179-182.

<sup>32</sup> P J Fitzgerald, *Salmond on Jurisprudence* (12<sup>th</sup> edn, Tripathi) 1.

Positivism never comforts about dealing with justice, freedom, liberty, morality, norms etc which occupy the central place in jurisprudence. Posner, does not argue about and for the 'rule of law' but discourses about the 'rule of economic'. Sovereign, within popular sovereignty, which advanced through the idea of judicial review has different influence on positivism. These all are glimpses of the issues of jurisprudence that no legal scholar, except a cynic, can escape from.

Jurisprudence, as the search for truth of law, is the desire for wisdom, since humanity yields to desire, rather than instinct, the source of both the power we possess and the existential problems we are posed with. Desires are articulated through speech and we seek to encode the most ambivalent of all human artifacts, i.e. our traditions, our ideas of dignity and the sacred. The 'game of language' observable in the contemporary jurisprudence give voice to the multifocused nature and sources of these desires. Desire becomes mobile, transitory, unfocused or, put more correctly, moves in a continual state of (re)focusing.<sup>33</sup>

#### ***b) Dynamism***

Dynamism and staticity are contesting notions that fragment jurisprudential thought. Jurisprudence is not new, its scope may be widened, new scholars enter it, new literatures have been published but jurisprudence is as it was; there has been no revolutionary changes in jurisprudence, rather we have defined it in a different manner and technique, just as the saying goes, it is 'an old wine in a new bottle'. To this, Neil Duxbury opines that 'The pendulum of history swings back and forth, accordingly, between formalism and realism. Sometimes the concepts are varied - formalism becomes scientism, realism becomes pragmatism, or whatever, but the basic pendulum-swing vision of American Jurisprudential history remains more or less constant.' Jurisprudential ideas are rarely born and rarely do they die.<sup>34</sup>

The autonomous theory of positivism has been criticized vastly and demonstrated the rationality of the dynamic nature of law. Particularly, sociologists, post-modernists and realists strongly appreciate the dynamic nature of law and jurisprudence. It is not static as command theory tried to convince, as Pound states, 'law must be stable but it cannot stand still.'

If law is forward looking, how can it be static? The technological development have brought changes in human behavior and influence law. E-governance, digital evidence, e-bidding and on-line submission of complain are common, accordingly, so is the use of technology in governance, banking, business and even court procedure. Jurisprudence is cognizant of revolution and civil war as well the title of revolutionary jurisprudence and

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<sup>33</sup> Wayne Morrison (n 3) 523- 524.

<sup>34</sup> Neil Duxbury, *Patterns of American Jurisprudence* (Oxford University Press 1995) 2.





excluded from the content of jurisprudence. In this sense, probably autonomy in the sense of independence implies that jurisprudence is the study about laws regardless of economic or political or social influence over the process to formulate the law. It indicates the self sufficiency of laws that does not require attention and interest towards the extra-legal phenomena, i.e. the reasons and cause behind the laws are not the scope of jurisprudence. Authority of laws is the power that is not driven from outside the law. For example, rule is law is not so-called because the people follow and abide to it nor because it sufficiently meets the requirements of social behaviors. In the word of Dworkin, the 'Nazis had law'. Altogether, the autonomy as emphasized by the Austin relates as 'The existence of law is one thing: its merit or demerit is another. This truth when formally announces as an abstract proposition is so simple and glaring then it seems idle to insist upon it.'<sup>40</sup>

In totality, the thesis of the positivism is to build upon jurisprudence as independent, by two methods. Primarily, by setting the scope or arena of jurisprudence as law alone, and not morality, justice, liberty, rights, customs and politics. Jurisprudence analyzes existing rules not behavior and social manner or demands and interest. Therefore, jurisprudence studies about the posited law, not the reasons or authority of the law from extra legal phenomena.<sup>41</sup> Secondly, law itself does not require establishing its validity by calling for moral, political or economical argument. The existence of law is enough to rule the people under the scope of law. Law guides, rules or commands its subject or people hence law is autonomous or master. Formalism and pure theory of Kelsen dedicate that law and its study, jurisprudence, enjoy true autonomy.

Autonomous is elaborated by Unger as 'a substantive, an institutional, a methodological and an occupational aspect. Law is autonomous in a substantive sense when the rules formulated and enforced by government cannot be persuasively analyzed as a mere restatement of any identifiable set of non-legal beliefs or norms, be they economic, political, or religious. ... Law is institutionally autonomous to the extent that its rules are applied by specialized institutions who main task is adjudication. ... Law is autonomous at the methodological legal when the ways in which these specialized institutions justify their acts differ from the kinds of justification used in other disciplines or practices. ... Lastly, the legal order is characterized by occupational autonomy. A special group, the legal profession, defines its activities, prerogatives and training, manipulates the rules, staffs the legal institutions and engages in the practice of legal argument.'<sup>42</sup>

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<sup>40</sup> Austin (n 21).

<sup>41</sup> To that, J. Raz confirms 'the law on a question is settled when legally binding sources provide its solution. In such cases judges are typically said to apply the law and since it is source-based, its application involves technical, legal skills in reasoning from those sources and does not call for moral acumen'. See Joseph Raz, *The Authority of Law Essays on Law and Morality* (Oxford University Press 2008) 49-50.

<sup>42</sup> R M Unger, *Law in Modern Society* in Lloyd (n 26) 732-733.

Jurisprudence as a discipline carries sufficient method, approach and content to be independent even though surprisingly modern jurisprudence has been shaped and developed with the influence of multi-disciplinary approaches. Economic analysis of law, political analysis of law, post modernism, including the moral and normative issues such as justice, liberty, rights, rule of law, globalization are shaping and coming into the legal study and subliming jurisprudence in a different fashion, thus negating the discipline's autonomy. Particularly, various scholars belonging to sociological school attempt to separate the laws from living law and positive law. For them, law is not more than social instrument to fulfill common purpose. Law has a life associated with society thus social value, morality, norms, prevailing political and economic gamut are the sources of laws. Law cannot exist in vacuum thus the society major the laws sufficiency and effectively. Law in totality prepares a legal system and obviously depends on society leading towards the question - how can law be autonomous? Similarly, naturalists offer the supreme law either by natural virtue, by practical reasonableness or by morality subordinates human law. Posner conceptualized the thesis of interdependence:

Autonomy refers to laws self-sufficiency and has two aspects. The first is law's autonomy from society... the idea that law has its win is internal logic and therefore when it changes it does so in response to the promptings of its inner natural like a caterpillar turning into a moth, rather than in response to political and economic pressures...The second aspect of autonomy is the independence of legal thought from other disciplines, such as economic.<sup>43</sup>

Thus, he recognized the economic and pragmatist analysis of law. If jurisprudence is a house, both Austin and Bentham have lived there and Posner, Nicos<sup>44</sup>, Pound and Dworkin are criticizing them but living in the same house. Nevertheless, Unger offers a settlement that no law is beyond the social reality, therefore, modern jurisprudence is both autonomous and interdependence.

#### **d) *Transnational***

Jurisprudence enjoys the transnational nature because it is not the study about the law and practice of some country or a particular timeline, but is a general philosophy of law which concerns all legal system regardless of fundamental political and economical differences, as Hart aptly highlights in 'no boundary of geography theory':

My aim in this book was to provide a theory of what law is, which is both general and descriptive. It is general in the sense that it is not tied to any particular legal system or legal culture, but seeks to give an explanatory and clarifying account law as a complex social and political institution with a rule-governed aspect... My account is descriptive...it is morally neutral and has no justificatory aims: it

<sup>43</sup> Richard A. Posner, *Overcoming Law* (Universal Law Publishing 2005) 17.

<sup>44</sup> See Nicos Stavoropoulos, *Objectivity in Law* (By Oxford University Press 1996) 186.

does not seek to justify or commend on moral or other grounds the forms and structures which appear in my general account of law ...<sup>45</sup>

Jurisprudence is consequently ubiquitous. Its concerns are an inescapable feature of the law and legal system.<sup>46</sup> Jurisprudence is the study about the law and its basic institution, legal phenomenon and issues are equally applies to the states of the world. For example all states adopt the tax system thus general principles of taxes as jurisprudence is common to all but tax-rate may differ from country to country. Consumer interest applies equally regardless of being Muslim or Hindu as well as western or eastern but the compensation rate or amount of fine may be less or high. Jurisprudence studies about the tax and its philosophy not about the rate of tax, similarly consumer interest and justice, not the amount of compensation.

Expediently, jurisprudence is beyond the regulation and control of sovereign state. The advent of technology and beginning of globalization comprise and claim number of issue like human rights, consumer-justice, liberalization, environmental-justice, good-government and liberty. Customs of European and Asian country might different, an issue of anthropological analysis but customs as the sources of law, basic requirement of valid custom, methods to recognize them are the issues of jurisprudence that equally apply to all legal systems. Surendra Bhandari mentions that

Law may be local but jurisprudence is not local. A sovereign may determine law but no sovereign does determine jurisprudence, local intuitions may contribute in subliming jurisprudence but do not own jurisprudence. Jurisprudence as a science of individual freedom, civil liberty, human rights or so on expands the human standing in world society and deters any attempt to confine the place of human being in a world society.<sup>47</sup>

**e) *Study about law***

Fundamental issues, what might be termed 'high theory' have a central place in jurisprudence. Very general questions about the nature and functions of law, the concept of a legal system, the relationship between law and morality, the differences between law and other types of social control, perennial questions about justice, and ultimate questions about the epistemological and other fundamental assumptions of legal discourse, stand at the core of legal theory.<sup>48</sup>

In jurisprudence, we ask what are the basic requirements of a valid rule? Or what distinguishes law from morality, etiquette and other related phenomena?<sup>49</sup> Jurisprudence is

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<sup>45</sup> Hart (n 2) 239 -240.

<sup>46</sup> Raymond Wacks, *Understanding Jurisprudence* (Oxford University Press 2009) 1.

<sup>47</sup> Surendra Bhandari, 'Jurisprudence in 21<sup>st</sup> Century: Whether the Province of Jurisprudence Determined or Identified?' (2001) 14 Nepal Law Review, 164.

<sup>48</sup> Lloyd (n 26) 21-22.

<sup>49</sup> Salmond (n 30) 1 – 3.

the work on law, thus the nature, authority, legality, efficacy, quality and popularity associated with law like sovereignty, judiciary, role of officials are the scope of jurisprudence. To that, Dicey acknowledges 'A work on law may, it seems to me, be concerned with any or all of three questions first what is the law?, second what ought to be law?, thirdly what is the history of the law?'<sup>50</sup>

Reflexivity is problematic. It invites an endless process of questioning. Once this is apparent, it is obvious that no total or final account of these processes can authoritatively be offered there could always be another twist to the tale, another item to be considered. All accounts emphasize certain features and neglect the others.<sup>51</sup>

The scope of jurisprudence is equally celebrated as what law is and what it ought to be<sup>52</sup>. The stereotype of Austin has been modified and the thesis of God-made law has also been ignored heavily. So, dynamism and divergence is cultivated in the arena of legal study from history to this day of new horizon, jurisprudence having pursued the human eye to see the law in social canvas. Number of issues are related to law either negatively or positively, e.g. gender, marginalized people, technological development, foreign investment and globalization and so forth, to which jurisprudence cannot turn a blind eye to.

