



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

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LECTURE: 16

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Lecture-16



LECTURE- 16: THE SOCIOLOGICAL SCHOOL OF JURISPRUDENCE

Sociology of law is defined in many ways, but its main difference from functional jurisprudence is that it attempts to create a science of social life as a whole and to cover a great part of general sociology and political science. The emphasis of the study is on society and law as a mere manifestation, whereas Pound rather concentrates on law and considers society in relation to it. Huntington Cairns also attempt to create a legal science with a dominant emphasis on sociology. He considers that modern jurisprudence is a meaningless and fruitless pursuit of a goal incapable of achievement.’ Jurisprudence is really an applied science, and no technology has ever succeeded unless it was based on the findings of a pure science. No universal propositions can be laid down concerning legal concepts or rules because they differ from race to race. If jurisprudence wishes to become scientific, it must create a science of society. The basis must be human behaviour as influenced by, and in relation to, disorder. It is impossible to discover how law operates unless we have greater knowledge of the factors that cause change in society and govern its evolution. When this is understood, jurisprudence as a technology can apply these rules to reach useful results. At present jurists are attempting to build a house before the foundations have been laid. Montesquieu laid the seeds of the sociological method in jurisprudence. In his “Esprit des Lois” (Spirit of the laws), published in 1748, Montesquieu used the historical method. Montesquieu researched into the laws and institutions of all kinds of human society. He considered that law should be based on historical observations, and not merely on reason or belief.

LEON DUGIT

The French jurist Leon Dugit was a professor of constitution law in the University of Bordeaux in France. He made substantial contribution to the sociological jurisprudence in early twentieth century. Dugit carried forward the belief that scientific progress can be accelerated by individual behavior in order to satisfy common social needs and interests. Dugit was inspired by Durkheim who himself had taken inspiration from Comte. Durkheim’s main point, on which

Dugit built upon, was that he made a distinction between two kinds of needs of men in society. Firstly, there are common needs of individuals which are satisfied by mutual assistance and secondly, there are diverse needs of individuals which are satisfied by the exchange of services. Therefore, the division of labour was pre-eminent factor of social cohesion as an indisputable fact beyond ideology, beyond religious or metaphysical speculation.... The constant realisation of social fact which is simply inter-dependence of individuals could at least replace ideological quarrels by observable facts.

Dugit attacked traditional concepts of state, sovereignty and law and sought to fashion a new approach to these matters from the angle of society. Dugit was much influenced by Auguste Comte's 'Theory of law as a fact' which denounced individual rights of man and subordinated them to social interest. Completed that "the only right which man can possess is the right always to do his duty." This formed the basis of Dugit's legal theory.

SOCIAL SOLIDARITY

Dugit built his theory on social solidarity. He insisted on the necessity of viewing social life as it is actually lived. The most important fact of the society is the interdependence of men. In the present day society, man exists by his membership of the society. Each man cannot manufacture and pronounce the necessities of life himself. Functions are so specialized that each in his turn depends on other for his necessities. The end of all human activities and organisations should be to ensure the interdependence of men. This is Dugit's theory of social solidarity.

Dugit puts forth in definite and clear term that law arises of the fact of social existence. Therefore, if man wishes to live and act in society he must act in conformity with the social law of solidarity. Solidarity is not a rule of conduct; it is a fact- the fundamental fact of all human society. In other words solidarity is neither a charity nor fraternity. These are moral duties. It is a fact. It means that in fact men are 'solidarity' with one another that is they have common needs which they can only satisfy in common. That they have different capabilities and different needs which they can satisfy by exchange of needs and division of labour. This solidarity is mutual interdependence is the product of social reality of social life. As such it is the duty of one and all to conform his conduct according to fact of social solidarity. It is a coincidence of purposes and facts- the unhappiness of one affect all, the happiness of one profits all. He says, man must so act

that he does nothing which may injure social solidarity upon which he depends, and more positively, he must do all which naturally tends to promote social solidarity.

Dugit's principle of social solidarity is however not free from criticism. Aware of the growing complexity of modern social life, Dugit attacks individualism as reflected in the conception of inalienable individual rights. He also rejects the alternative of strengthening the central power of the state. Instead he advocates decentralized group environment and the link between the different groups is to be an objective rule of law, the principle of social solidarity. This savors of natural law although Dugit emphatically rejects any such metaphysical conception as incompatible with scientific positivism, yet his idea of social solidarity is as strong a natural law ideal as any ever conceived.

As Allen puts it, "although Dugit disregards the ethical element in law, he is considered to be really postulating a content of ideal law "the natural law with valuable content". Again the meaning of the term 'social solidarity' is not clear from the analysis of Dugit. We may admit that the mutual interdependence of men in society and the need to collaborate for the functioning of social life is a scientific fact. But as many of these who have examined the comparative precision of facts in the social and natural sciences have observed, social facts are much less clearly determined than natural facts and Dugit's solid facts are, as one critic has observed, facts of a highly metaphysical order.

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Dugit launched a vigorous attack on the myth of state sovereignty. The social solidarity is the touch stone of judging the activities of individuals and all organisations. State is also a human organisation and it is no way different from other organisations. The state stands in no

special position or privilege and it can be justified only so long as it fulfills its duty. Dugit has no faith in all powerful illimitable authority-‘sovereign’. He strongly pleads for the check on the state power. His plea is for the decentralization and ultimately he develops an idea of syndicalism. Dugit denies the distinction between public and private law. Both are to serve the same end i.e., social solidarity. So there is no difference in their nature.

SELF-TEST QUESTIONS

S.NO	Question	Option (a)	Option (b)
1.	Dugit launched a vigorous attack on the myth of state sovereignty	True	False
2.	Dugit denies the distinction between public and private law	True	False
3.	Dugit attacks individualism as reflected in the conception of inalienable individual rights	True	False
4.	In fact men are ‘solidarity’ with one another	True	False
5.	This solidarity is mutual interdependence is the product of social reality of social life.	True	False

Answers: 1-(b),2-(a), 3-(a),4-(a), 5-(a)