

**LL.B. (Hons.) (Second Year) IIIrd Semester
Paper - I
Subject – Jurisprudence - I**

Unit – III: School of Jurisprudence - II

Topic: Sociological Jurisprudence with Indian Perspective

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- **Sociological Jurisprudence:**

The main subject matter of sociology is Society. Sociology is the study of society, human behaviour, and social changes. jurisprudence is the study of law and legal aspect of things. The Sociological school of Jurisprudence advocates that the Law and society are related to each other. This school argues that the law is a social phenomenon because it has a major impact on society.

Sociological school of law focuses on studying the law in practice with relation to the society. They lay emphasis on actual social conditions and situations which require the help of the law.

The characteristics of Sociological school of law:

1. Sociological School of Law lays emphasis more on the functional aspect of law rather than its abstract content.
2. They consider law as a social institution essentially interlinked with other scientists and the direct impact of the law on society with its formation according to social needs.
3. Sociological School of Law completely neglects positivism i.e., the command of sovereign and also historical jurisprudence.
4. Sociological jurists describe the perception of the law in different ways like the functional aspect of law or defining the law in terms of the court's rulings and decisions with a realistic approach of law.
5. The sociological jurists have greater concerns when it comes to the functioning and working of the law rather than the nature of the law.

The main exponents of sociological jurisprudence are Montesquieu, Auguste Comte, Albert Spencer, Ihering, Ehrlich, Duguit, Roscoe Pound etc. *The French thinker Auguste Comte is regarded as founding the father of the sociological school of law.*

Meaning of Sociological school of Jurisprudence:

The idea of Sociological School is to establish a relation between Law and society. This school laid more emphasis on the legal perspective of every problem and every change that take place in society. Law is a social phenomenon and law has some direct or indirect relation to society. Sociological School of Jurisprudence focuses on balancing the welfare of state and individual was realized.

Reasons for the Emergence of the Sociological School:

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- Laissez-Faire is the most important reason for the creation of the sociological school of jurisprudence. It refers to the policy of minimum governmental interference when it comes to dealing with the economy, the society or the individuals. *According to the Britannia dictionary, "Laissez-faire is the policy of minimum governmental interference in the economic affairs of individuals and society."*
- It is due to the increasing importance of the practice of Laissez-Faire that this law rose to existence. However, due to the development and growth of laissez-faire, there seems to be a greater relevance and focus on individual growth. The Sociological school came out as a reaction against the laissez-faire because sociological school advocates the balance between the welfare of the state and individual interest.
- Pragmatists as well as progressives were melioristic in orientation and shared an optimistic faith in the capacity of the social sciences to help identify justice and the public good, and the best means to achieve them. *The basis of the socio-legal school is formed by the ideas of pragmatism, which are expressed in the functional and instrumental approach to the law.*

Jurist of the Sociological School of Jurisprudence:

Montesquieu (1689-1755):

Montesquieu was the French philosopher and he paved the way of the sociological school of jurisprudence. He was of the view that the legal process is somehow influenced by the social condition of society. He also recognized the importance of history as a means for understanding the structure of society and explained the importance of studying the history of society before formulating the law for that society.

In his book 'The Spirit of Laws', he wrote: "law should be determined by the characteristics of a nation so that they should be in relation to the climate of each country, to the quality of each soul, to its situation and extent, to the principal occupations of the natives, whether husbandmen, huntsmen or shepherd, they should have relation to the degree of liberty which the constitution will bear, to the religion of the inhabitants, to their inclinations, riches, numbers, commerce, manners, and customs."

Auguste Comte (1786-1857): He is considered to be the founder of the science of sociology. Comte's method may be called 'Scientific Positivism'. He pleads for the application of the scientific method to the science of sociology.

Society is like an organism and it can progress when it is guided by scientific principles. These principles should be formulated by observation and experience of facts excluding all metaphysical and other like considerations. The implications of Comte's theory are many. He greatly influenced the philosophical and scientific thoughts of his time. In the field of

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legal theory, Comte's ideas inspired Durkheim, and who, in his turn, inspired Duguit, a great sociological jurist.

