REVIEW OF LITERATURE

HLA Hart – eminent Jurist (The Concept of Law, 1961)

Hart has primarily dealt with the following theory:

a) Law and coercion
b) Law and Morality
c) Nature of rules (Primary and Secondary)

According to his theory the primary rules of law which impose basic duty on persons.
They create obligations which people of a society is needing Eg:- Penal Code, Civil Code etc..

Secondary rules are those rules of law which are prime to the creation and operation of primary rules.

Is It Necessary for Procedural Laws To Have Morality Into It? (ISSN : 2347- 4963) Dec 2013

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Law and its relation with morality is the most clichéd topic, for discussion to jurists, and jurisprudence enthusiasts. However, in between the conflict of opinion whether one complements or contrasts other or not, this paper purely focuses on one kind of law i.e. procedural law, and its connection with morality. The theme which has colored every aspect of the paper is the need to know how Indian system has made an attempt to connect the two phenomenons and how far it does succeeds to do so. Indian system’s approach towards law and morality has been quite unique when it comes to intertwining morality into its laws.

He has developed the pure theory of law as it attempts to distinguish between the law and what is not stringently law. He also distinguishes from the facts and morals from the law. The main element of his pure theory is the world of things (noumena) and the world of ideas (phenomena). The Grundnorm – it’s the norm on which all the norms are based and beyond which no norms is presupposed. As a norm creates a duty to behave in a certain way by imputing a sanction to the breach of duty.

**NATIONAL JUDICIAL APPOINTMENTS COMMISSION: POLITICAL INTERFERENCE OR A NECESSITY? (Journal of Legal Philosophy, 2014 ISSN 2348-456X)**

An independent and impartial judicial body is a *sine qua non* for any democratic country to impart the basic functions of the interpretation of the Constitution as well as adjudication of matters between State and citizens. The Constitution thus provides for the establishment of Supreme Court which will act as a ‘Guardian of the Constitution’. But for the past few years, India has witnessed a sophisticated battle between the Judiciary and Legislature over the issue of appointment of Judges. There is no doubt as to the fact that the collegium system had fatal faults in it. But the bigger question now is that whether the National Judicial Appointments Commission is the right answer for it? It is indeed true that the Government was quite in haste for passing this bill but on the other hand it is also true that there were recommendations for a National Judicial Commission by various committees and commission. There have been conflicts between Judiciary and Legislature in which both try to emphasize their supremacy. The real fact is that neither Parliament nor Judiciary is supreme; it’s the Constitution which is supreme.

Ronald Dworkin (Law’s Empire, 1986):

As per his saying law cannot be understood in isolation to culture of a society. Different societies with different meanings of law. The characteristic that makes people will obey law is the integrity. People will obey even an unjust and unfair law as long as it has integrity as a whole. There two principles of political integrity. First one is legislative principle where the legislature
makes the law within the established principles of legal system. Second is the adjudicative principle were the judiciary make an attempt to interpret the statues and view the law to test its validity.

**MALI MATH COMMITTEE RECOMMENDATIONS: A CRITICAL ANALYSIS (Indian Journal of Legal Philosophy, December 2014, ISSN 2347-4963)**

Reforms in the criminal justice system have been a matter of frequent review and debate in India. The Law Commission of India as well as other commissions, from time to time have suggested a number of proposals for reform in the administration of criminal justice system. Most of the suggestions, predominantly loaded with the idea of fair, efficient and humane administration of criminal justice, not only insist for review of some of the fundamental principals of administration of Criminal Justice. The Malimath committee seeks to place a duty on the court to direct the investigating officer to make further investigation or to direct the supervisory officer to take appropriate action for proper or adequate investigation so as to assist the court in the search for truth thus the Malimath committee seeks to involve the trial judge in the investigation.

**Oliver Wendell Holmes (The Common Law, 1881):**

As Holmes theory law is the set of predictions. The role of judges is explained in twofold way. Law is the product of experience and not logic. Law exists even prior to is recognition by courts. He said that the judges should recognize their duty to weigh considerations of social advantage. As the economics and social power are the sources of law.

