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Irving, Ronald. The Law is a Ass. U.K. Duckworth, 1999. Universal Law Publishing Co. Pvt. Ltd., Third Indian Reprint, 2008. Pp. 320, Including Bibliography and Index, INR 175

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ABSTRACT

In Ronald Irving's book The Law is A Ass there is a collection of anecdotes which augment legal quotations in context with the different parts of how law actually works in the judicial system. The scheme of the book is to convey philosophies, concepts, understandings and practices associated with Law and its appurtenances, which may not be amenable to a student of Law seeking answers to "what is ***the*** *law". However, no student of Law may ever be able to clearly claim that they never encountered perplexing philosophical question or a difficult question juxtaposing Law as it '****is****' as against the Law as it '****ought to be****'. This book becomes important because of its capability to withstand such formalistic criticisms.*

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Irving, who read law at University of Oxford and then went on to join the bar, has kept ironical humour as the theme of the anthology. The humour comes to life by Irving's uncanny ability to converge his practical experience with his readings of Law books as well as the classical theories on Law sprinkled with tinge of classical literature. The name of the book itself has been inspired by Charles Dickens' *Oliver Twist*. The law schools have always grappled with

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the idea of bridging the gap between law in theory and law in practice, the book is an attempt to imbue the practical aspects of law in action in the law Courts to its reader. In respective sections of the book, based on notions of *Justice*, *Law*, *Lawyers*, the *Courts*, *Libel*, *Crime* and *Wills*, the anecdotes concerning politicians, judges, scholars, barristers and attorneys have been accentuated, which not only present to the readers some inconspicuous aspects of these ubiquitous notions, but also leave them chortling while reading the quotations from various sources which have been compiled by Irving.

In the section *Justice*, various facets of 'idea of justice' are reflected which one encounters frequently but seldom appreciates. Among these facets is Emperor Justinian's conception of Justice as a constant and perpetual wish to render everyone what is due to them, which Irving suggests has faded with the involvement of interpretation by Court of Justices and pecuniary considerations of lawyers for securing Justice with legal costs. This candid analyses of reality of the functioning of judicial machinery that churns out semblance of an idea of Justice only when oiled with economic wherewithal of the litigant. The reader may end up revisiting the distributive theory of justice of John Rawls while reading the part featuring Franz Kafka, whereby Irving sets out the repercussion of breakdown of justice as a by-product of enforcement of unjust laws, and may be compelled to recollect such instances in contemporary times. The abstract philosophies of ancient and contemporary famous thinkers have been extolled; such as: 'extreme justice is extreme injustice' by Cicero, 'fresh justice is the sweetest' by Francis Bacon, 'peace is more important than all justice; and peace was not made for the sake of justice, but justice for the sake of peace' by Martin Luther, and 'justice delayed is not only justice denied – it is also justice circumvented, justice mocked and the system of justice undermined' by Richard M. Nixon. The references not only strikes the reader with the cerebral kick to think, but also leads the reader to seek the works of the thinkers of past and present in search of why they said what they said, do we face the same challenges that our ancestors faced twenty five hundred years ago?

Irving discusses the development of Law, in terms of its form and skeptical views on its contents, in the section *the Law*, juxtaposing what Law 'is' with the aspirations of excellence by what Law 'ought to be'. Irving has given annotations pertaining to codification of laws, doctrine of legal precedents and payment of damages and compensations. Edward du Cann's observation on excessive accumulation of legislation as one of the obstacles to good government, which Irving too supports, may appeal a reader who finds himself entangled in a web of complex legislations over a single subject matter, and who is perplexed in the legal process. While a reader may be relieved when reading about the doctrine of *stare decisis* which

