

“INDIAN LAW EMBRACING SOCIOLOGICAL JURISPRUDENCE: A
DETAILED STUDY”

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Abstract

Sociological School of Jurisprudence is the school of Jurisprudence which give importance to the social norms, society, moral values, and the social facts and conditions. This school of thought was developed by the American Jurist names Roscoe Pound. The basic thought process of this school of Jurisprudence is to make sure that the need and want of society is kept in mind by the maker of law while framing the law. It ensures that the law so made is for the welfare of the people and it is the job of the lawyers, which, Pound addressed as social engineer, to make sure that the society so engineered is a string one and each and every member of the society is kept in mind while framing the law.

This essay at first introduces Sociological Jurisprudence and then goes back to its history and then focuses on Roscoe Pound and his finding and observation when it comes to Sociological Jurisprudence. It defines the different types of interest that he defined and later this essay brings Sociological Jurisprudence to India and cites different cases and legislature wherein the concept of Sociological Jurisprudence has been embraced.

Introduction

Glanville Williams in his book 'Learning the Law', defined law as:

“Law is the cement of society and also an essential medium of change in the society.”¹

The work of cement is to fix the two bricks that are used in the making of a building. Similarly, if we consider society as a building, it is the law that will be considered as cement and it will help to make a strong building which means a strong society. Marcus Tullius Cicero in his book De Legibus gave the maxim “*Salus Populi Suprema Lex Esto*” which means that the welfare of the people shall be the supreme law. When these people come together they form a society and hence the law must aim at strengthening the society and helping in the welfare of the society. The law is made for the person and as it is the ‘cement’ it must be made or rather framed by keeping in mind society and its welfare.

Sociological School of Jurisprudence, as the name suggests, is the school wherein the society was kept in mind before making any rule or framing any law. This essay will focus on the Sociological School of Jurisprudence and its evolution. It will also deal with the application of the concept in the India and how it has helped in changing the society and laws.

History

In the year 1911, Roscoe Pound, an American legal scholar, defined Sociological Jurisprudence in a law review article wherein he rebelled against the formal jurisprudence that has been dominating the country since the Civil War.² But the origin of this school goes back to Germany and in the year 1860s where Rudolf Von Jhering predicted law as a social phenomenon. According to him, law was an outcome of the struggle of individuals and groups to fulfil their purposes.³

¹ “A Critical Enumeration of the Definitions of Law by Various Writers and an Evaluation of the Place of Law in the Society”; Okezi, Uwede-Meshack; School of Law & Security Studies; pg: 4

² Sociological Jurisprudence and Social Change: Tracing the role of Supreme Court of India; Tarun Jain; pg 3

³ <http://www.britannica.com/EBchecked/topic/332775/philosophy-of-law/36354/Sociological-jurisprudence#ref415866> on April 10, 2015 at 6:27 pm

The theory of 'Living Law' of the Austrian Jurist Eugen Ehrlich was basically influenced by the work of Otto Von Gierke. As per Ehrlich, living law was the Law which dominated life itself even though it has not been posited in legal propositions.⁴ In simple terms, if one may say, law is something that is created by life of groups living within the society. It can also be said that law is something that governs the social life and require the study of social conditions and institutions. Many a times it is said that the theory of Pound has been influenced by this theory and has much in common with the same. Earlier it was Montesquieu, who pointed out that the law of the society should be determined by its national characteristics.

In the United States of America, the Traditional Jurisprudence was being evolved at the same time as that of the Sociological School. The Traditional School believed that the Laws and Rules have a particular meaning and the role of judiciary is to prevent the legislatures to cross the boundary so laid down by the laws. Whereas, the Sociological School had the belief that it are social morals and conditions that should be given more importance than the 'boundary' and the fixation of the boundary must be in accordance with the mindset and thought process of the society. If the crime rate of the society is at an increasing rate the boundary should be made a little shorter and the execution of the law must be done in a strict manner wherein it can be seen that the scenario of the society is such that no major harm is being inflicted then the harmonious way can also be applied. It is said that the Sociological Jurisprudence emerged out of rigid legal positivism and has also opposed historical school's undue insistence on past customs which has blocked the growth of the society. It was Sociological Jurisprudence that linked law with various other disciplines of social science and treated it as a synthesis of all of the above and it was linked by Roscoe Pound.

Roscoe Pound

Nathan Roscoe Pound, better known as, Roscoe Pound was born on October 27, 1870 in Nebraska, America. He is one of the greatest contributors of the Jurisprudence. He gave his contribution in the form of Sociological School of Jurisprudence. He first defined this term in a law journal article in 1911. According to Pound, the aim of Sociological Jurisprudence is to enable and compel law making as well as

⁴ "Understanding Jurisprudence"; Wacks, Raymond; 3rd Edition; pg 166

interpretation and application of legal rules and norms taking in regard the social facts. As per Pound, Sociological Jurisprudence must ensure that the making, interpretation and application of law must be done by taking the social facts in to account. Pound further says that to achieve the social aim there are certain steps that should be taken. First of all a factual study of the social effects of legal administration must be done and then there should be a social investigation and also a constant study of both, psychological and philosophical, should be done for making the laws more effective. As per Pound, in order to achieve the purposes of the legal order there must be recognition of certain interests of both public and social; also the limits of those interests must be clearly defined and it should be made sure that those interests are secured within the limits that has been defined. Pound further said that while determining the scope and subject matter of the system an inventory of interest must be prepared which should be classified on the basis of their legal recognition. Then the interest must be selected and the limits must be applied to them and then those limits must be secured by the means of law.

