



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

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Lecture-15



Unit -3

Lecture –15:- Sociological school

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. as per Sir Henry Maine, **Charles-Louis de Secondat, Baron de La Brede et de Montesquieu** was the very first jurist to accept the historical school approach to comprehending the concept of law. Montesquieu was a French judge, thinker, political philosopher, diplomat, and scholar. who studied and interpreted the rules of numerous civilizations and came to the conclusion that “**law is the invention of the climate, local conditions, accident, or imposture.**” As a result, debating or not the legislation is good is pointless because it is dependent on the social context. He is the principal source of the theory of separation of powers, which is implemented in many constitutions throughout the world.

He went on to say that the law, like society, should be dynamic, changing in response to the civilization’s needs and demands. However, despite constructing a precise theory, he did not go any further in expressing his vision of law and society or historical school. He stipulated that the legislation must be capable of addressing the needs of the common people. He even mentioned it in his book, “**The Spirit of Laws.**”

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 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."

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: