

THE INDIVIDUAL SOCIOLOGY AND PHILOSOPHY OF LAW

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Sociology and Philosophy of Law developed around the man and his nature. Carl in his "Vita-del- Diritto" writes that the useful, just and honest are three aspects of the truth. The useful corresponds to the senses of man by the bond he has with matter, from which he gets his means of sustenance. The just is connected with the social nature of man rendering civil community life possible. "The honest, is that sign of the good which is most intimately connected with the spiritual and moral part of the human being and its growth towards perfection." The honest is realised through the development of freedom, becoming a desire and aspiration of the finite towards the infinite. In ancient times, the objects of relation and subject to law were limited. As time goes on the objects of relation subject to law increase in number and grow intricate and complicated. Law now governs objects which were first within the jurisdiction of morals and other social sciences.

The individual in the Constitution of India - The Preamble to the Constitution of India declares: "We, the people of India having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure to all its citizens justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the nation give to ourselves this constitution".

The preamble clearly envisions the individual citizen as also the aggregate in the Nation.

Economic Justice - The concept of economic justice has been developing with the development of the society. Wolff spoke of business, immigration, population and mendacity. After him writers treated the relation between law and social economy changing certain economic principles into agreeable, rigorous and indispensable law by internal and systematic study. For them "economic perfection began with agreeable life between demanding individual and stable property attending to procreate through the equality of law larger and more equitable diffusion of pleasure." Its bases are the conception of commercial liberty, equal distribution of taxes, separation and distribution of social values over the greatest number according to the capacity of production. The State had the power of intervening in personal affairs which led to the gradual destruction of many of the advantages of the law. Economics, according to them, is an ethical science governed by the principles of the good, which man should attain by his own force aided by those of nature. Man is "the subject and end of wealth; man is individual and social, therefore, economics tends to express the law which guides individual and collective in matter of distribution, exchange etc. of wealth." Economic laws deal with the individual; and the State should accordingly grant security to persons, goods and rights and also to culture and civilisation and remove the obstacles in the way of free and full development of the actions of the individual and even should help them in a positive way. Economic laws for Legal are social and civil and reducible to ethical laws. The civil society, according to him, is the form of the ethical spirit and the economic laws are moral laws. The State has not only the power of protecting wealth, but tends as well to rule the moral world and the culture and happiness protecting the individuality which show in the free exercise of business, and all activities in general. The

economic theory of Adam Smith has its origin in the sociology which takes its impulse from the physical and moral needs of the individual. It recognises no other value than the prices of merchandise and looks upon the State only as a protector. This is economic theory.

Economic theory holds that the value of individual activity depends upon the internal budget of the State which represents the ethical hold, and must preserve the elements of culture and education from the evils of illusory price mechanism. Economics is considered to be a part of ethics and wealth was included in the conception of human nature, its ends and perfection. Aristotolian well-being or happiness included wealth or economic prosperity as part of it. In this view, Economics accomplishes the human good in wealth; and law considered it as a measure or as the portion of advantages and as a guarantee of the external relation between man and man. Social life is a foundation of economics. A great part of the contents of law is economic because law measures the proportion of advantages, utilities and wealth. By implication, Economic justice has to conform to these principles and to those specially mandated in the Constitution itself.

Political Justice- The political justice ensures, the individual right place and participation in the State politics as envisaged in the Constitution and the laws. Politics was conceived as the science of the State. Plato considered it as the Royal Art. Aristotle included in politics all the teachings which had to do with the State. It was the science of the ends of the State and all the proper means to attain them. According to Rosmini : "Politics is a state through which to advance social ends and which explains the means which the government has in its power in relation to these ends and the method of using them." According to him Civil Society is a body of attending towards a destination; and he divides the political rules, according to whether, they regard the ends towards its movement or its forces. Rosmini in his 'Filosofia delta politica' prescribed some rules for the government. First, the government should be careful to maintain and develop the prevalent force on which the existence of society depends. The second urges the government so to act that prosperity will produce the proper welfare upon which man realize, because contented citizens and tranquil and quiet. The prevalent force is the result of the complexity of all the physical intellectual and moral forces. These later impress their characteristics upon the physical and intellectual forces and constitute its unity and give it its character. Political justice has to conform to the specific and relevant provisions of the Constitution as also the above general principles interpreted in consonance therewith.