#### *f) Practical*

Practical denotes the working of jurisprudence in the realities which contribute to solve the real problems of human society, thus jobs of jurisprudence might be visible and workable as like a tablet but not the theory of medicine or medical science for a patient. Jurisprudence as being the human plus social discipline, could not escape from the men, societies and associated phenomenon though the contribution of the jurisprudence to the improvement of human conditions likes: injustice, corruption, inequality, poverty, ill health, undeveloped and bad governance is common. Hence, some are pessimistic and referred to jurisprudence is a subject without applicability.<sup>53</sup> In the same theme, W. L. Twining shares an optimistic vision:

One function of jurisprudence is to identify, to articulate and to examine critically, those working theories. In short, jurisprudence is not only the lawyer's introspection. One such purpose is to suggest changes or improvements.... Five functions of legal theorizing: the conduit function, high theory, the development of working theories and of theories of the middle order, and the synthesizing function.<sup>54</sup>

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<sup>50</sup> Cosgrove (n 17) .

<sup>51</sup> Morrison (n 3) 2.

<sup>52</sup> Dhyani (n 7) 66.

<sup>53</sup> Salmond (n 30) 3.

<sup>54</sup> Lloyd (n 26) 22, 24.

Primarily, jurisprudence attempts to analyze the legality of the government and its laws rather than providing security to life, liberty and happiness. Jurisprudence pays more interest to the book than life exemplified by Manu and Aristotle to the revolutionist like Marx, Angel and Hegel to the philosopher of present day like Hart, Fuller, Rawls, and numerous others. Then, the painful question is whether jurisprudence is something which contributes to uplift the life of human or it is just a course that every student must pass. It is a method; it ends in academic satisfaction but does not serves the medicine to patient. Raymond Cocks opines:

Modern jurisprudence is largely unconcerned with the problems which are of greatest importance to practitioners... In so far as jurisprudence was concerned with the study of ideas about law it was an odd view of the subject which excluded from consideration the ideas which were regarded as important by those who actually practiced law.<sup>55</sup>

Similarly, constitutionalism does not stop an arbitrary government from killing innocent people and from forfeiting the property of opposition. It is not surprising that the theory of victimology does not rescue the rape victim or child worker or war victim. Again, right to life is widely present in the pages of jurisprudence and highly considerable in the view of naturalists and positivists, as the virtue or minimum content, but no such jurisprudential value could rescue people deprived of life by thugs or gangster under the sponsorship of government. Lastly, adequate living standard condoned by jurisprudence will not provide the roof, food and cloth to the poor people. To this background, to understand the practicality of philosophy of law, quoting Noam Chomsky, 'By entering the arena of argument and counter-argument, of technical feasibility and tactics, of footnotes and citation, by accepting the legitimacy of debate on certain issues, one has already lost one's humanity.'<sup>56</sup>

The frustrating point is demonstrated by Raymond Wacks by linking life and law, that may be of practical value in jurisprudence. He writes 'We must hope that he is wrong, and that moral sensibility and rational argument can indeed co-exist. In the face of evil, it is all too easy to descend into tenuous simplification and rhetoric when reflecting up on the proper nature and function of the law... Legal theory has a crucial role to play in defining, shaping, and safeguarding the values that underpin our society.'<sup>57</sup>

At least, we must free ourselves from the sharp polarization between legal thoughts framed into the legal theory or interpretative theory but human life requires their closeness by reducing the so called intellectual quarrel, for this is the time to learn about the law and exploit the legal knowledge to guard our freedoms and happiness and to prohibit social evil that may turn into the grave cause of accumulation of power or property or resources

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<sup>55</sup> Cosgrove (n 17) 3.

<sup>56</sup> Noam Chomsky, *American Power and the New Mandarins* in Wacks (n 46) 11.