Herbert Spencer (1820-1903): Organic Theory of the Society: He gave a scientific exposition of the organic theory of society. He applied this evolutionary trend of society to sociology. The organic theory has been very beautifully summarized by Prof. Allen. The inter-dependence of organisms, in its sociological aspect, means the mutual relation of all members of civilized society and the distribution of a sense of responsibility far wider than can be comprised within the formula 'Sovereign and Subject'. It directed attention to the necessity of considering the law in relation to other social phenomena."

Ihering: (1818-1892): Ihering was another sociological jurist known for his monumental work 'spirit of the law'. He was against the theory of individuals welfare and favours the factor that social interest of society must have a priority over an individual's interest and the purpose of the law is to protect the interest of society, that is why his theory is known as 'Jurisprudence of Interest' which emphasizes on the sociological aspect of Sociological School of Law. He described the law in following aspects:

1. Law as a result of Constant Struggle: Ihering pointed out that the social struggle gives birth to law and the role of law is to harmonize the conflicting interests of individuals for the purpose of protection of interest of society. He gave importance to living law which develops with the struggles of society.
2. Law as a means to serve Social Purpose: According to him, the ultimate goal of the law is to serve a social purpose. It is the duty of the state to promote social interests by avoiding various clashes between social and individual interests. According to him, "law is coercion organized in a set form by the state", which means that he justified coercion by the state for the purpose of social welfare.
3. Law as one of the means to control society: Law alone is not a means to control society, there are some other factors also like climate, etc. Like Bentham, Ihering favours the interest in the achievement of pleasure and avoidance of pain but for the society, that's the reason that Ihering theory is also known as the theory of "Social Utilitarianism".

So, according to the Ihering, the social activities of individuals can be controlled by the state by means of coercion, reward and duty for achieving social control for the welfare of society. Friedman said that "Ihering was declared as the father of modern sociological jurisprudence because of his concept of law as one of the important effective factors to control social organisms."

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Criticism:

1. He Points Out Only the Problems, and not the Solution.
2. Law Protects 'Will' and not Purpose'.

Eugen Ehrlich (1862-1922):

Eugen Ehrlich was considered as the founder of Sociology of law. Sociology of law is the study of law from the sociological perspective. Ehrlich considered society as a main source of the law. And by society, he means “association of men”. Ehrlich had written that “Centre of gravity of all legal developments is not in legislation or judicial decisions but in society itself.” He argued that society is the main source of law and better source of law than legislation or judicial decision.

Law is to be Found in Social Fact: The central point in Ehrlich's (1882-1992) thesis is that the law of community is to be found in social facts and not in formal sources of law. He says:" At present as well as at any other time the centre of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself.

'Living Law' is the Facts that Govern Social Life: Ehrlich believed in the spontaneous evolution of law in the context of existing society. According to him, law originates from existing institutions of marriage, domestic life, possession, contract, inheritance, etc. They govern society through living laws. By living laws, he means that extra-legal control which governs/regulate the social relations of man. In his opinion, the centre of gravity of legal development in the present times or in the past lies neither with the juristic science, nor in judicial decisions, but in society itself. His living law is the law which dominates social life even though it has not been known in the form of enactments or decisions of courts. So, the scope of living law is under than the statutory law of the state. For example, there may be some enactments enforced in the sense that courts may apply them in the decisions in any issue but a community may ignore the enacted laws and lives according to the rules created by their mutual consent, like dowry system in India.

Criticism:

1. Makes no Distinction Between Legal and Other Social Norms:

Leon Duguit (1859-1928):

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Leon Duguit was a French Jurist and leading scholar of Droit Public (Public Law). He was greatly influenced by the Auguste Comte and Durkheim. ***He gave the theory of Social Solidarity which explain the social cooperation between individuals for their need and existence.*** Duguit's theory was based upon Auguste Comte's statement that "the only right which man can possess is the right towards his duty." **Social Solidarity**

Social Solidarity is the feeling of oneness. The term 'Social Solidarity represents the strength, cohesiveness, collective consciousness and viability of the society.' Leon Duguit's Social Solidarity explain the interdependence of men on his other fellow men. No one can survive without depending on other men. Hence the social interdependence and cooperation are very important for human existence.

The objective of the law is to promote Social solidarity between individuals. And Leon Duguit considered that law as bad law which does not promote social solidarity. Further, he also said that every man had the right and duty to promote social solidarity. For Example, in India, the codified laws are followed by everyone. Hence, it promotes Social Solidarity.

