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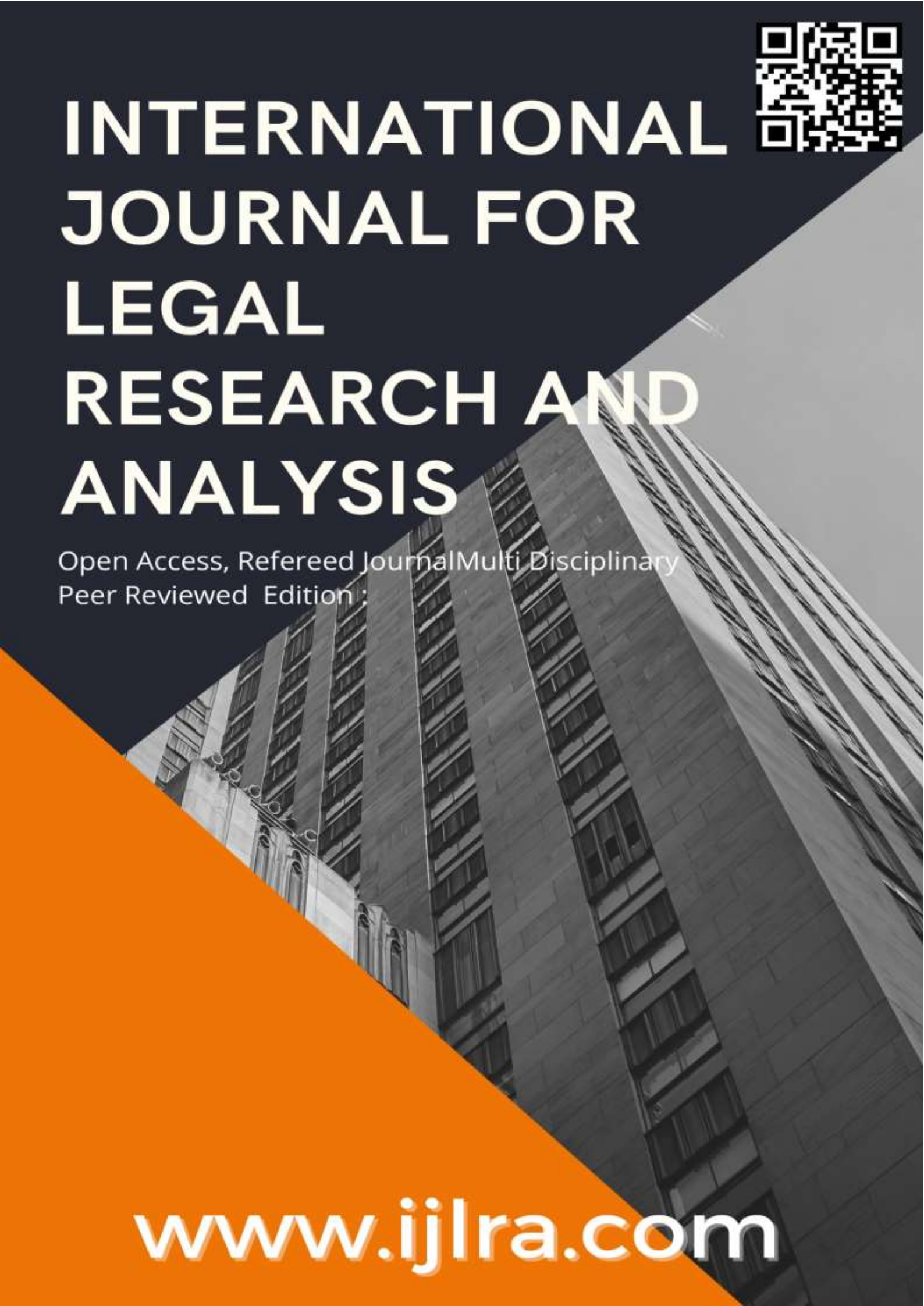

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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Avinash Kumar

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship.He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi.Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi.He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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CONCEPT OF LAW AND EVOLUTION OF THE INDIAN JURISPRUDENCE

AUTHORED BY: ROSHNI SINGH
Course: LLM (CONSTITUTIONAL LAW)
Batch: 2023-2024
Amity Institute of Advanced Legal Studies Amity University Uttar Pradesh

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ABSTRACT

This paper explores the multifaceted landscape of Indian jurisprudence, delving into its evolutionary trajectory by dissecting the concept of law and its interaction with various schools of jurisprudence. The key schools examined include the Natural School, Historical School, Analytical/Positive School, Realism School, and the Sociological School. Through an in-depth analysis, we unravel how these schools have influenced the development of Indian legal thought.