<sup>57</sup> Wacks (n 46) 11.

manifest in the form of terrorism, civil war, global crisis or war, poverty, slavery, trafficking or malnutrition. Therefore, jurisprudence might be shaped as a legal theory to meet the human requirements and central problems therein. Jurisprudence, thus may adopt the social technique and data to improve the social condition by bringing about reforms in the legal system. Law and economic, law and poverty, liberty and justice, social welfare legislation are some areas where legal knowledge step away from books and work to eradicate human misery and pains. As Friedmann says, 'Legal theory cannot provide a magical escape from the need for decision between alternative ideals and ways of life'. He also highlights three fashions : a) there is no escape for the law from the struggles of life; b) legal technique is always subordinate to social needs and c) the study and practice of law provides one avenue to a diagnosis of social crisis.

Its practicalities can be observed in some way. Before counting down the contributions that jurisprudence has cultivated, land of law as jurisprudence, as Freeman observed has been borrowed, which says, 'One of the jobs of jurisprudence is to supply an epistemology of law, a theory as to the possibility of genuine knowledge in the legal sphere.'<sup>58</sup> At first, jurisprudence alone correctly answers the sources of law.<sup>59</sup> However, there is no unanimous agreement on such point, thus it offer alternatives as like in the question whether the Nazi law is valid law or not, equally, were Stalin's laws law or not.

Second, legal reform might be possible by the utilization of jurisprudence but not by the legislator. Legislature cannot bring any significant changes in legal system but they can change and amend the statutes. Broadly speaking, jurisprudence does not occupied with the description of what the law is but it pays a great interest to the quality of law or about the law ought to be as well. Prof. McCoubrey and Dr. White write:

It is more helpful to think of jurisprudence as a kind of jigsaw puzzle in which each piece fits with the others to produce a whole picture. The picture in this case would ultimately be a complete model of law. It may be doubted whether any such ideal solution to the questions of jurisprudence is practically attainable, but progress towards it necessarily involves the assimilation of many different theoretical insights which are not necessarily in conflict but with each make a contribution to the whole. ... It can be suggested that a central task of jurisprudential study is to determine how the various insights of theory relate one to another and where the genuine incompatibilities lie and require to be resolved. It is only thus that the jurisprudential jigsaw may be assembled into a satisfactory picture of law.<sup>60</sup>

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<sup>58</sup> Lloyd (n 26) 5.

<sup>59</sup> Roger Cotterrell, *The Politics of Jurisprudence, A Critical Introduction to Legal Philosophy* (2<sup>nd</sup> edn, Oxford University Press) 1.

<sup>60</sup> McCoubrey & White (n 20) 2.



Jurisprudence is an interchangeable word for legal theory and philosophy of law therefore it is an umbrella. Jurisprudential criticism contributes to remove the obstacle, shortcoming and indeterminacy and to institutionalize the conformity and efficacy of the law. Legal theory successfully advances some process and method like popular law, people participation in law making process and so on. Ultimately, if jurisprudence is the knowledge of legal phenomenon and legal sphere, such knowledge will contribute to remove of the problems and legal dissatisfaction because knowledge is power. As Bertrand Russell conceives that, value of philosophy help to tap the opportunity of jurisprudence, in these words:

The man who has no tincture of philosophy goes through life imprisoned in the prejudices derived from common sense ... Philosophy, though unable to tell us with certainty what is the true answer to the doubts which it raises, is able to suggest many possibilities which enlarge our thoughts and free them from the tyranny of custom.<sup>61</sup>

Undoubtedly, jurisprudence occupies high academic or educational<sup>62</sup> and philosophical value but its direct and practical application is invisible and silent but operating behind the law. Professor Hilaire McCoubrey and Dr. Nigel D. White write:

Law is a practical discipline and its very practicality is based upon the adequacy of the theory upon which it rests, just as an aeroplane is a practical machine which works only if its design is based upon sound aerodynamic theory. The purchaser or user of a plane may not have much interest in aerodynamic theory but will be most displeased if the machine cannot in practice fly. The analogy with the role of jurisprudence in law is direct and those who ask ‘What use of jurisprudence?’ might more usefully as ‘What will happen to law without jurisprudence?’<sup>63</sup>

## Conclusion

Jurisprudence, in the stone age, was muscle-power centric, in religious era, church centric, in enlightenment, reason centric and in modern time, abstract and complex. Birth and death of these concepts are the results of the ultimate factor we know as human consciousness. Jurisprudence is a human discipline therefore cannot depart from history, as demonstrated by Neil Duxbury in ‘jurisprudence as an intellectual history’:

By studying the emergence and decline of ideas—by showing, for example, how the emergence or decline of one idea may be connected to the emergence or decline

<sup>61</sup> Bertrand Rullell, *The Problems of Philosophy* (1912) in Posner (n 43).