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Lord Denning supports in order to remove unfairness and oppression of strict legal principles, Irving reveals the other side of the coin, asserting that judges, while following the said doctrine, often end up passing awkward decisions. One is reminded of the never-ending conflict between the Blackstone's adamancy to legislative monopoly and Austin's acquiescence to 'judiciary law'. The latter view finds support of Bishop Benjamin Hoadly who opines that 'whosoever hath an absolute authority to interpret any written or spoken laws, it is he who is truly the law-giver to all intents and purposes and not the person who first wrote or spoke them.' This conflict seems to be settled in Indian context owing to inclusion of article 142 in the Constitution of India. The quest for sumptuous compensations by the plaintiffs and the willingness of courts to award damages has been suggested by Irving as the point of difference between the legal system of the United States and its British counterpart. Among several quotations featured at the end of the section, a reader may find himself to be intrigued by observations of Fredrick Douglass (No man can point to any law in the US by which slavery was originally established.

Men make slaves and then make laws), Jean Jacques Rousseau (Laws are always useful to those who possess and vexatious to those who have nothing), Cicero (It is ignorance of the law rather than knowledge of it that leads to litigation), Thomas B Reed (One of the greatest delusions in the world is the hope that the evils of this world can be cured by legislation) or Tommy Manville (She cried and the judge wiped away the tears with my cheque book). The book beseeches the idea of what law ought to be by making a judge's task to understand that Law in its literal sense may result in grave injustice.

By distinguishing between barristers and solicitors and describing the animosity of the former towards the latter, especially in the courts of the United Kingdom, Irving, in section titled *Lawyers,* unfastens the clandestine methods employed by lawyers for pecuniary gains which are often undetected and unpunished, but which also end them in serving prisons, howsoever less often. Mentions of Sir Stafford Cripps, who had associations with India during British reign, are made by Irving, alongside John Camden Neild and Rufus Issaic, whom Irving considers eccentric, unerringly talented, and excellent lawyers. Readers belonging to profession of law may feel disheartened when reading denunciations about lawyers – whether its Charles Dickens saying 'if there were no bad people there would be no good lawyers', or attributions made to Jeremy Bentham that 'lawyers are the only persons in whom ignorance of law is not punished' or definition of lawyer in Enlarged Devil's Dictionary as 'one skilled in the circumvention of the law' or to John Keats when he opined that lawyers may be classed in the natural history of monsters. For the bench, Irving brings Francis Bacon who warns judges of their conduct and construction - 'judges must beware of hard construction and strained

inferences; for there is no worse torture than the torture of laws. Specially in case of laws penal, they ought to have care, that that which was meant for terror be not turned into rigour', and for the bar Roy M. Cohn may seem relevant - 'I don't want to know what the law is, I want to know who the judge is.'

A court decides the culpability of accused within the strict letters of law and lawyers are agents of accused who are to carry out negotiations with the aid of these letters. In the section titled *In Court*, Irving apprises readers about rules and manners in which a trial should be conducted by a practitioner, including but not limited to cross-examination, leading questions, hearsay evidence, and courtroom etiquettes. Irving gives an account of criminal trial of O.J. Simpson which followed the civil trial, and of civil trial of Frederick Edwin Smith which followed the criminal trial, hinting on the never-ending litigation undertaken by court arising out of same evidence. Cicero's suggestion to practitioners on abusing the plaintiff when there is no basis for an argument left, or Lord Kilbrandon's lesson for a witness to remain silent in order to discourage a counsel talking nonsense, or F. Lee Bailey's impression of his fees being a sufficient punishment for guilty men, are some quotations handpicked by Irving and put in the latter part of the section, and a reader accustomed with provisions of law will find himself reading various principles of Law of Evidence reflected in various quotations of this section. Henry Cecil's view on law of evidence 'being preventive in nature from telling a person whole truth', Abraham Lincoln's view on a juror being 'more ready to hang the panel than to hang the traitor', or F.E. Smith's befitting response to Judge Wills calling him an ill-tuned cymbal, are some instances which will leave the reader let loose with gentle guffaw.