Sociology- Sociology is "the study of the reciprocal relation between human units and their aggregate, its structure, growth, development and functions." It is understood as a science which studies the social organism in all its elements and forms, showing its composition, development and functions. "It is the pursuit of the fundamental and supreme laws that had to do with the structure, function, equilibrium, movement and development of the social organism conceived in its integrity." Sociology must regard the aggregate and the units at the same time. The society is a "living organism" in which "the individuals are collected and united and reciprocally strengthened while the whole is organised in its parts, and is divided in each individual". The individual is strengthened for his particular ends through the whole. The society is, according to Carl, an ethical organism. This strengthening is in contradiction to organisation in the predominance of selfish and destructive interest ; and organisation hostile to strengthening means sacrifice of the parts. The relation between the human units and their aggregate, the structure, development, and functions of the later have a juridictive aspect in that they refer to the action of the individual or the aggregate itself and realise externally the law of good. The law in this case is the proportion of normal protection as it is in all cases. On the one hand it is the principle through which the assignment of their due is made to the human units

and the whole, on the other hand it perfects by its guardianship the development of life of the parts and the aggregate from being disturbed. The ethical organism demands a singular and collective activity of human action and is, therefore, subject to the rule of law, the real measure of strength and organisation.

Social Justice- Social justice ought to conform to the specific relevant provisions of the Constitution, as also the above principles interpreted in consonance with those provisions and the law.

Philosophy of Law- The Philosophy of law is the study of the highest principles of the social organism contemplated specially in respect to human activity. It is not possible to effect the proportion allowed by reason, Which is law, and to apply to the phenomenon of common life knowing the intimate structure, function and laws of the development of society. Justice enters in the composition of social elements and forces, though it may be a secondary and derivative factor; and it has intrinsic value. Ardigo says that the internal forms of justice is the mark of social organism. Justice, for Ardigo, is the specific force of such an organism and is explained in conformity with social ideas, based on the nature of man who wishes to act freely in accordance with the dictates of reasons. Philosophy of law conceives the doctrine as a theory based on the human idea of law and study of social elements which enter into the internal form of the juridical fact and its idea. The juridical fact is essentially-a social fact, since law is not possible out of society. According to Ardigo, it is this chief social fact looked at from a particular point of view, from that of the external relation between man and man and man and kin, in which the second good is realised in uniformity with the laws, proportion, strength and principles of protection. If this is the nature of juridical fact, law, according to Ardigo, is born and developed in society. It is transformed by society and works always for the attainment of the ideal which human knowledge indicates. Without law society is incomprehensible.

Harmonising Individualistic and Sociological deals- The individualistic tendency looks upon the individual as the centre in whose interest the society, the State and all legal and social rules exist and work, and values social institutions and legal systems only as they affect the individual with regard to his liberty or utility. The sociological tendency on the other hand transfers the centre of study from the individual to the society, and puts the society as a whole, where the individualist would place the individual.

"The individual consciousness is the ultimate basis of jurisprudence". The individual will and individual interests are not to be passively merged in the collective will and interest of the society, but they must be balanced with each other. According to this view, law is not merely the automatic resultant of the social forces of the interests of the dominant class asserting and expressing itself through the sovereign and the other organs of the State as its mouth-pieces, but is also, in part, the handy work of the conscious and determinate will voluntarily controlling and directing the natural forces for definite purposes and ends which are alike conducive to the interests of the individual and the society.

There is, therefore, need for harmonising the individualistic and the socialistic views.

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