<sup>62</sup> Salmond (n 30) 4.

<sup>63</sup> McCoubrey & White (n 20) 10.

of another, or by demonstrating how, sometimes, apparently closely related ideas are in fact hardly connected at all—We are able to find our way to the heart of jurisprudence. Ideas have histories, and jurisprudence is a much more enlightening and engaging enterprise when it focuses on those histories.<sup>64</sup>

A long history of jurisprudence nevertheless does not contribute any fixed and certainty in its sphere. But, this journey certainly makes jurisprudence prudent and prestigious.<sup>65</sup> Similarly, jurisprudence does not correlate with analogies like grammar of law, eye of law, science of law or knowledge of law and so on. The feudal fashion of jurisprudence, in the sense that jurisprudence was not the business of common people, but belonged to those who had sophisticated, highly authoritative intelligence like Aristotle and Plato, has become much democratized but not so liberalized. However, it expands with the philosophy of law and legal theory which encompasses all social phenomena and number of scholars attempt to demonstrate the law not only from the rich person's point of view or legislative's or judges perspective but equally as a female and a poor man's experience since aggrieved or victims are comprises within the boundaries of jurisprudence. Equally, an influence in law of sociology (sociology of law) economics, politics, ethics and morality, culture, world order and gamut of global governance are analyzed and have secured places in jurisprudence. There may not be mistaken to redefine the non definable word: jurisprudence, as the compendium of literature of different times and places and different ideology by which continuous attempts have been made to know about the law and its body or phenomenon. Nevertheless, jurists may apply their own comfortable methods, knowingly or unknowingly like Austin was partial to analytical and Savigny to historical, and study within self-imposed limitation, like Austin limits to analysis of existed laws and its sources of validity and Fuller broadly studies the laws of the laws. The entirety of judge's perspective is realism; historical perspective on laws is historical, analytical jurisprudence is the legislative perspective on the law. Sociological jurist adopts the societal perspective and allows the influence of interest into the criteria of law. It leads to the questions such as: Is jurisprudence value free or vice-versa, does jurisprudence have definite method or depends on the social science methods and what are the sources for jurisprudential observation? Thus there are different layers in jurisprudence and it lacks a uniform and solitary method to study the law and adheres to differences in perspectives and interests of the researcher or scholars. That is why there is difference between the natural and social science and the latter has some limitation in comparison to natural science.<sup>66</sup> There is no ultimate truth in jurisprudence. All truth is contextual and condition. Jurisprudence comprises the methods to study about the law, which we considered science but not the establishment of some definite truths in legal sphere. Common maxim is that we see what we want to see, and it shall apply to know the law as well.

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<sup>64</sup> Duxbury (n 34) 6 -7.

<sup>65</sup> Lloyd (n 26) 3.

<sup>66</sup> Lloyd (n 26) 8.

Similarly, the wide scope of jurisprudence poses as well as removes the problem of defining jurisprudence, but the factual truth is that politicians, economist, sociologist and psychologist are entering in the legal phenomenon and demonstratedly turning into part and parcels of legal theory or jurisprudence. Critics, feminist and racist have already made their strong appearance in law. The growing concern about right, liberty, humanity, justice and morality are not negated in jurisprudence throwing lights at the possibility that perhaps jurisprudence, in association with theory and philosophy attempts to know law in continuum, partly through disciple and partly through ideology; is partly a matter of knowledge and partly of satisfaction and interest.

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