The first impression which a reader may get after reading the section *libel* is to settle with the defendant when found amidst a defamation suit, which his attorney suggests to be tilted in his favor. The punitive sanctions for libel which were excruciating in the Roman times and were decided by judicial duels introduced by William I, have been reduced to civil action in modern day defamation law. While the account given by Irving suggests that in Merchant of Venice, insult was akin to law and resulted in homicide, a reader may find himself looking at Portia, yet again, acting as an emblem of justice and invoking law to protect the insulter of Shylock. When Irving suggests that the law pertaining to libel has been susceptible to change with the passage of time, one is reminded on Eugen Ehrlich and his notions of 'living' nature of law, and in this sense the contemporary version of prosecution of defamation is more compensatory than retributory, which is also supported by Irving, as well as Samuel Johnson, who opines that one committing calumny can never repair the injuries resultantly sustained. A short account of celebrated cases of *Gordon-Cumming v. Green* (1891), *Mountbatten v. Odhams Newspapers*

(1932), *Beloff v. Private Eye* (1972) and *Goldsmith v. Private Eye* (1977) has been given by Irving, which gives the reader an insight of most of the defamation trials doing seldom good than harm, and which is also bolstered by David Leigh when he says that 'libel is such a profitable High Court casino because only the rich can play.'

The designation of an act as a crime and the element of its punishability, as David Frost and Anthony Jay suggest, is determined by the pleasure of upper class. While the said idea has a pinch of Marxist thought, Irving, in the section titled *crime and punishment,* does not bother to decipher the relationship of crime and class conflict, and instead sticks to the explanatory methodology of narrating anecdotes and illustrating the interaction of crime with the corresponding punishment and giving justifications to the presence of punishments for acts which are labelled as crime. A brief discussion by Irving on existence of capital punishment and prison reforms in a legal system, appears to be relevant even in contemporary times where abolition of capital punishment and release of prisoners as a rule as well as a right, is being demanded in various jurisdiction including India. The quotations annexed at the end of the chapter will make the reader delve into the psychology, rationality and justifiability of crime and individuals committing such crimes, some of which include Andrew Young's opinion that nothing is illegal if 100 businessmen decide to do it; Quentin Crisp's thought on mass murderers are simply people who have had enough; Riber Rice's definition of crime being a logical extension of the sort of behavior that is often considered perfectly respectable in legitimate business; and an anonymous quote suggesting that it is not the people who are in prison that should be worried about; it is the people who aren't.

An essential feature of modern conception of right to property is its attribute of being capable of alienation and through this does the relevance of bequest gains significance. An intriguing definition of 'bequeath' viz. 'to generously give to another that which can no longer be denied to somebody', supports this view. In the last section of book titled *wills,* Irving gives a historical account of varying nature of wills and hardships faced by a legatee who often ends up losing the bequeathed property in a fierce attempt to obtain it. Even though wills were being written long back in 2400BC in Egypt, yet testators till present day find themselves in hitches while making a bequest, and the role of lawyers in this process, as suggested by Irving, has been widely condemned due to their enigmatic drafting. Selleck Osborn supports this view by saying that what one leaves on his death must be left by him without controversy; else the lawyers will be your heirs. As pointed out rightly by Niccolò Machiavelli that 'a son can bear with composure the death of his father, but the loss of his inheritance can drive him to despair', even

in contemporary times, a bulk of litigation in the courts is driven by an appetite for inherited property.

The book relies on the wisdom, quotes and ideas on Law and Justice of thinkers and philosophers who have heavily influenced the legal landscape in academic thinking, practice of law at Bar and judicial decision making through their seminal works. The doctrinal research comes together with the empiricist understandings of Irving as a practicing lawyer in London.

Though the book is an attempt to bridge the gap in theoretical understanding of Law and Law in practice, but it has its limitations because of the limitations of words having a limited effect on its reader. Nevertheless, it is a good read for any student of Law who can bring his imagination to work on the writings in the book which will surely support his understandings on Law in practice in Courts. The book would rightfully supplement students of law, lawyers, teachers and even judges, who wish to attain a superordinate understanding of legal concepts. Irving has immaculately orchestrated to unveil the obscure aspects of law by adding humour to its contents and materiality in its form by making it discernable and comprehensible.

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