

**SOCIOLOGICAL JURISPRUDENCE AND ITS RELEVANCE TO CONTEMPORARY SOCIETY\***

**Abstract**

*The Sociological School of jurisprudence considers law or legal development from the perspective of the people in the society. It posits the harmonization of law with the wishes and aspirations of the people. Therefore, if law becomes inconsistent with the people or even violates their interests or expectation, such law is worthless. This paper appraises the relevance of Sociological Jurisprudence to contemporary Society by carefully exploring the emergence of sociological jurisprudence, sociological approach, nature and meaning, characteristics of sociological jurisprudence, background of sociological jurisprudence, objectives of sociological jurisprudence, sociological thinking, its relevance to law making, the effects of law and society on each other, backdrops of sociological jurisprudence, differences between sociological jurisprudence and sociology of law and so on. However divergent the view of various sociological jurists may appear, they have common point that the law must be studied in relation to society. Furthermore, that Sociological School of jurisprudence sees law or legal development from the views of the human populace. It perceives law as a social phenomenon and mechanism, it contended the fusion of law with the wishes and objectives of the people. In sum, it promotes the peaceful coexistence of law and the interests of the people. Hence, where law becomes contrary to the individuals aspirations or even negates their interests, such law becomes worthless, ineffective, and lacks legitimacy.*

**Keywords:** Sociological Jurisprudence, Sociology of Law, Contemporary Society, India.

**1. Introduction**

The Sociological School of jurisprudence considers law or legal development from the perspective of the people in the society. Perceiving law as a social phenomenon, it posits the harmonization of law with the wishes and aspirations of the people. In other words, it insists on the harmony between law and the interests of the people. Therefore, if law becomes inconsistent with the people or even violates their interests or expectation, such law is not worth it. Such law is not people-oriented. This study discusses the emergence of sociological jurisprudence, the sociological approach, characteristics of sociological jurisprudence, background of sociological jurisprudence, objectives of sociological jurisprudence, sociological thinking and its relevance to law making, the effects of law and society on each other, backdrops of sociological jurisprudence, sociological jurisprudence of Roscoe Pound with regard to his theory of interests, and the related views of other sociological jurists.

**2. Sociological Jurisprudence**

Sociological jurisprudence is a term coined by the American jurist Roscoe Pound (1870–1964) to describe his approach to the understanding of the law. Central to Pound's conception was the very suggestive idea that in modern societies the law represents the principal means through which divergent interests are brought into some sort of alignment with one another. Unfortunately, perhaps because he was a jurist rather than a sociologist, he did not combine this insightful conception with a developed understanding of how these interests were formed and why some of them came to be privileged over others within the legal system. A sociologically informed account of Pound's work, which places it in the context of the historical development of the sociology of law, will be found in Alan Hunt, *The Sociological Movement in Law*, 1978.<sup>1</sup> The Sociological approach to the study of law is the most important characteristic of our age. Jurists belonging to this school of thought are concerned more with the working of law rather than its abstract content. Their principal premises are that the law must be studied in action and not in textbooks. They have been at work upon jurisprudence with reference to the adjustment of relations and ordering of human conduct which is involved in group life. They are concerned with the study of law in relation to society. They concentrate on actual social circumstances which gives rise to legal institutions. Sociological jurists...insist on the unity of the social sciences and the impossibility of the wholly detached self – centered, self – sufficing science of law. They insist that the legal order is a phase of social control and that it, cannot be understood unless taken in its whole setting among social phenomena.<sup>2</sup> Sociological school of jurisprudence has emerged as a result of synthesis of various juristic thought. The exponent of this school considered law as a social phenomenon. They are chiefly concerned with the relationship of law to other contemporary social institutions. They emphasize that the jurist should focus their attention on social purposes and interest served by law rather than on individuals and their rights. According to the school the essential characteristic of law should be to represent common interaction of men in social groups, whether past or present ancient or modern.<sup>3</sup>

The main concern of sociological jurists is to study the effect of law and society on each other. They treat law as an instrument of social progress. The relation between positive law and ideals of justice also affects the sociology of law. It would therefore be seen that sociological jurisprudence is a multifaceted approach to resolve immediate problems of society with tools which may be legal or extra – legal and techniques which promote harmony and balance of interests of society.<sup>4</sup> Sociological jurisprudence is not, strictly speaking, a legal philosophy. Rather, it is a method which attempts to use the various social sciences to study the role of the law as a living force in society and seeks to control this force for the social betterment. It has experienced an evolution through a mechanical positivist stage, a biological and a psychological stage, and is now well into the stage of unification. Its attitude is essentially functional. Law is an instrument of social control, backed by the authority of the state, and the ends towards which it is directed and the methods for achieving these ends may be enlarged and improved through a consciously deliberate effort. The sanction of law lies in social ends which law is designed to serve. The sociological jurist has no preference for any particular type of precept but only for that which will do the most effective job. In philosophy he is generally a pragmatist. He is interested in the nature of law but only with reference to its use as a tool to serve society, and his examination into the law is always in connection with some specific problem of the everyday work of the legal order<sup>5</sup>. Stated more succinctly:

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<sup>1</sup> A Dictionary of Sociology 1998, originally published by Oxford University Press 1998.

<sup>2</sup> Singh, M. *Sociological Jurisprudence*. ISBN No: 978-81-928510-1-3

<sup>3</sup> Ibid pg. 34

<sup>4</sup> Singh, M. *Sociological Jurisprudence*. ISBN No: 978-81-928510-1-3

<sup>5</sup> Stone, *A critique of Pound's Theory of Justice*, 20 Iowa L. Rzv. 531, 532-33 (1935).

The sociological jurists propose to study law in action on the basis of the hypothesis that the law in action bears some significant relationship to law in the books, and to proceed then to ascertain in what respects the hypothesis is or is not substantiated and requires qualification.<sup>6</sup>

The sociology of law (or legal sociology) is often described as a sub-discipline of sociology or an interdisciplinary approach within legal studies.<sup>7</sup> Some see sociology of law as belonging ‘necessarily’ to the field of sociology,<sup>8</sup> but others tend to consider it a field of research caught up between the disciplines of law and sociology.<sup>9</sup> Still others regard it neither a subdiscipline of sociology nor a branch of legal studies but as a field of research on its own right within the broader social science tradition. Accordingly, it may be described without reference to mainstream sociology as ‘the systematic, theoretically grounded, empirical study of law as a set of social practices or as an aspect or field of social experience’.<sup>10</sup> It has been seen as treating law and justice as fundamental institutions of the basic structure of society mediating ‘between political and economic interests, between culture and the normative order of society, establishing and maintaining interdependence, and constituting themselves as sources of consensus, coercion and social control’.<sup>11</sup>

Irrespective of whether sociology of law is defined as a sub-discipline of sociology, an approach within legal studies or a field of research in its own right, it remains intellectually dependent mainly on the traditions, methods and theories of mainstream sociology and, to a lesser extent, on other social sciences such as social anthropology, political science, social policy, criminology and psychology. As such, it reflects social theories and employs social scientific methods to study law, legal institutions and legal behavior.<sup>12</sup> More specifically, sociology of law consists of various approaches to the study of law in society, which empirically examine and theorise the interaction between law, legal, non-legal institutions and social factors.<sup>13,14</sup> Areas of socio-legal inquiry include the social development of legal institutions, forms of social control, legal regulation, the interaction between legal cultures, the social construction of legal issues, legal profession and the relation between law and social change.

Sociology of law also benefits from and occasionally draws on research conducted within other fields such as comparative law, critical legal studies, jurisprudence, legal theory, law and economics and law and literature. Its object encompasses the historical movement of law and justice and their relentless contemporary construction such as in the field of jurisprudence focused on institutional questions conditioned by social and political situations, in interdisciplinary dominions such as criminology and through analysis of the economic efficiency and the social impact of legal norms.<sup>15</sup> The sociology of law is often distinguished from sociological jurisprudence. The latter is not primarily concerned with debates within mainstream sociology and instead engages with some of the debates within jurisprudence and legal theory. Sociological jurisprudence seeks to base legal arguments on sociological insights and, unlike legal theory, is concerned with the mundane practices that create legal institutions and social operations which reproduce legal systems over time.<sup>16</sup> It was developed in the United States by Louis Brandeis and Roscoe Pound.<sup>17,18,19</sup> It was influenced by the work of pioneer legal sociologists, such as the Austrian jurist Eugen Ehrlich and the Russian-French sociologist Georges Gurvitch.<sup>20</sup> Although distinguishing between different branches of the social scientific studies of law allows us to explain and analyse the development of the sociology of law in relation to mainstream sociology and legal studies, such potentially artificial distinctions are not necessarily fruitful for the development of the field as whole. For the social scientific studies of law to transcend the theoretical and empirical limits, which currently define their scope, they need to go beyond such artificial distinctions.<sup>21</sup>

### 3. Emergence of Sociological Jurisprudence

There are following factors responsible for emergence of Sociological School of Jurisprudence.<sup>22</sup> They can be summarized as follows:

- i) Mental bankruptcy of analytical approach to meet the social demands of modern society.
- ii) Conflicts between individual interests and social interests and the need to reconcile them.
- iii) Inter – connection between law and society.
- iv) Works of the earliest pioneers of the new interests in society, i.e., Bentham, Renner, Weber and other etc.

<sup>6</sup> Stone, *A critique of Pound's Theory of Justice*, 20 Iowa L. Rzv. 531, 532-33 (1935).

<sup>7</sup> For various definitions of the sociology of law, see Ehrlich 1936 (orig 1912); Timasheff 1939; Pound 1943; Selznick 1965, Aubert 1969 and 1980, Black 1972, Stjernquist 1983, Hydén 1986, Tomasic 1987, Ferrari 1989, Podgorecki 1991, Cotterrell 1992, Banakar 2003 and 2011; Mathiesen 2005, Deflem 2008, Travers 2009, Nelken 2009, Scuro 2010, Banakar and Travers 2013, Banakar 2014.

<sup>8</sup> Deflem, Mathieu (2007) ‘Sociological Theories of Law’ pp. 1410–1413 in *Encyclopedia of Law and Society: American and Global Perspectives*, edited by David S. Clark. Thousand Oaks, CA: Sage Publications.

<sup>9</sup> Banakar, R. (2003) *Merging Law and Sociology: Beyond the Dichotomies of Socio-Legal Research* (Berlin/ Wisconsin: Galda and Wilch).

<sup>10</sup> Cotterrell, Roger (2007) ‘Sociology of Law’ in *Encyclopedia of Law and Society: American and Global Perspectives* (Thousand Oaks: SAGE).

<sup>11</sup> Scuro Neto, P. (2010) *Sociologia Geral e Jurídica*. São Paulo: Saraiva, 7th ed.

<sup>12</sup> Banakar, R. and Travers, M. (2005) ‘Law, Sociology and Method’ in *Theory and Method in Socio-Legal Research*, pp. 1–25. Edited by Banakar, R. and Travers, M. (Oxford: Hart Publishing, 2005).

<sup>13</sup> Nelken, David (2009) *Beyond Law in Context* (Asghate).

<sup>14</sup> Trevino, Javier (2008) *The Sociology of Law: Classical and Contemporary Perspectives*. New York: St. Martin's Press (1996) Reissued with a New Introduction. New Brunswick, NJ: Transaction Publishers.

<sup>15</sup> Scuro Neto, P. (2010) *Sociologia Geral e Jurídica*. São Paulo: Saraiva, 7th ed.

<sup>16</sup> Cotterrell, Roger (2018) *Sociological Jurisprudence: Juristic Thought and Social Inquiry* (New York/London: Routledge).

<sup>17</sup> Faigman, David L. (2005). *Laboratory of Justice: The Supreme Court's 200-Year Struggle to Integrate Science and the Law*. Henry Holt. p. 97.

<sup>18</sup> Pound, Roscoe. ‘Scope and Purpose of Sociological Jurisprudence.’ *Harv. L. Rev.* 24 (1910): 591.

<sup>19</sup> Wilfrid E. Rumble, Jr., ‘Legal Realism, Sociological Jurisprudence and Mr. Justice Holmes,’ *Journal of the History of Ideas* (1965) 26#4 pp. 547-566 in JSTOR

<sup>20</sup> Banakar, R. (2002) ‘Sociological Jurisprudence’ in R. Banakar and M. Travers, eds, *Introduction to Law and Social Theory*, Oxford, Hart

<sup>21</sup> Banakar, Reza (2009) ‘Law Through Sociology's Looking Glass: Conflict and Competition in Sociological Studies of Law’ in *THE NEW ISA HANDBOOK IN CONTEMPORARY INTERNATIONAL SOCIOLOGY: CONFLICT, COMPETITION, AND COOPERATION*, Ann Denis, Devorah Kalekin-Fishman, eds., (London: Sage). An e-copy available at: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1327025](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1327025).

<sup>22</sup> Pranjape, N. V., *Studies in Jurisprudence and Legal Theories*, Central Law Publication, Ed. 2021, p 59

### **Sociological Approach: Nature and Meaning**

Sociological approach towards study of law was a reaction and revolt against the analytical and historical school both of which regarded law as self – contained system – the former deriving validity of law from the sovereign – the law giver and the latter from the slow and silently flowing historical and cultural processes and forces. The sociological approach considers law as a social fact or reality to shape, mould and change society to sub-serve its needs, expectations and goals through law.<sup>23</sup> The interrelationship between law and society and the study of community and of social phenomena, of group or individual interests and their realization and fulfillment through law is the paramount concern of law. Of – course! The Sociological approach to the study of law is of recent origin. The other Schools have been more concerned with the nature of law and its source rather than its actual working, functioning and social ends which law strives to sub serve. All the jurists who define law in relation to society in terms of ends which law serves and the interests which the law satisfies and the common good which the law seeks to achieve – thereby make law as an instrument of social control and social change are grouped together as jurists belonging to Sociological School of Jurisprudence<sup>24</sup>.

### **Characteristics of Sociological Jurisprudence**

The chief characteristics of Sociological Jurisprudence are as follows:

1. Sociological jurists are concerned more with the working of law rather than with the nature of law. They regarded law as a body of authoritative guides to decision and of the judicial and administrative processes rather than abstract content of authoritative precepts.
2. It considers law as a social institution which can be consciously made and also changed, modified or retained on the basis of experience. In other words, it synthesizes both the analytical and historical approach to the study of law.
3. Sociological Jurists lay emphasis upon social purposes and social goals and expectations which are the law subserves rather upon sanctions and coercive character of law.
4. Sociological jurists look on legal institutions, doctrines and precepts functionally and consider the form of legal precepts as a matter of means only to satisfy greatest good of the greatest number.<sup>25</sup>

### **Background of Sociological Jurisprudence**

Sociological approach to the study of law towards the end of the 19th century did not emerge in isolation. It was a reaction against the formal and barren approach of the analytical jurists and the pessimistic approach of the historical jurists. There was a dire need to study law not in mere abstraction, but in its functional and practical aspects. Further, on account of economic and social conflicts towards the beginning of 20th century led to growing disbelief in the eternal principles of natural law which had hitherto placed an idea of harmony before the individual. These various approaches appeared as a clog in the way of legal reform, social change and economic justice. The theory of inalienable natural rights was now being considered as an expression of outmoded laissez – faire philosophy. This led the States to expand the dimension of their activities to such matters as health, insurance, education, old age security and other form of social and economic aspects of welfare. Hence a new approach towards the study of law in relation to its ends, purposes and functions for ordering and regulating to its ends, purposes and functions for ordering and regulating to its ends, purposes and functions for ordering and regulating to its ends, purposes and functions for ordering and regulating relationship between individuals and groups of individuals emerge which is described as the sociological jurisprudence.<sup>26</sup> Among the foremost writers who made an attempt to apply scientific methods to social phenomenon was Auguste Comte (1798 – 1851). He is known as the founder of sociology as a science. He laid stress upon empirical methods such as observation and experiment for the study of society. It is the task of sociology to provide methods, tools and a basis for purposeful and realistic appraisal of social phenomena which interact in society.<sup>27</sup>

### **Bentham's Theory of Utility**

The Bentham's theory of utility, i.e., the greatest good of the greatest number has been utilized by the sociological jurist for legal reform, social progress and general welfare. It would be useful to dilate upon the contributions made by important jurists towards the growth and development of the Sociological School of Jurisprudence.<sup>28</sup> The sociological school's idea of law is a continuation of this persistent process of enquiry into the origin of law as begun by the Historical School. This view of the sociological school is in tandem with the knowledge of law with regard to society: what it is doing; what it has done; and what it is expected to be doing. The sociological school carries forward the mission of the historical school and rejects the formal and logical idea of law according to the positivists on the ground that the formal law presents only a portrait of the law. In effect, the preoccupation with the study of the science gave law a prominent place in the new studies and the 19th century unearthed a number of leading sociologists in Europe (and America) especially Germany who began to look to the newly found studies of society as a key to a better understanding of law than had been gained from the Natural Law School and the Positivists.<sup>29</sup> The contribution of the various scholars and jurists of sociological persuasion highlighted several points which need mention:

- a. That law is not unique but only one of the social control norms;
- b. That the socio – economic problem of the present time cannot be solved by means of the existing law;
- c. That the laws in the books and statutes containing formal rules, legislations and expositions of particular subjects is not where the real law in society is to be found;
- d. That the law is not an absolute and static body of rules in themselves but are relative to time, place and society; that there is such a thing as 'social justice'. However, view differ greatly as to what constitutes social justice and the achievement thereof.

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<sup>23</sup> Tripathi, B.N., *Jurisprudence Legal theory*, Allahabad Law Agency, 14th Ed. 1999, p 34.

<sup>24</sup> Lecture Note on Jurisprudence and Legal Theory, Obafemi Awolowo University, Ile Ife, 1997.

<sup>25</sup> Dhyani S.N., *Jurisprudence Indian Legal Theory*, Central Law Agency, 14th ed. 2002, at p 97

<sup>26</sup> AN INTRODUCTION TO AMERICAN LAW 36-37, 40, 43 (1919).

<sup>27</sup> Singh, M. *Sociological Jurisprudence*. ISBN No: 978-81-928510-1-3

<sup>28</sup> A Theory of Social Interests, 15 PAPERS AND PROCEEDINGS OF THE AMERICAN SOCIOLOGICAL SOCIETY 16-45 (May, 1921); revised and published as Pound, A Survey of Social Interests, 57 HARV. L. REV. 1-39 (1943) (hereinafter cited as Survey).

<sup>29</sup> Dhyani, S.N., *Jurisprudence Indian Legal Theory*, Central Law Agency, 4th Ed. 2002, pp 88 – 89

Comte had stated that the advancement of knowledge could be through only 'observation and experiment' and he furnished a classification of the social sciences that was hierarchical. Comte considered it most fruitful to apply the scientific method to sociology despite the inherent difficulty. He compartmentalized sociology into two i.e., social statics and social dynamics all emanating from his description of sociology as the science of social order and progress. He saw society as an object constantly in development which if viewed in a scientific way could have its growth harnessed for one purpose: progress. The object of the sociological school was to work out in a scientific way the process of determining the variables by which society functioned with regards to law and vice versa.<sup>30</sup> The importance of sociological school of law may be immediately noticed when the attitude of law and state is compared. The previous attitude of the state was to confine itself to law and order enforcement and thereby striving to enforce stability in society by enforcing the norms regulating the existing relationship between individuals and society as well as between individuals. This in many ways (which we will evaluate) can be futile. Therein lies the allure of the sociological school: in the failure of the laissez faire notion of law and state.<sup>31</sup>

### **Objectives of Sociological Jurisprudence**

The objective of sociological source of jurisprudence is to resolve immediate problems of society with such tools, legal or extra-legal techniques which promote harmony and balance of Interest of society. Further the Jurist of sociological schooling rejected the analytical and historical jurisprudence as Jurisprudence of concepts & considers law as an Instrument of serving the head of Individuals in society. The study examines how the school cause into being passing through various stages and how for it is different from others schools of jurisprudence.<sup>32</sup>

### **Sociological Thinking and its Relevance to Law Making**

The sociological school of thought may be said to have made some inroads into legislation making in Nigeria but its impact is felt more in trial proceedings than anywhere else. It is unclear if this importation of sociology into law making is by inadvertence or by design but its relevance for use in our courts may not now be disputed by the discerning eye.<sup>33</sup> This importation is by means of Evidence Act. The Act provides that; 'facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts or facts in issue, or which constitute the state of things under which they happened, or which afforded an opportunity for their occurrence or transaction are relevant.' The question will often be asked why trial proceeding in Nigeria for instance will allow evidence derives from the sociological fields while such considerations are not taken into cognizance in the codification of laws. For, in many countries, not least of all Nigeria, legislation has not appeared to follow sociological precepts thereby leading to laws being ignored or out rightly contravened.<sup>34</sup> The most significant of which is the specific sociological setting in Nigeria that allows for permissiveness. In many cases corruption has rendered laws ineffective largely due to the fire brigade approach to legislation devoid of sociological investigation and also coupled with an abundance of lack of enforcement. The Taxation laws<sup>35</sup> and the Bankruptcy laws<sup>36</sup> are called to question. Ljalaiye cited other cases which include the ownership of land vested in the governor of states.

### **Effect of Law and Society on each Other**

Sociological school includes a number of approaches made since the end of the last century. These approaches are more diverse than uniform. The main and the common field of study of the jurist who made such approaches is the effect of law and society on each other. This approach takes law as an instrument of social progress. Therefore, it is concerned with values also. And many jurists have pleaded that under sociology of law the relation between positive law and ideals of jurists should also be studied. Many jurists of great authority have been their definitions of sociology of law but, as pointed out above, it is not possible for a single definition to cover the wide range of study under this approach. To know these approaches in their proper historical context, a discussion of the views of representative jurists of various approaches is necessary.<sup>37</sup>

### **Backdrops of Sociological Jurisprudence**

It is well known that the relations between individual, society and state are never static; they have always been changing with the exigencies of time and needs of the society. Therefore, various theories regarding their relationship have also changing. For instance, the early society societies were governed by customs which were only a social sanction. There came the period of the supremacy of the Church, that is, the priestly class. To counter the growing influence of the Church, the secular State emerged powerful dominating all other institutions. The omnipotence of the State gave rise to the period of renaissance and the legal philosophers began to think in terms of freedom of individuals and their rights and liberties.<sup>38</sup> This resulted into political upheavals giving rise to despotic rule i.e., Nazism in Germany and Fascism in Italy. As a result of this, there was need to review the legal theory for maintaining a balance between the State, welfare of the society and the individual interests.<sup>39</sup> Finally, it was realized that socialization of law and legal institutions would perhaps best sub – serve the common good and interests of the society. Consequently, a synthetic approach to jurisprudence by evolving a new legal philosophy called the sociological school emerged out of the synthesis of historical and philosophical movement and the comparative study of legal system.<sup>40</sup>

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<sup>30</sup> Singh, M. *Sociological Jurisprudence*. ISBN No: 978-81-928510-1-3

<sup>31</sup> Banakar, R. (2011) 'The Sociology of Law: From Industrialisation to Globalisation', *Sociopedia.isa*, 2011 ; U. of Westminster School of Law Research Paper No. 11-03. Available at SSRN: <http://ssrn.com/abstract=1761466>

<sup>32</sup> Singh, M. *Sociological Jurisprudence*. ISBN No: 978-81-928510-1-3

<sup>33</sup> Arnaud, André-Jean and Vittorio Olgiati (1993) *On Complexity and Socio-Legal Studies: Some European Examples* (Oñati Proceedings 14).

<sup>34</sup> Lecture Note on Jurisprudence and Legal Theory, Obafemi Awolowo University, Ile-Ife, 1997.

<sup>35</sup> Income Tax Management Act (1961) (as amended) Cap 173 Laws of the Federation, 1990.

<sup>36</sup> The Bankruptcy Act, Cap 30 (1970) Laws of the Federation

<sup>37</sup> Cotterrell, Roger (2018) *Sociological Jurisprudence: Juristic Thought and Social Inquiry* (New York/London: Routledge).

<sup>38</sup> Woodman, G. R. (2008) 'The possibilities of Co-Existence of Religious Laws with Other Laws' in Mehdi, R. et al. (eds.) *Law and Religion in Multicultural Societies*. Copenhagen: DJOF Publishing.

<sup>39</sup> Pranjape, N. V., *Studies in Jurisprudence and Legal Theories*, Central Law Publication, Ed. 2001, pp 61 – 62

<sup>40</sup> Ibid p 59

### **Sociological Jurisprudence and Sociology of Law Distinguished**

It would be pertinent to draw a distinction between sociological jurisprudence and sociology of law which appear to be similar concepts. Though it is difficult to draw a hard and fast line of demarcation between the two because of their identical subject matter they do differ in respect of their theme and approach to law. Sociological Jurisprudence is a functional study of law applied to concrete social problems in order to make law an effective instrument of social control for harmonizing the conflicting interest of individuals in the society. In this sense law has a wider connotation and includes judicial decisions and administrative processes used for reconciling the competing interests of the people. It is for this reason that sociological jurisprudence has also been called as functional jurisprudence or jurisprudence of interests or jurisprudence of social engineering.<sup>41</sup> Sociology of law, on the other hand, is a descriptive study of law and legal institutions of a given society.<sup>42</sup> As Roscoe Pound rightly remarked, sociology of law is mainly a descriptive study of law in a theoretical manner. It treats law as just one of the several aspects of society and therefore has a secondary position as compared to society which is the main theme of sociology.<sup>43</sup> Thus strictly speaking, sociology of law is just a branch of sociology. According to Hall, sociology of law is a theoretical science which consists of generation regarding social phenomenon, so far as they refer to contents, purposes, application and effects of legal rules.<sup>44</sup> According to Timasheff,<sup>45</sup> 'sociology of law exists as a distinct science whereas sociological jurisprudence is merely a branch of science of jurisprudence. However, both consider society as the matrix of their common interest.'

### **Sociological Jurisprudence of Roscoe Pound**

'A desire for an ideal relation among men which we call justice leads to thinking in terms of an achieved ideal relation rather than of means of achieving it.' With the rise of the modern Science, there came to exist among jurists an apparent unanimity of belief in the possibility of applying 'the scientific method' to the study of law and legal philosophy. Under the influence of the Comtian positivist sociology, there developed a sociological jurisprudence having in view the understanding of the role of law in society and the application of the social sciences to the study of law in action and the rendering of law more effective as an instrument of social control for the ends which law is designed to accomplish in the civilization of the time and place.<sup>46</sup> As the recognized leader of the sociological school in America for more than half a century, Roscoe Pound has devoted his efforts to this work. Through his vast legal studies, excursions into legal history, mastery and application of philosophy to law, and his research into case law for purposes of understanding how law is actually functioning, Dean Pound has made tremendous strides toward the accomplishment of this objective. In addition to these efforts, Pound has contributed a 'theory of interests' which he believes to be the most effective instrument yet devised for the scientific development and application of law. A brief consideration of Pound's theory of interests in the context of sociological jurisprudence is the subject of this article.<sup>47</sup>

### **Background of Pound's Philosophy**

The forerunner of sociological jurisprudence was Montesquieu, who was the first to apply the fundamental principle which sociological jurists assume. In *L'Esprit des Lois*, he expounded the thesis that a system of law is a living growth and development interrelated with the physical and societal environment.<sup>48</sup> The great impetus to the movement in modern times was furnished by Rudolph von Jhering, who revolted against the jurisprudence of conceptions of the historical-metaphysical school. Whereas juristic activity was centered on speculation as to the nature of law, Jhering emphasized consideration of the function and end of law. He stressed the social purpose of law and insisted that law should be brought into harmony with changing social conditions. His thesis was that the protection of individual rights is dictated by social considerations only. What are termed 'natural rights' are nothing more than legally protected social interests. The individual's welfare is not an end in itself but is recognized only insofar as it aids in securing the welfare of society.<sup>49</sup> The basic ideas of Jhering, called social utilitarianism, stand as a link between Bentham's individual utilitarianism and two important movements of the twentieth century; the 'jurisprudence of interests' in Germany and the sociological jurisprudence of Roscoe Pound. While writing his great treatise, *The Spirit of the Roman Law*, Jhering reached the position that a legal right is a legally protected interest. This led him to search for the purpose of law and to conclude that purpose is the creator of all law, that every rule of law owes its origin to some practical motive. Every act is an act done for a purpose. Thus, while he held the human will to be free from mechanical causation, he concluded that it is subjected to the law of purpose, that is, it acts 'because of' reasons (interests). Interests become the basic ingredient of his system.

