**An Analysis of Different Schools of Jurisprudence**

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# Abstract

Sociology is the study of human society and social institutions. Law controls and restricts the behaviour of its subjects. The study of legal aspects of things and law is known as jurisprudence. The sociological school of jurisprudence and related jurists believe that law and sociology are interdependent and related fields. The main reason for the development of this theory is the spread of Laissez-Faire doctrine. The impact of this doctrine and resultant effects are discussed in later part of research.

Various jurists such as Ehrlich, Duguit, Montesquieu who gave important thesis and ideas for establishing the relationship between law and society and proving the importance of the same are covered. The ideas of the jurists cement the interface between sociology and law.

Further, Roscoe Pound is considered the father of sociological jurisprudence. The research shall bring out his theory of social engineering, jural postulates and interest theory.

Indian legal system has worked in sync with the societal standards or the norms. This is evidently proved by landmark judgements and contemporary enactments by legislature.

The research concludes by bringing out the inherent relationship between law and society.

# Introduction

The relationship between law and sociology has been recognised and accepted by sociological school of jurisprudence. This interdisciplinary approach studies law as a social construct and all manifestations on society by law. The core belief of the jurists believing in the relationship between sociology and law is that any change in either subject will have an impact on another subject.

The development and spread of Laissez-Faire doctrine reduced the role of state in public welfare and public life and have paramount importance to individual rights. This left poor and oppressed people a mercy of powerful. The exploitative practises surfaced in the society and with no state intervention, inequalities were wide spread. The response was the development of the theory which saw society and law as related subjects. The jurists advocated that law must be an instrument of social progress. The focus of law must be on social purposes and greater good rather than benefit of few.

This research focuses on the background of this approach. How the relations came to be recognised and how it has been propounded by Indian legal system.

The legal system and society works on the balance. Law is an instrument of state to enforce its authority and embodies rights which are individual, public. But these laws regulate the behaviour of citizens of the state; this means the laws regulate society and societal behaviour. Any such restriction on the society must be just and reasonable as per norms of society and for the benefit of the masses. If this is not the case, the society may not comply with the legal authority and an enactment may not get effective implementation.

Also, any enactment or order must be a result of wide public consultation or study, only then it will be able to gauge the needs of the society and meet its end.

# Emergence of Sociological School of Jurisprudence

## The doctrine of Laissez – Faire

The doctrine of Laissez – Faire contributed to the development of sociological school of jurisprudence. The doctrine of Laissez – Faire meant least interference by the government in the affairs of the society. Literally, it means- allow to do. This doctrine gained the prominence after industrial revolution and spread of capitalism, the individual interests ultimately became more important than societal interest or welfare of citizens. The doctrine also meant that there can be a situation where the gap between rich and poor could increase and wealth can be accumulated in few

hands. The ideology divided the society into two parts- Bourgeoisie and Proletariat1. After minimum role of the state, Bourgeoisie continued to dominate society and gather more resources whereas Proletariat remained oppressed and with no means of production in their control.

In reaction to this doctrine, Sociological School of Jurisprudence developed. The jurists, sociologists, and thinkers thought that this divide brought by Laissez – Faire doctrine would deepen societal problems and bring new economic unrest. The aim was to balance the interest of society at large and individual interest. The school of thought aimed to bring consonance by being considerate of welfare and individual interest.

The main jurists and thinkers behind the theory were Montesquiue, Leon Duguit, Eugen Ehrlich and Roscoe Pound. The theory and principles given by Roscoe Pound form a large part of sociological school of jurisprudence and have been delath in detail in next chapter.

Let us now understand the reason and rationale given by different jurists and thinkers.

# Views of the Jurists

**Eugen Ehrlich** thought that society remains the main source of law. For him Society means, association of men. He puts forth that main reason for any legal development is not legislation or judicial order but the society itself. Any law that is brought is a kind of manifestation of desires and needs of society. Because the law fulfils the needs of society, it is implemented, if that is not the case, law cannot get enforced and ceases to be a law.

