Western Punjab College of Law

LL.B Part I

Notes: Introduction to Philosophy of Law

(Handout no. 14)

**Critical Legal Theory**

**Historical Background:**

Critical theory is often associated with so-called Frankfurt School, a term which refers to the work of members of the institute or Social Research. The institute was established in Frankfurt Germany during 1923. Critical theory was first defined by Max Horkheimer of the Frankfurt School of sociology in his essay Traditional and Critical Theory.

**Introduction:**

Legal theory constitutes one of the main components of jurisprudence. It is concerned with law as it exists and functions in society and the manner in which law is created and enforced. The legal theory seeks to co-relate law with other disciplines such as religion, philosophy, ethics, politics etc. it is therefore necessary that while analyzing legal concepts an effort should be made to present them in the background of social developments and changing economic and political attitudes.

**As pointed out by Friedmann:**

“all systematic thinking about legal theory in linked at one end with philosophy and at the other end with political theory.

**Exponent of Legal theory:**

Dr. W. Friedmann was the first who coined the term legal theory.

**Definition of Critical Theory:**

A school of thought advancing the idea that legal system perpetuated the status quo in term of economics, race and gender by using different concepts and by creating an imaginary world of social harmony regulated by law.

**Characteristics of Critical legal Theory:**

1. **Individual from various disciplines:**

The Critical theory project initially involved attempts of individuals from various disciplines to work together collectively to develop a historical and systematic theory of contemporary society rather than just bringing individuals from separate disciplines together to chat or assigning various specialists different topic for research and inquiry.

1. **Theory of society:**

Critical theory insists that one needs a theory of society grounded in a theory of capitalism to make sense of socio historical processes and developments because the dynamics of capitalism play such a constitutive role in social life.

1. **Totality:**

Frequently critical theorist use the term totality in a synchronic sense to refer to the structure of society defined by Marxian critique of political economy which provide the framework and context of inquiry and which constitutes many social facts.

1. **Global and Historical:**

Critical theory is global and historical and attempts to provide the big Picture that sketches the fundamental outlines of socio-economic development and the ways in which capitalism structures social life as well as the dynamics through which a capitalist society can be replaced by a socialist one. The critical theorists thus described the interconnections between these spheres as well as the contradictions.

1. **Systematic:**

Critical theory is thus systematic, totalizing and global. Social theory has a mediating function for the critical theorists integrating science and philosophy and mediating between research and theoretical construction and presentation.

1. **Mediates:**

Critical theory mediates b/w various domain of reality, b/w parts and whole, b/w appearance and essence, and b/w theory and practice. The now “classical” 1930s model of critical theory thus synthesizes social theory research, and radical politics in critical global theory of present age. Critical theory today, confronts the challenge of reconstructing its theory of capitalist society in the light of social conditions and developments. Critical theory “never aims simply at an increase of knowledge as such. Its goal is man’s emancipation from slavery”

1. **Role of philosophy:**

Philosophy role in critical theory is to analyze the presuppositions of critical social theory and to criticize the presuppositions and effects of competing theories.

1. **Self-reflexive and self-critical:**

Critical theory is thus deeply self-reflexive and self-critical , forcing critical theorists to continually concern themselves with reflection on methods and the nature and effects of a critical social theory.

While horkheimer believed that critical social sciences would provide indispensable material for the theory.

1. **Substantive social theory:**

Critical theory strives to provide both a substantive social theory of present age. On one hand, critical theory contains a set of ways of looking at theory and at the world and a set of investigative, research, textual, and political practice. Yet, critical theory also provides a substantive, comprehensive theory of present age in addition to its methodological orientation for doing social theory and research and for relating theoretical work to radical politics.

1. **Motivated:**

Critical theory is thus motivated by an interest in emancipation from capitalism and provides a philosophy of social practice engaged in “the struggle for the future”. critical theory horkheimer argued, must remain loyal to the “idea of the future society as the community of free human beings, insofar as such a society is possible, given the present technical means.”

1. **New form of technology:**

According to many critical theorists, new forms of technology, new modes of organizing production, new configuration of class, and new methods of social control were producing a “one-dimensional” society without opposition. It also seemed that new forms of political, social, and especially cultural conformity were becoming institutionalized. A crisis of critical theory emerged with its fragmentation after world war.

1. **Theorize new technology:**

In particular, critical theory has not continued to theorize new technologies, new developments in the media, changes in socialization practices, and the new cultural developments.

**Post Modern Critical Theory**

Postmodern critical theory politicizes social problems by situating them in historical and cultural contexts, to implicate themselves in the process of collecting and analyzing data.

The focus of research is centered on local manifestations, rather than broad generalizations. Postmodern critical research is also characterized by the crisis of representation which rejects the idea that a researcher’s work is an objective description of a stable other. Instead many post modern scholars have adopted alternatives that encourage reflection about the politics of their work. In these accounts the embodied collaborative dialogic and aspects of qualitative research are clarified.

**Conclusion:**

To conclude that critical social theory should be directed at the totality of society in its historical specificity and that critical theory should improve understanding of society by integrating all the major social sciences including geography, economics, sociology, history, political science and psychology.