Furthermore, this paper investigates the intricate interplay between Dharma, the ancientIndian concept of moral and ethical duty, and Indian jurisprudence. It highlights how Dharmahas remained a guiding principle in shaping the foundations of law in India and continues to be a significant influence.

The evolution of Indian jurisprudence is not merely an academic exercise but a dynamic process. This paper discusses how Indian jurisprudence has adapted to changing societalnorms, legal challenges, and global influences. It underscores the judiciary's pivotal role in adopting and adapting the Sociological School of jurisprudence to address contemporary issues, thus bridging the gap between traditional values and modern legal paradigms.

In conclusion, this paper offers a comprehensive overview of the concept of law in Indiaand its evolution through the various schools of jurisprudence. It illuminates the enduring influence of Dharma and underscores the flexibility of Indian jurisprudence in adapting to theevolving needs of society, making it a compelling subject for further study and reflection.

INTRODUCTION

LAW has been in force in one form or another ever since the society came into existence, and practically speaking, even before the origin of the society. We have seen law and civilization growing simultaneously but seldom do people put any emphasis on the principles on which it has been started and that is one of the reasons, the legislation very often comes with laws and regulations that turn out to be draconian in nature and which gradually shift a society from progressive to conservative.

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RESEARCH AIM

This paper has been written to understand the concept of law and the principles of jurisprudence and to see the relevance of western jurisprudence with Indian concept of law. The main focus has been given on the evolution of Indian Jurisprudence.

RESEARCH QUESTION

1. What is the concept of law?
2. What are the theories and principles on which the legal system around the world is based.
3. Does India have any legal jurisprudence of its own?
4. Does the western concept of law have any relevance with Indian concept of law?
5. Does India have a dynamic legal system and does it have shown any evolution with respect to existing concepts?

RESEARCH METHODOLOGY

The researcher here has followed a Doctrinal exploration technique and have used secondary data for her research paper. Have referred essential sources like bare acts of India, U.S., ancient texts including Manusmriti and Yajnavalkyasmriti, case laws, auxiliary sources like books, magazines, published and unpublished articles.

HYPOTHESIS

India has started from Dhrama based jurisprudence and currently following the sociological school of Jurisprudence.

CONCEPT OF LAW

Law is a large body of rules and regulations, based mainly on general principles of justice, fair play, and convenience which have been worked out by governmental bodies to regulate human activities[1]. Law, however, is also a normative social practice: it purports to guide human behaviour, giving rise to reasons for action.[2] An essential feature of the law is it is normative, the law is a norm and its objective is not exhausted by its fulfillment once, it's a continuous and repeated process to conduct human behaviour. Also as termed by H.L.A. Hart, "Law is the primary norm which stipulates the sanction"[3].

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But apart from the aforesaid definition which can be found in the primary legal education textbooks around the world, "what is law?" is still a major question under the study of jurisprudence. Moreover, Jurisprudence is in itself a huge subject to understand, the term "jurisprudence" has been derived from a latin word "Jurisprudentia" which means the knowledge of the law, the bifurcation of the term jurisprudence, leads to the word 'juris' which means 'law' and 'prudentia' means 'skill' and 'knowledge'.

Jurisprudence, if not highly interpreted, is the study of the philosophical aspects of law. It assumes that law possesses certain features, and it possesses them by its very nature, or essence,

[1] Meaning of Law; Introduction to Law by National Institute of Open Schooling;
[2] Marmor, Andrei and Alexander Sarch, "The Nature of Law", The Stanford Encyclopedia of Philosophy (Fall 2019 Edition), Edward N. Zalta (ed.), First published Sun May 27, 2001; substantive revision Thu Aug 22, 2019
[3] H.L.A. HART, "The Concept of Law, Third edition", Clarendon Law Series, edited by Paul craig

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as law, whenever and wherever it happens to exist[4] and it purports to reason out why it is the way it is.