**Leon Duguit** gave the theory of Social Solidarity2. The theory of Social solidarity explained the interdependence between men in society, it explained how individuals are dependent on each other in society and their survival depends on this interdependence. Hence, the co-operation between men is an essential in this theory.

Leon contends that the law must promote solidarity among its subjects. A good law is again sourced from society as an instrument promoting social solidarity.

**Montesquiue** was of the opinion that society had an influence over legal processes and laws. He said that it is important for studying the history of society and societal norms before bringing any law. Any law void of societal perquisites is not a good law and cannot get easy implementation. He wrote that law must be in relation to quality, extent of openness, climate, soul etc of the natives of the nation. The liberty, equality etc values enshrined in law must be restricted to an extent till which society can accept. 3

# Contribution of Roscoe Pound in Sociological Jurisprudence.

## Social Engineering

**Roscoe Pound** proposed that law must be studied in actual working 4scenario and not merely in static respect like in rulebooks or statutes. He gave a term known as ‘**Social Engineering**’. As per Pound, “Law is social engineering which means a balance between the competing interests in society,”5 in which applied science is used for resolving individual and social problems. Social Engineering can be better explained with an example – the technocrats or the engineers who work for updating technology, discovering new ideas, innovation etc so that our life becomes more convenient and easy. Just like new and slim laptops provided mobility and versatility than old computers which

1 Aarlin Moncy, Sociological School of jurisprudence, Legaldesire (Oct 29, 2021, 9:21 AM), <https://legaldesire.com/sociological-school-of-jurisprudence/>.

2 The Editors of Encyclopaedia, "Léon Duguit", *Encyclopedia Britannica* (31 Jan. 2021), [https://www.britannica.com/biography/Leon-Duguit. Accessed 29 October 2021](https://www.britannica.com/biography/Leon-Duguit.%20Accessed%2029%20October%202021).

3 Montesquieu Charles, The Spirit of Laws. Prometheus Books, 2002.

4 Anjali Dixit, Sociological School of Jurisprudence, Into Legal world (Oct 30, 2021, 2:07 PM), [https://www.intolegalworld.com/article?title=sociological-school-of-jurisprudence.](https://www.intolegalworld.com/article?title=sociological-school-of-jurisprudence)

5 BN Tripathi, Jurisprudence of Legal Theory 49 (16th ed. 2018).

were bulky and less efficient. Like these engineers of technocrats, we need Social Engineers. He proposed that these engineers need to look into functioning of laws, monitor their efficiency and if need be amend them or change them to suit the needs of the society. This social engineering is just like engineering where old and outdated things must be updated and changed to help society function in better way. The laws so enacted by social engineers must balance between interest of the society and interest of individuals.

Every Person in the society has personal interests and he/she may consider it supreme. The aim of law must be to create balance between what he considers supreme and what is supreme for the society as whole. This is what the essence of social engineering is. For example, Article 196 in Indian constitution provides right to freedom of speech and expression- this is good for individual interest but reasonable restrictions there are as well. The reasonable restrictions ensure that no right given in article 19 is used in a manner that infringes the right of other people. This is a classic example of social engineering where a balance is achieved out between individual and societal interest.

# Jural Postulates

Roscoe Pound gave five **Jural postulates**. 7He thought that by protecting and sustaining these, we can protect the important interests of society.

1. **Criminal Law-** The laws must prohibit and forbid any act of aggression in society. Any act in furtherance of ill-will and by act of aggression must be punishable by the laws of the land.
2. **Law of Patent-** If the inventor endeavours his sincere efforts and those efforts lead to a novel invention or bring in existence something that never existed before, the inventor must be given exclusive rights for the usage or leasing that product. This protects the interest of individuals by giving them monopoly over the usage and production of goods which they discovered.
3. **Strict Liability-** This postulate protects the society against any harm cause by unnatural use of the land. For example, if the owner of the land constructs a reservoir in his land and due to his negligence the water escapes and floods the land of the tenants, the owner of the land will be held strictly liable.
4. **Law of contracts-** This postulate contends that the individuals in society must honour their promises to fellow citizens. This protects the promisee and the promisor against wilful and arbitrary violation of commitments.
5. **Law of Tots-** Any act that causes damage to the society or individuals as annoyance, trespass etc shall be punishable by the law of the land. This includes any civil misconduct which is caused by the culprit when he deviates from the standards as followed by any reasonable man.

# Interest Theory

As society is not static and its notions keep changing, Roscoe propounded that these postulates may become defunct in time to come and there may originate new postulates which may be specifically suited for the society to come. Therefore, the postulates may form or reform or deform based upon the needs of the society.

To remove vagueness and ensure that no conflict of interest occurs between individual, public and social interest, he clearly defined three of them in **Interest Theory**.8

# Individual Interest

It involves the “demand and or claims involved from the standpoint of the individual life which includes interest of personality, interest in domestic relations and interest of substance.”

6 INDIA CONST. art. 19, § 1, cl. a.

7 Stone Julius, Roscoe Pound and Sociological Jurisprudence, 78(8) Harvard Law review 1578, 1578- 1584 (1965), <https://doi.org/10.2307/1338955>.

8 McLean Edward B, ROSCOE POUND’S THEORY OF INTERESTS AND THE FURTHERANCE OF WESTERN CIVILIZATION, 41(1) II Politico 5, 5-18 (1976),

[https://www.jstor.org/stable/43209883.](https://www.jstor.org/stable/43209883)

For Example, rights of property, succession, ,marriage, contract etc.

# Public Interest

It includes the claims or aspirations by/of a citizen in his political life. Basically, it means that every citizen has a duty towards each other and an opportunity to avail facilities/provisions created by state.

Example- public employment, protection of state, administration etc.

# Social Interest

It involves the claim in social life, i.e., to fulfil the needs of the society for the proper functioning of it. It includes the interest in preservation of general peace, health, protecting religious institutions, prohibition of bad acts (like gambling, prostitution) etc.

It also includes the well being of general areas like economic well being, social well being etc.

# Criticism

Pound has been criticised because of his usage of the word-‘engineering’, the word relates to concept of factory. But laws are not produced like products but they are result of societal processes and outcome of social norms. The word ‘engineering’ gives a mechanic connotation to law. Also, the concept of applied engineering to create law is again miscounted no materialistic process can create law but only social process create law.

# Main features of Sociological Jurisprudence

Sociology is centred on processes, goals, institutions of society. It studies the social phenomena which affects humankind. Jurisprudence is the study of law and related things. Thinkers like Pound, Duguit etc gave theories to establish connection between two subjects. The development of school of sociological jurisprudence propounded and vociferously supported the idea that law and society are related. The scholars of the school believed law was a social phenomenon because it has a huge impact on the society.

The school advocates for studying the two subjects together and in tandem to each other. The two areas can’t be isolated as both can be the source or product of each other. Further, any law cannot gain effect or achieve its predetermined goal without taking into account or taking note of prevalent societal conditions.

The sociological school of law focuses more on functional nature of law9, i.e., how a law is implemented and how it operates between individuals of society. Also, it considers law as mere source guiding authority which is used in administrative, legal processes.

The school also considers that laws can be created, removed from effect and modified as per the needs and wants of the society. The laws so modified/enacted/removed are outcome of history and contemporary approach and practises of society.

Sociological school doesn’t accept the theory as propounded by the positivists, that society has no relation in whatsoever manner as being source of law.

The school consider the goals and ends a law wants to deliver or achieve rather than strict interpretation of law.

9 Luckhnow University student management system, [https://udrc.lkouniv.ac.in/Content/DepartmentContent/SM\_22454e1e-c719-4afe-add9-](https://udrc.lkouniv.ac.in/Content/DepartmentContent/SM_22454e1e-c719-4afe-add9-39636a677cf4_30.pdf) [39636a677cf4\_30.pdf](https://udrc.lkouniv.ac.in/Content/DepartmentContent/SM_22454e1e-c719-4afe-add9-39636a677cf4_30.pdf) (last visited Oct 22, 2021).

The jurists following the sociological school of jurisprudence perceive legal bodies, rules and laws in respect of their functional form. They consider the various forms of law as matter of means or virtues only to serve the interest of the society.10

# Sociological Jurisprudence in India

This chapter in particular studies the instances of sociological Jurisprudence in India. The chapter shall further the theory that law and society affect each other. In India, there have been several leading case authorities which were classic examples of Sociological Jurisprudence. These case laws were decided to preserve the societal thread or in other words, these case laws were adjudicated in conformity to societal standards or demands of society.

No legal system can form effective and good laws for smooth functioning of society without studying how the society functions. Hence, the interdependence of law and society is necessary for better legal framework.

After the **2012 Nirbhaya Gang rape**, the criminal law amendment act was brought. After the rape, the Indian society witnessed huge public protests and demand for strict and better laws was omnipresent in the society. .

The law amended and somewhat changed the criminal justice system of society. The law was partially an outcome of public demand and partially an outcome of the signal that the prevalent laws are not able to control the crimes in society. Law was enacted in consideration of society and individuals living in society.

In the **Union of India & Anr v Reghubir Singh** 11, the court concluded that any law to be drafted or to be bought into effect must be made while being considerate of social conduct and past social experiences.

In **Sarla Mudgal v Union of India**12, the judgement expressly declared void and illegal the practice of solemnizing second marriage by conversion to Islam, while first marriage still existed. The trend in the society disbanded the thread of morality and settled social practises in society. The court laid down the principles which were an outcome of social norms and also this law impacted the society by not allowing conversion for sole purpose of marriage.

In **Bandhowa Mukti Morcha vs Union of India**13, the court said that Laissez- Faire should be discarded by judicial courts. It further noted that this approach should be strictly avoided when deciding the cases related to enforcement of fundamental rights. 14

The ant-conversion laws in state of UP, MP, Uttarakhand etc are an outcome of social problem of allurement for the purpose of conversion. The murder of a girl in Haryana because of same problem of forced conversion brought out a major problem in society. This social problem was solved by enactment of laws by respective states. The laws studied the societal problem, previous trends, emerging cases and then propose a solution. This signifies the interdependence of law and society.

10 Manmeet Singh, Sociological Jurisprudence, LegalService India (Oct. 30, 2021, 4:54 PM), <http://www.legalservicesindia.com/article/2190/Sociological-Jurisprudence.html>.

11 Union of India & Anr v Reghubir Singh, (1989) 2 SCC 754.

12 Sarla Mudgal v Union of India, (1995) SC 1531.

13 Bandhoaw Mukti Morcha vs Union of India, (1997) 10 SCC 549.

14 Indian Kanoon, <https://indiankanoon.org/doc/595099/>(last visited Oct. 22, 2021).

There are several other examples of interdependence between law and morality. The interface is aptly supported and is evident by Indian case laws and statutes.

# Conclusion

Laws enacted for the regulation of society, they must be studied in respect of the society they are to be implemented. There are several instances in judgements of Supreme Court of India that principles of social jurisprudence are clearly followed and extended. In addition, various statutes have also been evident of accepting these principles. This then goes without saying that legal system of India has developed itself to adopt the principles pf sociological jurisprudence.

There are also other schools of thought, some advocate philosophy, morality as source of law. However, many schools converge on the view that there exists an interdependent relationship between law and sociology. For example, morals are often accepted and preached as social standards allow. What is morally correct now may not be correct as per society tomorrow. This again depends on society. Like ways many school of thoughts find their way connected to sociological school of jurisprudence in one manner or another.

To maintain balance in society, to make society more harmonious, peaceful and better place to exists, things which are goof for society must be encouraged and those detrimental to the interest of society must be prohibited. This balance and choice between right and wrong must be settled by studying law and morality together. The laws must further values as desired by society and any change that laws try to bring in society must be supported by extensive consultation, long settled values else the laws will be met by huge unrest and they will not be able to meet the ends they desire.

1. Student, Indore Institute of Law [↑](#footnote-ref-1)