Importance of Duguit's theory:

1. Over emphasis was given on duties rather than rights.
2. The direction towards mutual cooperation among individuals in society.
3. Law as an instrument of social solidarity to promote justice.

Criticism:

1. 'Social Solidarity' a Natural Principle
2. Social Solidarity to be Decided by Judges:
3. He Confuses 'is' with 'Ought'
4. He Overlooked the Growing State Activity
5. Inconsistencies in the Theory: Another weakness of Duguit's theory is its inconsistency at several places. On the one hand, he expresses faith in the biological evolution of society, and on the other hand, he vigorously attacks the idea of collective personality. He denied any personality to state or group distinct from the individuals who constitute it.

Roscoe Pound (1870-1964):

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Pound was an American Legal Scholar. His view is that law should be studied in its actual working and not as it stands in the book. He was one of the most leading and important jurists who developed American sociological jurisprudence in a systematic manner.

He treated the law as a means of affecting social control and his contribution to jurisprudence is great. The functional aspect of the law.

Roscoe Pound gave stress on the functional aspect of law. He defines law as containing the rules, principles, conceptions and standard of conduct as a developed technique of social engineering. The main function of law is to satisfy the maximum number of people. Not only this function but also to reconcile the conflict in the interest of individuals and society.

Theory of Social Engineering:

Roscoe Pound gives the theory of Social Engineering in which he compared lawyers with the Engineers. Engineers are required to use their engineering skill to manufacture new products. Similarly, social engineers are required to build that type of structure in the society which provides maximum happiness and minimum friction.

According to Pound, “Law is social engineering which means a balance between the competing interests in society,” in which applied science is used for resolving individual and social problems.

Social Engineering is balancing the conflicting interest of Individual and the state with the help of law. Law is a body of knowledge with the help of law the large part of Social engineering is carried on. Law is used to solve the conflicting interest and problems in society.

He mentioned that everybody has its own individual interest and considered it supreme over all other interest. The objective of the law is to create a balance between the interests of the people. For Example, Article 19 of the Indian Constitution provides ‘Rights to speech and expression’ but on the other side, State put some restriction on this right. And when the conflict arises between Individual right and State’s restriction, then the law comes to play its part. And solve the conflict between the interests.

He describes that there are various kinds of interests in society and the main task of law is to make all possible efforts to avoid conflict between them. Thus, courts, legislature, administrators and jurists must work with a plan and make efforts to balance these three categories: Public, Private and Social Interests. Interest Theory

Roscoe Pound in his interest theory mentioned the three kinds of interest. To avoid the overlapping of the interests, he put boundaries and divide the kinds of interests.

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Individual/ Private Interest:

These are claims or demands involved from the standpoint of the individual life which consists of interest of personality, interest in domestic relations and interest of substance. The individual's interest is known as private interest like physical integrity, reputation, etc. and they're protected by the law of crime, torts and Contract Law, etc.

Domestic relations of a person such as a husband and a wife, parents and children, etc. are protected by Personal Law. The interests of the property, succession, contractual relations, testamentary relations, etc. are protected by Property Laws.

Public Interest:

These are the claims or desires asserted by the individual from the standpoint of political life which means every individual in a society has a responsibility towards each other and to make the use of things which are open to public use. Main public interest is interest in the preservation of States. Administration of trust, charitable contracts, protection of the environment, regulation of public employment, etc. are being protected by the States.

Social Interest:

These are the claims or demands in terms of social life which means to fulfil all the needs of society as a whole for the proper functioning and maintenance of it. Interest in the preservation of general peace, health, the security of transaction's, preserving social institutions like religion, politics, economic.

Interest in preservation of peace and health.

Preserving social institutions of religion, politics and economics. Preserving certain prohibiting acts like prostitution, gambling, etc. Conservation of social and natural resources.

General progress including economic, political and cultural areas. E.g.- Freedom of Trade and Commerce, Speech and Expression, etc. Interest to make a political, physical, social and economic life to promote personality.