**Clemency In Criminal Justice System: Analysis From A Human Right Aspect (Dec 2014, Indian Journal of Legal Philosophy)**

The clemency power is provided in our Constitution to the President is for mitigating the sufferings of the convicts. The sole purpose of providing such unfettered power was to make sure that all legal as well as humanitarian factors are considered which stand inadmissible in a trail. Along with being a power its more importantly a constitutional duty which must be discharged in an expeditious manner. Inordinate delay has degrading and inhuman effect on the convict. It
must be born in mind that a condemned convict is also entitled to Fundamental right to life and personal liberty under Article 21 of the Indian Constitution and deprivation of liberty and detention in custody is not a procedure authorized by law.

**Karl Llewellyn (On our Law and its Study, 1930)**:

Law is not a mathematical function where the judges could simply apply the rules and reach to a conclusion. Rules are ambiguous making leeway for judges to apply their discretion while adjudicating an issue. The Law as it is shaped by moral considerations that the courts apply in the guise of logic. In order to figure out the courts a person must look beyond the rules and study the various judicial opinions on particular subject so as to understand how courts have use the a particular rule in different situations.

**ORDER IN SOCIETY: THE ROLE OF LAW (ILP, December 2014 ISSN -2347-4963)**

Order goes hand in hand with peace, harmony and all of the other identified objectives of forming a society. So a key question that one faces is as to where and how civilization derives order from i.e. one is inquisitive about the sources of order in society. Modern society is progressing towards a dire state of chaos. Invariably, cracks have appeared on a global scenario where the breakdown of state machinery and order is threatening to destroy civilization as we know. At such times, it is of extreme importance that we evaluate the role law plays in maintaining, and in a current day perspective, restoring order to society, as it clearly is an influencing factor.

**Karl Olivercrona (Law as Fact, 1939)**:

He believed that a monopoly of force is the fundamental basics of law. It is produced by natural causes such as the action of human beings that have natural effects in the form of actual influence on the conduct of judges and individuals. Despite rejecting the law as command theory by Austin, he state that law consists mainly of rules about the application of force.

**LEGAL AID: THE INDIAN SCENARIO VIS-À-VIS THE GLOBAL PERSPECTIVE (IJLP, December 2014 ISSN - 2347- 4963)**
Legal Aid is an important step in the direction of providing basic rights to the citizenry. The concept of legal aid has attained worldwide attention. In its common sense, it means the assistance provided by the society to its weaker members in their effort to protect their rights and liberties. It can be defined as the professional legal assistance given either free or for a nominal sum, to indigent persons in need of such help. Legal Service includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter.

Alf Ross (On Law and Justice, 1953):

He has stated the a norm has two aspects:

a) A directive to do or not something;

b) Correspondence of the directive to social facts.

In order to be a norm it must have both the above prescribed aspects. Legal rules are different from other norms in the sense that they employ use of coercion. They contain directive to those in authority.

MACHIAVELLI & JUDICIAL REASONING (March, 2014, IJLP ISSN -2347-4963)

Nothing personifies a thinker’s notions and where it is leading to then his quotations. The study of the same gives a general but palpable drift to the mind of the author namely Niccolo Machiavelli (referred hereinafter as M) as to the machinery conceived by him on government policy and the law M was the 16th Century author of “The prince” which is of significance as it influenced socio-political treaties and the law, to English rulers like Henry the VI and others. Below are some of the quotable quotes on which reflections are gleaned on the basis of modern judicial patterns and some on Indian Philosophy. The reflections are devoid of references (as these are my own thoughts) but generally imbues the ethos of Indian culture or as understood by 21st Century organizational systems. The views expressed by M are for the consumption of a modern day prince. Such princes are in today’s context, placed in varied hues and shades of power in a variegated lax society. These are in organizational structures of corporations in the form of CEO’s and lesser known deities and take on various shades of control and command with different priorities for different applications at the work place. Indeed
Machiavelli touch bases on the march of time where his thoughts require some modifications or even outright rejection.

**Thomas Aquinas (Treatise on Law, 2009)**: 
He believed that the controlling principles of the universe supplied the ultimate criteria by which human laws must be judged. He then divided law into further four types

a) Eternal Law (Universe is the creation of God)

b) Natural Law (Laws of nature such drink, sleep etc)

c) Divine Law (Human accepted law which are holy and divine in nature eg. Ten Commandments)

d) Human Law (it consists of custom or legislative laws)

**Alternate Dispute Resolution Settlement of Joint Family Property Disputes (IJLP, MARCH 2014 ISSN -2347-4963)**

Alternative Dispute Resolution (ADR), as the name suggests, is an alternative method of dispute resolution to the existing methods such as litigation, conflict, violence and physical fights wherein a third party attempts to resolve the differences between the parties to the dispute. The Arbitration and Conciliation Act, 1996 enacted in order to come up with a quick and easy method of dispute resolution and accommodate the harmonization mandates of UNCITRAL Model Law on International Commercial Arbitration 1985 is the law governing arbitration in India, providing a driving force for the settlement of civil disputes outside the courtroom

**Thomas Hobbes (Writings on Common Law, 2005)**: 
It is said by human nature are selfish and in a state of nature would cause havoc and destruction. He argues that people by nature do not like conflict and seek peace. This need of man to come at a peace combined with power of reason allows men to come to terms of social contract that allows individuals to live in safety and harmony. This is called the Hobbesain Social Contract Theory.
The Indian penal Code was drafted in the year 1860. The social evils that were gripping the Indian society in that era are completely polarizing from the ones that befall us today. India, a country marred and haunted by a plethora of social evils, has always sought to mitigate, if not eradicate all forms of social evils. The glitz of independence was stained by the blood of the incessant and innumerable innocent people who lost their lives in the aftermath of partition. The problems relating to the India 1970s and 1980s are different from today’s evils of the globalized and technocratic era. But we follow the same criminal law that was drafted more than one and a half a century ago. What we fail to take cognizance is of the fact that the profile of crimes are changing with changing times. So we need to reequip the laws with the needs and aspirations of the changing society. This premise will form the edifice of our research, i.e. the need to enhance the laws with suitable measures in order to ameliorate the dearth of the present laws.

Karl Marx (1867, Das Capital):

Marx’s theory describes how the concept of privatization emerges with the rise of capitalist class in the industrial age. He has argued that the division of labour leads to accumulation of wealth and property in hands of few and this creates the exploitation of working class. This socio economic gap is also one the major issue & challenges before the judicial system even today’s scenario.

John Rawls (1971, A Theory of Justice):

The Veil of ignorance – when we isolate our political, physical, social identity along with our advantages and disadvantages we would choose an original position of equality. The principles agreed to in such a situation would be just. He’s idea of the social contract is a hypothetical agreement in an original position of equality.

Robert Nozick (Anarchy, State and Utopia 1974):

He argues that distributive justice depends on two requirements
a) Justice in initial holding if the resources you used to make money were legitimately your first place. (it should not be taken by fraud or stolen)

b) Justice in transfer if you make money either through free exchanges in the marketplace or from gifts voluntarily bestowed upon you by others.

Devlin Patrick (The Bodley Head, 1958):  

He describes that law without morality destroys freedom of conscience and is the paved road to tyranny. He talked about the society’s moral fabric which the society hold together and reinforce society’s morality it will destroy the moral fabric leading to disintegration of society. This is cause for the issues to leading the loosing of moral fabric to create pendency in present judicial system.