There had been a lot of effort put into coming up with a universal definition of the term law by various eminent jurists in the past, but it has been rightly stated by Baron Hampstead that no such universally acceptable definition of law could be produced[5].

But several attempts have been made where Austin defined law as "the command of a sovereign backed by the threat of a sanction." He emphasized the importance of a central authority in the creation and enforcement of law. Hart argued that law is a system of primary and secondary rules. Primary rules are those that govern behaviour, while secondary rules provide the framework for creating, altering, or adjudicating primary rules. Jr. Holmes famously stated that "the prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law." Dworkin believed that law is a matter of moral principles that judges must interpret and apply. He introduced the concept of "law as integrity,"where legal decisions should be based on a coherent and morally justifiable interpretation of legal principles. Fuller argued that law should meet certain internal and external criteria to be considered valid. He proposed that the law must be consistent, clear, prospective, and not contradictory. Jerom Hall defined law as "a collective and institutionalized control of the use of force in society." Pound viewed law as "social engineering" aimed at achieving justice and solving societal problems. He believed that law should adapt to changing social needs. Locke'sperspective on law is rooted in natural law theory. He argued that law should protect natural rights, including life, liberty, and property. Hobbes believed that law is necessary to prevent the chaos and conflict that would exist in a state of nature. He saw law as a social contract thatindividuals enter into for their own protection. Joseph Raz's theory of law emphasizes the importance of authority and the need for a legitimate authority to create and enforce law. He argued that law is a set of rules that are backed by social institutions with the authority to enforce them. These are just a few perspectives on the definition of law, and there are many more in the field of jurisprudence and legal philosophy. The nature and purpose of law continueto be subjects of debate and discussion among legal scholars and philosophers.

[4] Supra note 2.
[5] Dennis Llyod, “Baron Llyod of Hampstead, Introduction to Jurisprudence”, Stevens & Sons, London, 3rd Edition, 1972

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SCHOOLS OF JURISPRUDENCE

Law and its concept are further categorized into different schools of jurisprudence, the categorization of the law into various schools is based on their difference in philosophies of the concept of law.

NATURAL SCHOOL

The Natural Law School of Jurisprudence is a philosophical approach to understanding the law that posits the existence of inherent and objective moral principles that govern human behaviour. This school of thought suggests that laws should be derived from these fundamental moral principles, and an unjust law is not truly a law and should not be obeyed. Natural law theorists argue that legal systems should align with and promote these fundamental moral truths like justice, ethics, and human nature.

Thomas Jefferson in the Declaration of Independence and Bill of Rights of the US Constitution, has cited Natural law theory stating it "the laws of Nature and of Nature's God". Also, the principle of "following the due process of law" in the USA and the principle of the "Rule of Law" used in the legal system of both Britain and India is based upon the theory of Natural law.

Notable jurists of the Natural School were Aristotle, Socrates, St. Thomas Aquinas, Hugo Grotius, John Locke, Sir Edward Coke, etc.

HISTORICAL SCHOOL

The very emphasis made in the introduction of this paper was somehow the derivation from the historical school of jurisprudence. This school puts emphasis on "Law being the product of social consciousness." This social consciousness started even before the sovereignty.

The Historical School of Jurisprudence, also known as the Historical School of Law, is a legal and philosophical approach that focuses on the historical development and evolution of legal systems, institutions, and concepts. This school of thought emphasizes the importance of understanding the historical context and cultural factors that have shaped the law. This school states that Law is framed for the individuals and

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by the individuals[6] considering the evolving requirements of the people in the society. This school considered historical evolution, habits, customs, tradition, and cultural developments as their primary source of law and historically they have opposed the strict codification of law since the law is believed to be an evolving process and constantly changing according to the said evolution.

Notable jurists of the historical school were Friedrich Carl von Savigny, Gustav von Hugo, Heinrich Brunner, Sir Henry Maine, Ferdinand Mackeldey, etc.

ANALYTICAL /POSITIVE SCHOOL

Legal positivism or the positive school considered as most important or modern school as it puts more emphasis on what the law is than what the law should be. It is also termed as analytical school due to its nature of analysis of the existing law rather than being focused on its past or future. Though most of the jurists of the positive school had differences in their opinions but their basis of the concept of law remained the same, that emphasizes empirical observation, scientific methodology, and the study of law as it actually exists, rather than as it should be based on moral or normative principles. This school of thought seeks to analyse and understand the law through empirical and objective means. Since it separates mortality from the law, it provides a concept that the law should be based on the maximum happiness of the maximum people, which seems to be a practical approach towards the law and its enforcement.