Jhering treats law in the broad context of society. The purpose of law is to secure the conditions of social life, and this determines the content of law. The conditions of social life include both physical existence and ideal values, but these are relative to the social order of the time and place. He developed an inchoate scheme of interests and designated them as individual, state, and public, the last two of which he tended to treat as one. However, he did not develop a successful means of 'evaluation' of the interests as against each other. Jhering thoroughly subordinates individual interests to social interests, holding that the duty to assert one's individual interest is a duty owed to society, even when in a material sense it would not pay to do so. Thus, individual rights regarded from the socialized point of view are but a means for society to realize its social ends. Unlike Bentham, Jhering<sup>50</sup> recognized altruistic interests as well as egoistic interests, but he gave little consideration to the former. He recognized the beneficial interests to society which comes from an individual's

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<sup>41</sup> Singh, M. *Sociological Jurisprudence*. ISBN No: 978-81-928510-1-3

<sup>42</sup> Cotterrell, Roger (2007) 'Sociology of Law' in *Encyclopedia of Law and Society: American and Global Perspectives* (Thousand Oaks: SAGE).

<sup>43</sup> Pound, Roscoe. (1943). 'Sociology of Law and Sociological Jurisprudence.' *University of Toronto Law Journal* 5.

<sup>44</sup> Durkheim, Emile (1984) *The Division of Labour in Society* (transl. W. D. Halls). London: Macmillan (orig. 1893 *De la division du travail social*).

<sup>45</sup> Timasheff, Nicholas S. (1939) *An Introduction to the Sociology of Law* (Westport, Greenwood Press reprint, 1974).

<sup>46</sup> Tamanaha, B. (1993) 'The folly of the 'social scientific' concept of legal pluralism' in *Journal of Law and Society* 20: 192-217.

<sup>47</sup> Stone, A critique of Pound's Theory of Justice, 20 *Iowa L. Rzv.* 531, 532-33 (1935).

<sup>48</sup> The jural postulates are set out in POUND, *OUTLINE OF JURISPRUDENCE* 168, 179, 183-84 (5th ed. 1943) (hereinafter cited as *OUTLINES*).

<sup>49</sup> Jhering's principle work is *DER ZWANG IM RECHT*, translated in English as *Law as a means to an end* (Husik transl. 1913). Good short accounts of Jhering's philosophy are found in the following sources: Frizdman, *LEGAL THEORY* 213-217 (2d ed. 1949); Patterson, *Jurisprudenz* 459-464 (1953); Rutschlein, *JURISPRUDENCE* 107-112 (1951); Stone, *The Province and Function of Law* 299-316 (2d ed. 1950).

<sup>50</sup> *Ibid*

acting to vindicate his personal interests, however. Jhering's scheme has been criticized for lack of a reasonably objective criterion for selection and evaluation of interests. His ideas were to have a great influence on the thought of Roscoe Pound.<sup>51</sup>

Rudolph Stammler began his critical philosophy with an attack upon economic and historic determinism. He sought a systematic coordination of the various phenomena under a comprehensive principle, a formal method by which the changing content of empirical rules might be worked out. Stammler focused his attention on the relation of ethics to law rather than administration of justice by legal rules. Under his scheme, the jurist is confronted with a twofold problem: the existence of a rule of right and law; and the mode of effectively executing such a law. It is the duty of the state to study social phenomena and to use its findings for the attainment of just law. This functional sociological approach is Stammler's greatest achievement. He set up the social ideal as the goal of justice through law. Whereas Kant had looked to free-willing individuals, Stammler looked to a community of free-willing men. He conceived of an ideal of social cooperation, whereby the individual is merged in the community. Then, putting emphasis on individual ends rather than individual wills, he arrived at a theory of justice. He sought to supplant an individualist philosophy with a social philosophy of law and to add a theory of just rule-making and just decision in concrete cases. With his aims the sociological jurist must be in thorough accord.<sup>52</sup>

### **Pound's Objective of Sociological Jurisprudence**

The practical objectives of sociological jurisprudence have been formulated by Pound as follows;

1. A study of the social effects of legal institutions, legal precepts and legal doctrines, of the law in action as distinct from the law in books.
2. A sociological study as an essential preliminary step in lawmaking.
3. A study to ascertain the means by which legal rules can be made more effective in the existing conditions of life, including the limits of effective legal action.
4. An attempt to understand the actual growth of the law by a study of the judicial methods and modes of thought of the great judges and lawyers.
5. A sociological legal history of the common law, for studying the past relations of law to then existing social institutions.
6. Individualization of the application of legal rules so as to take account of the concrete circumstances of particular cases.
7. The establishment of a 'Ministry of Justice' by the states to participate in this program.