As per Pound, lawyers were the engineer of the society. This could also be linked with the definition given by Glanville Williams wherein he has said law to be the cement of society and the lawyers are the engineers who make the building and if the technique used by the engineer is perfect then the building will be strong and same is true for the society. If the cement i.e. law is used in a correct manner to build the building i.e. society by the engineers i.e. lawyers the building will be strong. The aim of the engineers is to use the available resources judiciously, similarly, as per Pound it is the aim of lawyers as the social engineers to satisfy the maximum wants with minimum waste which means that there must be a balance between the competing interest. It could be possible that a person may be at fault but before giving the person any punishment there shall be a comparison between the competing interest and the decision has to be made in accordance to the result of the comparison.

As per Pound, there were three types of interest, and they are

1. Individual Interest
2. Public Interest
3. Social Interest

Individual Interest

While classifying the interest and demarcating the limit for the same, these are the interest which shall be look upon from the perspective of an individual. These interests concern Personality, Domestic Relation & Interest of Substance and include freedom of will, honour, reputation, family, and property, freedom of trade and association and employment.

Public Interest

As per Pound, the claims asserted in title of a politically organised society can be included in Public Interest and there can be two types of interest. One of them being Interests of the State as a juristic person and the other being Interests of the State as guardian of social interests.

Social Interest

These are the claims or demands which are thought in terms of social life and can be generalised as claims of social group. These interests include a) Social interest in general Security which further include safety, health, peace and order, b) Social interest in the security of social institution which also includes domestic, religious, and political and several other kinds of institutions, c) Social Interest in general morals, d) Social interest in the conservation of Social Resources, e) Social interest in general progress, f) Social Interest in Social life.

With respect to the interest, Pound said that these interests can't be put against each other when there is any conflict. In case, there is any conflict in any interest, it can be weighed only against other interest on the same plane. Public interest cannot be weighed against social and social against public. It must be weighed among the same plane.

Further, Pound also classified different types of institution wherein he differentiated between rules, principles, conceptions, doctrines, and standards. **Rules** attach definite consequences to definite situation; **Principles** are authoritative points for legal reasoning in case rules are not there for that particular situation; **Conceptions** are the basis on which rules or principles becomes applicable; **Doctrines** are union of rules, principles, conceptions; **Standards** prescribes limits of permissible conduct. He died on June 30, 1964.

India and Sociological Jurisprudence

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 the rights that are provided in this chapter have certain limits and hence these rights will not be accessible under certain situation and certain circumstances. Further, satisfying the third condition of Pound these rights has been secured as the Constitution of India says that any law that is in conflict of the Fundamental Rights will be held ultra-vires.⁵ 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*⁶ 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*⁷ 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 *State of Madras vs Champakam Dorairajan*⁸, the Court held that Article 46, being a directive principle cannot override the fundamental rights.

In *N. Adithayan vs Travancore Devaswon Board and Ors*⁹, 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 *Bandhova Mukti Morcha vs Union of India*¹⁰, 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

⁵ Article 13 of Constitution of India

⁶ (1997) 5 SCC 201

⁷ (1989) 2 SCC 754

⁸ AIR 1951 SC 226

⁹ AIR 2002 SC 3538

¹⁰ AIR 1984 SC 802

new method and adopt new strategies for the purpose of making fundamental rights meaningful for the large masses of people.

In *Sarla Mudgal v Union of India*¹¹, the court embracing the concept of Sociological Jurisprudence said that marriage celebrated under one personal law cannot be dissolved by 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 same plane will be weighed together.

Criticism

There are several criticism and loopholes in the theory of Pound. While talking about the engineering of society he talks about maximum satisfaction with least friction and waste but nowhere has he defined what can be termed as waste and friction. Also, Pound has assumed the presence of law in case of the claims whereas there are certain claims which subsequently give rise to formation of law. Choosing one among two competing ideals is a very subjective topic. There can be a particular claim that may interest a person and the same claim cannot be an interesting topic for other. Also, Pound has given a list of interest wherein the list can never be exhaustive in nature. It will change with due course of time. The concept of Pound is said to be in favour of liberal and capitalist society¹². He has also overlooked the extent to which the law has recognised already vested rights. It is not easy to establish people's interest as man is a manipulative being. The difference between the interests is not being distinctly mentioned by Pound. Pound has failed to define the meaning of recognising an interest.

Conclusion

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.

¹¹ (1995) 3 SCC 635

¹² Lloyd's Introduction to Jurisprudence Pg: 851