Notable jurists of positive school were Auguste Comte, John Austin, Jeremey Benthem, Hans Kelsen, H.L.A. Hart, Roscoe Pond, Thomas Erskine Holland, John Salmond, etc.

REALISM SCHOOL

The Realism School of Jurisprudence, often referred to as Legal Realism, is a legal and philosophical approach that focuses on the practical effects and social context of law rather than abstract legal principles or formal rules. Legal Realists argue that judicial decisions are often influenced by subjective factors, such as the judge's personal values, social and economic considerations, and political considerations. This school of thought

6 Concept of Law and Schools of Jurisprudence, published online on Legal Desire, https://legaldesire.com/concept-of-law-and-schools-of-jurisprudence/, last visited on 17.09.2023

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seeks to understand the law as it is applied in practice, emphasizing the importance of empirical analysis and recognizing the limitations of legal formalism.

The jurists who put emphasis on the realist school of jurisprudence were Oliver Wendell Holmes Jr, Jerome Frank, Karl Llewellyn, Benjamin N. Cardozo, Roscoe Pound, etc.

SOCILOGICAL SCHOOL

The sociological school puts emphasis on the law and society relationship. It purports that the law is neither an outcome of the principles and philosophies nor the command of the sovereign, but rather the collective consciousness of the society.

The Sociological School of Jurisprudence, also known as the sociological approach to jurisprudence or sociology of law, is a legal theory and perspective that emphasizes the influence of society, culture, and social factors on the development and application of law. This school of thought focuses on understanding how law is shaped by and, in turn, shapes society, rather than solely relying on abstract legal principles or moral values. It seeks to analyse the relationship between law and society and how the law reflects and responds to social norms, customs, and values.

Prominent Jurists associated with the sociological school of jurisprudence are Max Weber, Eugen Ehrlich, Roscoe Pound, Karl Renner, etc.

There have been several other thoughts that emerged from time to time to show the actual nature of the law or the principles on which any country's legislation are based. Important to consider that though the basic principle of the emergence of law in any part of the world remains the same, it does vary from nation to nation on the basis of their local custom, traditions, religious aspects, and social structure. The same difference in principles can be seen in the Indian legal system. The history of ancient legal jurisprudence lays down several principles and aspects.

DHARMAAND INDIAN JURISPRUDENCE

In ancient Indian society, law and dharma were not distinct concepts. In dharma Sastras, Smrities, and Arthasastra, the concepts of justice, law, and religion were not distinguished,and invariably justice was equated to dharma and injustice with Adharma.[7]

A thorough study of sources such as Vedas, Puran, Upanishads, Dharam-Shastra, and Smritis, from which ancient India derived its legal and justice system will show how Indian jurisprudence differs from the other schools of jurisprudence. Indian jurisprudence is the

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dharma-based justice system, and thus it is more of a duty-oriented than command-oriented. It has been emphasized that those who exercise political power must wear the hand glove of dharma and 'principles of dharma govern every sphere of activity including governance of the country.[8]

Dharma in its very essence propounds the now-called theory of the 'Rule of Law', the same can be seen, without any interpretation, widely cited passage from Brihadaranyaka Upnishad:

> Law is the kings of kings, far more rigid and powerful than they; there is nothing higher than law; by its prowess as by that of the highest monarch, the weak shall prevail over the strong.[9]

It is very clear from the passage that there was an established concept of Supremacy of Law.

The ancient world was replete with tracts articulating various moral, religious, and customary laws which, when enforced by the sovereign authorities, held the status of law. Examples are the Dharmshashatra and more particularly the Manusmirti. It is worth noting that, according to these texts, the kings were almost universally regarded as subjects to the law(s), and not – as in the Austinian or Schhmittean legal theories – sovereign over the law. This notion, that the king bore duties and obligations towards the welfare of his subjects, is termed as Rajya Dharma[10].

7 N.C. Sen Gupta, "Evolution of Ancient Indian Law" 336 (Calcutta 1954)
8 Fredrick Max Muller, "India: What Can It Teach Us", Pg 6.
9 Gajendragadkar, 1965: 119
10 Aakash Singh Rathore and Garima Goswamy, "Rethinking Indian Jurisprudence: An Introduction to the Philosophy of Law", published by Routledge

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Dharma is different from religion[11], though it is used interchangeably, the difference between the terms is very clear and has been clarified from time to time both by the legal scholars and the judiciary. Since the Indian legal system has gone through significant changes over the course of time and its history of invasion played a crucial role in creating religious diversity within the country and the same has also played its role in structuring the legal system we have presently in the country. And since India is a secular state, it makes it even more important to draw a clear distinction between 'Dharma' and 'Religion'.

EVOLUTION IN INDIAN JURISPRUDENCE

Ancient Indian jurisprudence shows its inclination towards the natural school of Jurisprudence, As according to the theorists of the natural school, liberty, equality, and fraternity are inherent and 'natural' to man, and similarly, in the ancient Hindu text, the right of human by birth were given more importance and legal system were often directive than obligatory, with no or very rarely any sanction associated to it, hence giving more power to the individual rulers to decide the course of legal system for their kingdom. However, even though ancient Indian text didn't provide penalty or sanction, it does come up with the term 'Prayaschit' i.e. atonement, which can either be self-atonement or directive atonement, some Smiritkars, for e.g. Yajnavalkya, in his Yajanavalkya Smirti divided the book into three parts, The first chapter is called Achara which deals with religion and morality, the second chapter is called Vyavahara, which deals with law, and the third chapter is called Prayaschit which deals with penance[12].

However, what can be natural to one society or at a certain time in the society can differ from another society or at another time in the society. Indian jurisprudence gradually shifted from the natural school to a more positive school of jurisprudence, where the rulers became more

11 Rajesh Himmat Lal Solanki vs Union of India, GHC, 2011, the apex court while citing A.S. Narayana Deekshitulu vs State of A.P. & Ors, (1996) 9 SCC 548, stated that "in the very decision, the Apex Court (through Hansaria, J.) (supplementing), observed that the very often the words 'religion and 'dharma' are used to signify one and the same concept or notion. To put it differently, they are used interchangeably. Dharma is said to be 'Sanatan', i.e., one which has eternal values; one which is neither time-bound nor space bound. It is because of this that Rigveda has referred to the existence of 'Sanatan Dharmani'. The concept of 'dharma', therefore, has been with us for time immemorial. Dharma is for the stability of the society, maintenance of social order and well-being and progress of humankind."
12 Raj Vardhan Tiwari, "ANCIENT INDIAN JURISPRUDENCE, by Justice Markandey Katju, Judge, Supreme Court of India", Speech delivered on 27.11.2010, Banaras Hindu University, Varanasi, published, on academia.edu

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important and powerful and their ordain became the legislation, giving rise to the analytical school/positive school which saw the law as it and didn't consider how the law should be, whether it be good or bad, entirely contrary to natural law, which state "a bad law is not a law at all and should not be obeyed". This rise of positive schools can be seen during the Islamic era and it reached its peak during the European invasion, more particularly during the British Raj. It does provide a set of rules and regulations, leaving no or very less scope of vagueness as against the natural school.

The positivism of the legal concept though of great importance and greatly suited for the modern era, but it was defective in its social connection and relevance aspect. It discarded the study of social behavior, economy, history, custom, etc., since it believed these aspects are beyond the scope of jurisprudence and shall be covered under sociology. The legislation that was influenced and was the outcome of positivism didn't align well with society. This theory of positive school narrowed down the jurisprudence and nearly separated it from the realities of society and hence made it very short-lived.

After being tortured by the long rule of British Raj, which can be seen as a classic example of positive school of jurisprudence in India, the Constitution makers took the effort to constitute a legal and administrative system which will strive for the welfare of the state and its subject rather than just act as a supreme authority capable of commanding without being worried of national interest and opinion.

The post-independence era shows the emergence of sociological school inference to the newly constructed modern Indian legal system, the draft committee ruled the provisions of the Indian Constitution in such a manner that will aim to attain the goal of social welfare and any act done by the state shall be judged on its capability of aiding to the creation of a welfare state.

Even though the idea of social welfare was ingrained in the newly constructed constitution, there were no such direct reference to the same, and which somehow led to the very famous atrocities imposed by the state during the Emergency. People suffered by the unrestricted power given to the state during the declaration of emergency and hence several steps were taken to held the state accountable for its acts and provisions and powers of state during the emergency were relaxed. It is the outcome of the emergency that the term "Socialist" was added in the constitution and the preamble declared India as a Socialist country and hence the Indian administrative and legal system adopted the concept of Sociological School of Jurisprudence.

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And as propounded by the Pounde, the Indian judiciary and judges adopter the concept of 'social engineering' and the officers of the court started adopting the role of 'social engineers', where social engineering is aimed at building a society as efficient as possible in which wants of maximum are satisfied with minimum of friction and waste[13] and hence introduced the concept of PIL i.e., Public Interest Litigation. PIL henceforth, opened a path for judicial activism. The judicial innovation of PIL as a tool to enable access to justice defined a new chapter in the evolution of the Supreme Court as a central player in people's lives.[14]

ADAPTATION OF SOCIOLOGICAL SCHOOL OF JURISPRUDENCE BY JUDICIARY IN INDIA

For past few decades the Supreme Court has shown a discernible approach for the adaptation of sociological school of jurisprudence in its findings in several cases,

In **Ashok Kr Gupta & others vs State of Uttar Pradesh**[15] it was held that this court is not bound to accept an interpretation which retards the progress or impedes social integration.

In the case of **Union of India & Anr v Raghubir Singh**[16] the court held that This need for adapting the law to new urges in society brings home that truth that the life of the law has not been logic, but it has been experienced. The law is forever adopting new principles from life at one end and "sloughing off" old ones at the other.

The court here observed that the aspect of the social conduct and experiences of the ages has to be considered while determining and framing the new laws and norms.[17]

13 Deva Prasad,"Law and Social Transformation in India through the lens of Sociological Jurisprudence" : (2011) PL January 24

14 Malcolm Langford, "Social Rights Jurisprudence: Emerging Trends in International and Comparative Law." (2008). United Kingdom: Cambridge University Press.

15 (1997) 5 SCC 201

16 (1989) 2 SCC 754

17 Arunesh Bhardwaj & Anshika Agarwal, "INDIAN LAW EMBRACING SOCIOLOGICAL JURISPRUDENCE: A DETAILED STUDY," International Journal of Law and Legal Jurisprudence Studies :ISSN:2348-8212 Vol 2 Issue 3

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The Court in **Bandhowa Mukti Morcha vs Union of India**[18], held that the Court should abandon the Laissez Faire approach in the judicial process particularly where it involves a question of enforcement of fundamental rights and forge new tools, devise new method and

adopt new strategies for the purpose of making fundamental rights meaningful for the large masses of people.

In **Sarla Mudgal v Union of India**[19], the court embracing the concept of Sociological Jurisprudence said that marriage celebrated under one personal law cannot be dissolved by application of any other law. This observation matches up with the concept of Pound wherein he said that in case of conflict between interests, the interest of same plane will be weighed together.

These cases clearly show the adaptation of sociological school in the approach of judiciary. Justice Krishna Iyer exhorts judges not to act by hunch but on hard facts and concrete realities since the rule of law stemmed from rule of life. Since law is a social science, judges would not depend only on abstract principles or rigid legal cannons alone but on social circumstances, demands and needs of time.[20]

But is it the end? The question arises, if the principles of sociological school of jurisprudence is the final foundation on which the Modern Indian legal system will work, or the evolution of the same is still at its infancy.

The answer lies in the approach of the judiciary adopted in creating its precedent. Ever since the nation got the Independence and Indian Judiciary has been bestowed with the responsibility to uphold the principles of the constitution, it has been working in a way to create a harmony between the modern legal principles and the principles laid down by the ancient Indian Jurisprudence, and for that matter even before Independence, the theories of the ancient Indian jurisprudence has been considered several times to attain the justice or arrive at the best suited judgement for the Indian citizen.

18 AIR 1984 SC 802
19 (1995) 3 SCC 635
20 Prof. B. Hydervali, NLUO, "SOCIOLOGICAL PERCEPTIONS OF LAW", An MHRD Project under its National Mission on Education through ICT (NME- ICT), MHRD, Govt. Of India

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In **G. S. Manju W/o P. Ajith Kumar V K. N. Gopi @ Gopinathan Pillai and others**[21], the Kerela High Court quoted Kurma Purana, Manusmirti, Holy Quran and Holy Bible, to show the duties of children towards their parents, the Hon'ble High Court stated that "*These religious values are universal values acknowledged and encompassed in all civilized society or class*."

Again in **Karnail Singh and others V State of Haryana**[22], the court while giving refence of the book "Sacred Animals of India", written by Nanditha Krishna, quoted that "*The Yajur Veda says that service to animals leads to heaven: 'No person should kill animals helpful to all and persons serving them should obtain heaven.' According to the Atharva Veda, the earth was created for the enjoyment of not only human beings but also for bipeds and quadrupeds, birds, animals and all others creatures. The emergence of all life forms from the Supreme Being is expressed in the Mundakopanishad from Him, too, gods are produced manifold, The celestials, men, cattle, birds."*

21 2019 Indlaw KER 2695, 2019 (4) KLT 634
5(i) The Kurma Purana, one of the Eighteen Mahapuranas and named after the tortoise avatar of Vishnu prescribes : "No Deva can equal the mother and no superior can equal one's father. Hence, no son can get relieved of the debt he owes to them." [Kurma Purana 2.12.36]
5(ii) In Manusmriti, 2/227, it is given that, "Parents who give birth and rear children face agony that cannot be overcome in a hundred years. Therefore, the father, mother and teacher must always be kept happy and content through care and service. This is important to attain truth and success in life."
5(iii) In Holy Quran, in chapter 2-83 (Al-Baqarah), duty is enjoined upon believers to do good deeds to parents. In chapter 46-15 (Al-Ahqaf), it is mentioned, "And We have enjoined upon man, to his parents, good treatment. His mother carried him with hardship and gave birth to him with hardship, and his gestation and weaning [period] is thirty months. [He grows] until, when he reaches maturity and reaches [the age of] forty years, he says, "My Lord, enable me to be grateful for Your favour which You have bestowed upon me and upon my parents and to work righteousness of which You will approve and make righteous for me my offspring. Indeed, I have repented to You, and indeed, I am of the Muslims."
5(iv) In the Holy Bible, the tenth book of New Testament, Ephesians, chapter 6, verses 1-3, prescribes :
"Children, obey your parents in the Lord, for this is right. Honor your father and mother, which is the first commandment with a promise, that it may go well with you and that you may enjoy long life on the earth". [Ephesians 6:1-3]

22 2019 Indlaw PNH 1659, 2019 (3) RCR(Criminal) 396

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These ideas led to the concept of ahimsa or non-violence. Much later, the Manusmriti says, 'He who injuries innocent beings with a desire to give himself pleasure never finds happiness, neither in life nor in death.

In **National Insurance Company Limited V Bapu Khan**[23] "The practice judging the truthfulness or credibility of a witness by examination not only his statement but also his demeanour and body language have always been recognized from past both in India and abroad. Perhaps it may not be out of place to mention that even in Manusmriti a reference is there to that effect in 26th verse in the 8th Chapter. It goes as follow:

(what is there in the mind of the witness is understood by his guesture, tenor, efforts, words and change in the colour of eyes and face.)"

In **Ramendra Shah S/o Ram Swaran Shah V Shew Ram Shah and others**,[24] court stated that "If any reference is necessary one can take recourse to verse 26 of Chapter VIII of the Manusmriti which goes as follow:

(The feeling lying in the mind of the witness has to be understood by studying his body language, exchequer, style of dialogue, change of colour of eyes and face etc.)"

In **United Riceland Limited and Another V State of Haryana and Others**[25] the Punjab & Haryana High Court while mentioning the duty of payment of tax on sale, stated "In India also, the existence and inception of system of taxation is referred to by Manu in his Manusmriti which prescribes how a duty is to be imposed on the transaction of sales. Manueven acknowledged the existence of sales tax as did Kautilya also."

The reason to refer aforesaid cases shows that how time and again the judiciary had recourse to the ancient texts in its judgement to give a socially acceptable verdict. These references make

23 2015 Indlaw GUW 696, 2016 (4) GauLR 627
24 2015 Indlaw GUW 79, AIR 2015 GAU 80, 2015 (2) GauLR 477
25 1995 Indlaw PNH 198, 1996 (114) PLR 227, 1997 (104) STC 362

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the study of Indian jurisprudence much more important than the status it has been given in todays legal studies of Indian Law and legal system. The refence has been made for vide range of subjects and as against the general notion of being the Indian jurisprudence only having importance in personal matter, the reference has been made on variety of subjects including crime and criminal procedure, taxation, debts, and many more.

It is also been emphasized by several Indian scholars that teaching of jurisprudence in India within law schools does not meet any of the basic tests of need or utility, as these ideas are of no use or of ground realities, as these ideas are oblivious to the actual Indian situation. According to them, the philosophy of law tradition from John Austin H.L.A. Hart to Joseph Raz needs to be toppled Indian philosophies of Law, rather, should look to reflect the real ideas and best practices of the Indian people. Indian jurisprudence should be Indian in Origin, in content, in application it should be sui generis and not only merely borrowed or derivative.[26]

In a recent conference, Supreme Court Justice S Abdul Nazeer said "the surer yet arduous way to free administration of justice in India from the colonial psyche is to teach law students about ancient yet advanced legal jurisprudence. He said the legal norms developed by great personalities like Manu, Kautilya, Brihaspati and others were worth studying and emulation."[27]

CONCLUSION

The concept of law in Indian jurisprudence, if not entirely but more than partially, different in its approach as against the western approach. The Indian legal jurisprudence has undergone a series of changes, and various thinkers and legal experts tried to co-related the principles followed in Indian Jurisprudence by evaluating the trend and approach of state and its judicial system. However, the Indian society has been a very as compared to western society and the situation still persists even after an era of ongoing globalization.

Though the current approach of judiciary and the state uphold the social mandate and its welfare as supreme, it cannot be said that it is following exact sociological school of Jurisprudence as propounded by Roscoe Pound. Where the theory of the American Jurist Roscoe Pound is mostly based on upholding the rights of the individual and balancing the conflict of interest of state and society.

26 Supra 10.

27 Must teach ancient Indian jurisprudence, throw out colonial law system: Nazeer, Published by Dhananjay Mahapatra, The Times of India, TNN, Dec 27, 2021, 04:49 IST

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It can be said that the current approach of the Indian judiciary is based on the protecting individual rights and creating a balance of conflicting interest between state and society as established under sociological school of jurisprudence, by also making an effort to uphold the principles of duty of individual towards other individual and the state as laid down in the ancient Indian jurisprudence.

Hence the hypothesis of the author remains partially proved and partially disproved.

Reference:

H.L.A. HART, The Concept of Law, Third edition, Clarendon Law Series, edited by Paul craig

Aakash Singh Rathore and Garima Goswamy, Rethinking Indian Jurisprudence: An Introduction to the Philosophy of Law, published by Routlege,

Prof Dr. Mukund Sarda and Basim Akhtar, Concept of Dharma, Justice and Law: A study, Bharti Law Review, Jan – March, 2017

Wesley Newcomb Hohfeld, Fundamental Legal Conceptions as Applied in Judicial Reasoning, The Yale Law Journal , Jun., 1917, Vol. 26, No. 8 (Jun., 1917), pp. 710-770; Published by: The Yale Law Journal Company, Inc.

Marmor, Andrei and Alexander Sarch, "The Nature of Law", The Stanford Encyclopedia of Philosophy (Fall 2019 Edition), Edward N. Zalta (ed.), First published Sun May 27, 2001; substantive revision Thu Aug 22, 2019;

Prof. Dr. Mukund Sarda and Basim Akhtar, CONCEPT OF DHARMA, JUSTICE AND LAW: A STUDY, Bharati Law Review, Jan – Mar, 2017,

Shantanu Rathore, Dharma and law; Symbiosis Law School, Noida, Academike; Published on May 13, 2015;

Raj Vardhan Tiwari, ANCIENT INDIAN JURISPRUDENCE, by Justice Markandey Katju, Judge, Supreme Court of India, Speech delivered on 27.11.2010, Banaras Hindu University, Varanasi, published on academia.edu

Deva Prasad, Law and Social Transformation in India through the lens of Sociological Jurisprudence: (2011) PL January 24

Arunesh Bhardwaj & Anshika Agarwal, INDIAN LAW EMBRACING SOCIOLOGICAL JURISPRUDENCE: A DETAILED STUDY, International Journal of Law and Legal Jurisprudence Studies: ISSN:2348-8212 Volume 2 Issue 3