A Never Ending Wait To Justice-The Plight of The Under-Trials In India (JLAR, June, 2014 ISSN 2348-456X)

In India, eighty percent of the inmates in the jails are under trials. The major problems faced by these inmates are not only of not getting a trial but that of not being granted bail, inhuman treatment in jails, facing poor conditions, lack of proper medical treatment, etc. There are various statutes such as the Prisoners Act, 1894; the Model Manual Prison India, et al. and various precedents which have been laid down in landmark cases which provide for the rights which these prisoners are entitled to. However, the problem today lies not in the availability of these rights but in the implementation of these rights

and precedents. Prisoners should get their rightful treatment in the prisons, safeguard their access to a fair and speedy trial, facilitate bail procedures and work towards various other procedural requirements to ensure that these prisoners make efforts to only achieve reformation and don’t have to fight for their survival

Role of Nyaya Panchayats in Providing Speedy Justice for the Rural People(JLRA, September 2014 ISSN -2348-456X)

The Nyaya Panchayats are established with a view to reduce burden on general law courts. The Nyaya Panchayats allowed the advocates to bring the cases which are of serious nature. The
Nyaya Panchayats role would be like quasi judicial bodies. And to act resolve the cases through to the methods of alternative disputes resolution. 73rd amendment of the constitution has provided for the settlement of Nyaya Panchayats is providing speedy justice.

**Judicial Activism and Public Interest Litigation – The Indian Scenario (JLRA, September 2014 ISSN -2348-456X)**

Judicial Activism is nothing more and nothing less than the activity to bring justice to the doorstep of people particularly in areas not covered by any statute made by a legislature. It is born out of the well known doctrine of ‘independence of judiciary’ which emphasizes the supremacy of law above the rulers. It could also be described as an expression invented by jurists and lawyers to describe the creative activity of judges in fields not covered by existing law. Thus the expression ‘Judicial Activism’ signifies the anxiety of courts to find out appropriate remedy to the aggrieved by formulating a new rule to settle the conflicting questions in the event of lawlessness or uncertain laws.

**Lon Fuller (1958) (Positivism and the Separation of Law and Morals):**

Law and morality are not interchangeable terms and law cannot be strike down merely if it’s devoid of any moral conduct. He states that law must possess certain characteristics if it is to be classified correctly as law and one of most important of such characteristic is inner morality. He considered the law to be a collaborative effort to aid in the satisfying of mankind’s common needs with each rule of law having a purpose related to the realization of value of the legal order.

**An Analysis of The Concept of Common Law and Civil Law Vis-À-Vis Their Differences and Points of Intersect(JLRA, September 2014 ISSN -2348-456X)**

Civil law may be defined as that legal tradition which has its origin in Roman law, as codified in the Corpus Juris Civilis of Justinian, and as subsequently developed mainly in Continental Europe. The civil law legal tradition itself can be divided further into the Romanic laws, influenced by French law, and the Germanic family of laws, dominated by German jurisprudence. In particular the Roman laws were modeled on the ground breaking French Code
Civil from 1804 (Code Napoleon), which conquered Europe’s realm of ideas as the Napoleonic armies conquered the countries. Also the German Civil Code from 1896 (in force since 1900) is a consequence of the movement towards codified laws initiated by the Code Napoleon. It is typical of all civil law systems that the law is almost entirely codified, highly systemized and structured and that it relies on broad, general principles, without necessarily setting out the details.

A Critical Analysis of Legislative Framework for Ensuring Speedy Justice under The Code of Criminal Procedure in India (JLRA, March 2015 ISSN -2348-456X)

The sole aim of the law is approximation of justice. A Judge is looked upon as an embodiment of justice. Assurance of fair trial is the first imperative in the dispensation of justice. It cannot be denied that one of the most valuable rights of our citizens is to get a fair trial free from an atmosphere of prejudice. Firstly right flows necessarily from Article 21 of the Constitution of India which makes it obligatory upon the State not to deprive any person of his life or personal liberty except according to the procedure established by law. In India, though the constitution of India has no specific provision for right to speedy justice but Hon’ble Supreme court while interpreting Article 21 in the case Hussainara Khatoon’s 1 held that speedy trial is the essence of criminal justice and, therefore, delay in trial by itself constitutes denial of justice. Though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21. Speedy trial which means reasonably expeditious trial, is an integral part of the fundamental right to life and liberty enshrined in Article 21. Secondly, for enforcement of speedy criminal trial, the Criminal Procedure Code Sections 167, 258, 309, 311 and 468 provides to expedite the disposal of cases and to enable timely delivery of justice. The Section 167 Criminal Procedure Code2 provides a statutory time limit to complete an investigation, and Section 167 further provides that a failure to complete investigation within the statutory timeframe shall lead to release of the accused in custody on bail.

Law Commission Report No 77:

The commission has suggested the necessary amendment to the Code of Civil procedure to avoid delays by curtailing the times for filing written statement and no adjournment beyond
three. It also suggested that the Under Trial Prisoners should be dealt as soon as possible and to view the provisions of Section 436 A of the Code of Criminal Procedure.

In Salem Bar Association Case xxix,

The challenge made to the constitutional validity of amendments made to the Code of Civil Procedure (for short, `the Code) by Amendment Acts of 1999 and 2002 was rejected by this Court (Saleem Advocates Bar Association, T.N. v. Union of India (2003) 1 SCC 49), but it was noticed in the judgment that modalities have to be formulated for the manner in which Section 89 of the Code and, for that matter, the other provisions which have been introduced by way of amendments, may have to be operated. For this purpose, a Committee headed by a former Judge of this Court and Chairman, Law Commission of India (Justice M. Jagannadha Rao) was constituted so as to ensure that the amendments become effective and result in quicker dispensation of justice. It was further observed that the Committee may consider devising a model case management formula as well as rules and regulations which should be followed while taking recourse to the Alternate Disputes Resolution (ADR) referred to in Section 89. It was also observed that the model rules, with or without modification, which are formulated may be adopted by the High Courts concerned for giving effect to Section 89(2)(d) of the Code. Further, it was observed that if any difficulties are felt in the working of the amendments, the same can be placed before the Committee which would consider the same and make necessary suggestions in its report. The Committee has filed the report.

The report is in three parts. Report 1 contains the consideration of the various grievances relating to amendments to the Code and the recommendations of the Committee. Report 2 contains the consideration of various points raised in connection with draft rules for ADR and mediation as envisaged by Section 89 of the Code read with Order X Rule 1A, 1B and 1C. It also contains model Rules. Report 3 contains a conceptual appraisal of case management. It also contains the model rules of Case Flow Management.

This for the first time concept of Case Flow Management was discussed by the Hon’ble Supreme Court for effective delivery of justice to all. Model Case Flow Management Rules have been separately dealt with for trial courts and first appellate subordinate courts and for High Courts. These draft Rules extensively deal with the various stages of the litigation. The High Courts can examine these Rules, discuss the matter and consider the question of adopting or making case
law management and model rules with or without modification, so that a step forward is taken to provide to the litigating public a fair, speedy and inexpensive justice.

Report No. 3 deals with the Case Flow Management and Model Rules. The case management policy can yield remarkable results in achieving more disposal of the cases. Its mandate is for the Judge or an officer of the court to set a time-table and monitor a case from its initiation to its disposal. The Committee on survey of the progress made in other countries has come to a conclusion that the case management system has yielded exceedingly good results.

The Model Case Flow Management Rules read as under:

They are further divided into two types

(A) Model Case Management Rules for Trial Courts and First Appellate Subordinate Courts;

(B) Model Case Flow Management Rules in High Court.

This case flow management system by taken into consideration by the apex court because of PIL. As it was started to protect the fundamental rights of people who are poor, ignorant or in socially or economically disadvantaged position. It is different from ordinary litigation, in that it is not filed by one private person against another for the enforcement of a personal right. The presence of ‘public interest is important to file a PIL in any higher court. Supreme Court has entertained numerous PIL and has protected the basic rights of the different sections of society. Following Article needs to taken into consideration as they are part of the effective justice delivery system.