Pound has compared the sociological jurisprudence with other schools of legal thought and notes the following characteristics of adherents to the sociological school: they pursue a comparative study of legal phenomena as social phenomena and criticize these with respect to their relation to society.<sup>53</sup> In particular they (1) consider the working of the law rather than its abstract content; (2) regard law as a social institution which may be improved by human effort and endeavor to discover and effect such improvement; (3) lay stress upon the social ends of law rather than sanctions; (4) urge that legal precepts be used as guides to socially desirable results rather than inflexible molds; and (5) their philosophical views are diverse, usually positivist or some branch of the social-philosophical school.<sup>54</sup>

### **The Theory of Interests**

In the effort to accomplish the program of sociological jurisprudence, Pound believes that the first problem confronting society is the establishment of his theory of interests as a functioning part of the legal order. The development of this theory occurred in two steps: the formulation of the jural postulates, in 1919, followed by the announcement of a classification or scheme of interests two years later. Pound claims this to be his most valuable contribution to jurisprudence. While recognizing certain valid criticisms, he has defended it vigorously as the most workable means yet devised for sound 'social engineering.'<sup>55</sup> The jural postulates consist of five generalized propositions about the law which are supposed to serve as major premises under which all valid principles of positive law, both civil and criminal, may be comprehended or subsumed. They are grounded in human nature and conduct as expressed in Pound's interpretation of American judicial decisions on the appellate court level and represent his conception of the jural ideals of our society. The relationship of the jural postulates to the scheme of interests will be discussed hereinafter.<sup>56</sup>

### **Other Sociological Jurists and Legal Theories**

It is not possible to discuss all the sociological jurists and their theories. In modern times, social relations are growing more complex. The concept of state and its relation with individuals have undergone a drastic change. New interpretations are being given to these changes, some under the influence of various political theories and others on the basis of a partial picture of law. Some of the modern theories are no more than an analysis of the legal systems of the countries in which they have been propounded. Some have classified these jurists as Nazi, Fascist, Soviet or Communist, or American. The technical and complicated machinery of the administration of municipal law and the increasing importance of International Law has also given birth to new theories which we shall discuss separately under the headings 'Realist School' and 'Pure Theory of Law' and 'Communist Theory' in some detail.<sup>57</sup>

### **Sociological School and Indian Position**

Sociological school of jurisprudence has much relevance in terms of realisation of the social and economic goals of the community. Law in free India is being adjusted to serve the common needs and ends of society along with individual interests. However, before 1947 the judges, the lawyers and law administrators did not look around while making new laws. The pace of social change was very slow as the law was conceived either in analytical fashion emanating from the British Parliament or the law had no relationship or relevance with the life of people of India. The role of judges was not to discover the 'inarticulate major premises' or 'felt needs' of the people but to

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<sup>51</sup> Pound, Roscoe. 'Scope and Purpose of Sociological Jurisprudence.' *Harv. L. Rev.* 24 (1910): 591.

<sup>52</sup> Singh, M. *Sociological Jurisprudence*. ISBN No: 978-81-928510-1-3

<sup>53</sup> Pound, The Scope and Purpose of Sociological Jurisprudence, 24 *Harv. L. Rev.* 591 (1911)

<sup>54</sup> Singh, M. *Sociological Jurisprudence*. ISBN No: 978-81-928510-1-3

<sup>55</sup> *AN INTRODUCTION TO AMERICAN LAW* 36-37, 40, 43 (1919).

<sup>56</sup> The jural postulates are set out in POUND, *OUTLINES ON JURISPRUDENCE* 168, 179, 183-84 (5th ed. 1943) (hereinafter cited as *OUTLINES*).

<sup>57</sup> Rumble, Wilfrid E. Jr., 'Legal Realism, Sociological Jurisprudence and Mr. Justice Holmes,' *Journal of the History of Ideas* (1965) 26#4 pp. 547-566 in JSTOR

interpret the law in its logical manner irrespective of the considerations of social justice. The law was mostly imposed from above. It had no roots in the Indian soil and its language too was foreign.<sup>58</sup> After 1947 there was a change in the perspective of law itself. India became free and it adopted the new Constitution with a view to establish justice – social, economic and political. To achieve these set goals Indian planners introduced the system of economic planning in India with a view to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all institutions of national life. Accordingly State evolved new social and economic policies to achieve the above ends. The old analytical approach towards law was obviously abandoned in the interest of common goods as it was unnecessary, unreal and inconvenient to the emergence of new social order. Hence a new sociological approach for reconciling conflicting social interests and values became necessary for bringing peaceful social change through law.<sup>59</sup>

#### **4. Conclusion**

It is to state that however divergent the view of various sociological jurists may appear, they have 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 though 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 this type on the subject and are influenced by sociological approach. It was the findings in this paper that Sociological School of jurisprudence sees law or legal development from the views of the human populace. It perceives law as a social phenomenon and mechanism, it contended the fusion of law with the wishes and objectives of the people. In sum, it asserted the peaceful coexistence of law and the interests of the people. Hence, where law becomes contrary with the individuals or even negates their interests or expectation, such law is worthless. Such law is meaningless, useless, baseless and lacks legitimacy.

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<sup>58</sup> Baxi U (1986) *Towards a Sociology of Indian Law*. New Delhi: Stavahan.

<sup>59</sup> Dhyani, S.N., *Jurisprudence Indian Legal Theory*, Central Law Agency, 4th Ed. 2002, pp 88 – 89