Jural Postulates by Roscoe Pound:

According to Roscoe Pound, every society has certain basic assumptions for proper order and balance in society. These assumptions are implied and not in expressed form and are called as Jural Postulates of the legal system of that society. These assumptions of man

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related to the reference for what they want from the law or legal system or we can say that it is the expectation of a man from the law. He has mentioned five kinds of jural postulates:

1. In a civilized society, man must be able to assume that others will not commit any intentional aggression on him.
2. In a civilized society, man must be able to assume that they must control for beneficial purposes. E.g.- control on whatever they discover or create by their own labour.
3. In a civilized society, man must be able to assume that those with whom they deal as a member of societies will act in good faith.
4. In a civilized society, man must be able to assume that the people will act with due care and will not cast unreasonable risks of injury on others.
5. In a civilized society, man must be able to assume that certain people must restrain from doing harmful acts under their employment and agencies which are otherwise harmless to them.

So, these Jural Postulates are a sort of ideal standards which law should pursue in society for civilized life and with the changes in society, the jural postulates may emerge or originate in society.

Criminal:

An interest in protection from any intentional aggression. For Example, Assault, Wrongful restraint, Battery, etc.

Law of Patent: An interest in securing his own created property by his own labour and hard work. E.g., agricultural land, any music or artistic things.

Contract: The interest in making the contract and getting of reasonable remedy or compensation when his right violates.

Torts: Protection against Defamation and unreasonable injury caused by the negligent act of another person.

Strict Liability:

Similarly, in case Ryland Vs. Fletcher Protection of our interest if the injury caused by the things of another person. It is the duty of other people to keep his/her things with his/her boundary and should look after that thing to avoid injury to other people.

Criticism:

1. 'Engineering' Nor a Happy Word; 'Engineering' Ignores an Important Part of Law

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2. Classification of Interest not Useful

Sociological Jurisprudence with Indian Perspective:

Sociological jurisprudence in India can be seen in many laws and enactments in India.

In India, Sociological Jurisprudence has been adopted in the Indian Constitution. Part III of The Constitution of India solely deals with the Fundamental Rights of the citizen and people of this country wherein the citizens and the people are provided with certain rights. These rights are provided by recognizing the public and private interest of the individual.

Further, there are several cases wherein the concept of Sociological Jurisprudence has been mentioned and has been taken into consideration while delivering the judgment.

*In Ashok Kr Gupta & others vs State of Uttar Pradesh*¹, it was held that this court is not bound to accept an interpretation which retards the progress or impedes social integration.

*In the case of Union of India & Anr v Reghubir Singh*², the court observed that the aspect of the social conduct and experiences of the ages has to be considered while determining and framing the new laws and norms.

*In the State of Madras vs Champakam Dorairajan*³, the Court held that Article 46, being a directive principle cannot override the fundamental rights.

*In N. Adithayan vs Travancore Devaswon Board and Ors*⁴, the observed that distinction based on cast could not be allowed to permeate in the social fabric of the society. Thus, the Court reaffirmed its stand that discrimination of any sort, amounting to untouchability would not be tolerated.

*The Court in Bandhawa Mukti Morcha vs Union of India*⁵, held that the Court should abandon the Laissez-Faire approach in the judicial process particularly where it involves a question of enforcement of fundamental rights and forge new tools, devise a new method and adopt new strategies for the purpose of making fundamental rights meaningful for the large masses of people.

¹ (1997) 5 SCC 201

² (1989) 2 SCC 754

³ AIR 1951 SC 226

⁴ AIR 1951 SC 226

⁵ AIR 1984 SC 802

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*In Sarla Mudgal v Union of India*¹, the court embracing the concept of Sociological Jurisprudence said that marriage celebrated under one personal law cannot be dissolved by the application of any other law. This observation matches up with the concept of Pound

wherein he said that in case of conflict between interests, the interest of the same plane will be weighed together.

India has remarkably embraced the concept and principles of Sociological Jurisprudence and that can be seen by the judgment that is being delivered by the apex Court. Also, different Statutes has taken into account the theory in a way or other and it can be easily said that the Sociological Jurisprudence has been widely accepted on the legal frontier of the country.

Conclusion:

It is to be stated that howsoever divergent the views of various sociological jurists may appear. they have one common point that the law must be studied in relation to society This view has a great impact on modern legal thought. But it should not be taken to mean that other methods have completely ceased to exist Still there are advocates of natural law thought with a 'variable content'. There are Catholic jurists who plead for maintaining a close relationship between law and morals. But these approaches are. in many respects, basically different from earlier approaches of type on the subject and are influenced by the sociological approach.

¹ (1995) 3 SCC 635

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