



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

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LECTURE: 3

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Lecture-16



Unit -3

Lecture –16:- Jurist of the Sociological School of Jurisprudence

Jurist of the Sociological School of Jurisprudence:

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)

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.