

Hello students. Welcome to

module 7. In this module we shall be dealing with Hart's theory. The outline of this module that is Hart theory of law. We will be first dealing with introduction followed by the legal philosophy approach to the treatment of jurisprudence. Salient Features of Harts, theory and criticism faced by Hart's theory.

Learning outcomes. The student will be able to understand jurisprudence in its technical sense, its underlying legal philosophy with the help of legal theory, as propounded by H LA Heart.

Comprehend the meaning the salient features implications, and the application of this theory. Let us now begin with heart theory. Hart's theory was propounded by HLA

Hart Herbert Lionel Adolphus

Hart. He was born in the year 1907.

He practiced law for a while at the Chancery Bar and later took up as Professor of Jurisprudence in Oxford during the years 1952 to 1968.

He is considered as a leading contemporary representative of British

positivism. In the year 1961, he published his most influential book, *The Concept of Law*. Hart outrightly rejected to accept Austin's theory of positivism. In its place, he expounded his legal theory based on the relationship between law and society.

Hart favored an analytical approach to law.

His notion of law was very different from his predecessors. He understood law, coercion and morality as related social phenomenon.

We will now move on to the next concept Hart's approach to concept of law.

Human conduct in some sense will continue to be non optional or obligatory in presence of law.

The idea of obligation is at the core of the rule according to Hart. He explains law as being a system of two typical sets of rule. They are the primary rules which impose a duty, and Secondly the secondary rules which confer power.

The union of these primary and secondary rules provide a key to understand the science of jurisprudence.

The union of these primary and secondary rules is considered as an essence of law.

Hart rejected Austin's command theory as it is based on the coercive character of law, the duties imposed by primary rules on individuals are binding because of their popular acceptance. Example, rules of kinship, family sentiments, etc. They are considered as unofficial rules and are seen to suffer from three major defects. They are as follows. Firstly, uncertainty. Secondly, static character of law and Thirdly inefficiency. Secondary Rules confer power and thus enable legislators to modify their policies according to the needs of society.

Law is born from the union of these primary and secondary rules.

Primary rules are the ones which impose duties and are concerned with actions involving physical movement and changes.

Secondly, rules are the ones which confer private and public powers. They provide for operations that lead to creation and variation of obligations and duties.

We now move on to the next slide, which deals with the rules of recognition.

Hart explains the existence of law with reference to the rules

of recognition. He states that its acceptance lies in its binding force. This is not any hypothetical concept like Kelson's Grund Norm.

Rather, these are the only rules in a legal system whose binding force depends upon the acceptance.

We now move on to the next concept. That is Hart's view on law and morality.

Hart attributes acceptance to a certain degree of natural law in his theory of positivism.

He believes that some connection between law and morality is necessary. The Union of Primary and Secondary Rules has an element of morality implicit in

it. Law and morality are complementary and supplementary to each other.

There is a thin line of control to balance the freedom of an individual to have intellectual and artistic freedom.

It is the duty of law to protect society from this poverty and corruption that Hardin propounds. The function of law is to ensure that morality of society does not disintegrate away.

Law is the last line of defense to protect morality of

society. The inherent attempt to preserve the accepted morality of the state is first attributed to the society itself. This can be achieved through education, mass media, etc.

We now move on to the next aspect faced by Hart theory, that is, criticisms faced by

Hart Thierry. The two prominent legal jurists who criticize Hart's theory was that Ronald Dworkin and Lon Fuller.

Ronald Dworkin rejected Hart theory on the ground that no legal system can be conceived merely as an aggregate of rules.

It has to be based on certain solid principles and policies.

He states that judges, while exercising that discretion, can create GNU legal rules where the existing law is silent on that particular point.

The next legal jurist. But we will see at this juncture is

Lon Fuller. He criticised hart Theory on the ground that there is no law involved other than rules or recognition.

As legal system has a responsibility to act as an instrument of change, it must contain law as it is as well as law as it ought to be.

Law invites in itself a sustainable purpose and has

morality implicit in it?

Follow further explains that if law exists in absence of morality then it may cause injustice. Hence it has to conform with internal morality.

Fullers text on it conditions which constitute the internal morality of law are as follows.

Firstly, there must be rules. Secondly, the rules must be published. Thirdly, retrospective legislation must not be used abusively. The rules must be understandable. 5th.

Their rules must not be contradictory. The rules should not require the conduct beyond the power of affected parties.

The rules must not be changed so frequently that the subjects cannot guide their actions by

them. There should be congruence between rules as announced, and their actual enforcement.

You can do further references in this topic by referring

books by Salmond on Jurisprudence, Mahajan on

Jurisprudence and legal theory. NK Jaya Kumar,

Lectures in Jurisprudence and Doctor NB Paranjape studies

in jurisprudence and legal theory. Thank you.