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The Philosophy of Society and Law

Authored By-Utkarsh Singh

The ancient Indian legal scholars had their own indigenous system and framework, which was based on principles of reasoning connected to human welfare and outperformed many other legal systems in the globe at the time. Mayne made the following observation on the old Indian system and its jurisprudence:

"Indian law has the oldest pedigree of any non-system of jurisprudence and even now it shows no signs of decrepitude. At this day it governs races of men extending from Kashmir to CapeComorin who agree in nothing else except their submission to it"

The Indian jurisprudence is considered to be as old as when humans existed as there is no founder of it other than the creator of the human himself. The ancient Sanatan Dharma imbibe all the law proper that has developed on the Indian soil and has been nurtured by it since ages. The Hindu philosophy has been considered as the all-encompassing philosophy where every Idea and concern could be accumulated and it is considered as the soul of all the religions and therefore is ever present and ever ending. Law was at that time the part of Dharma and there was no conflict or disharmony between both of them as they constituted a part of a single integrated whole. Where we can say that the importance of ancient Hindu legal theory, its study and analysis is perhaps necessary for all round understanding of the present scenario where the Indian legal system works and the state structure and its jurisprudential background.

1.1. The Philosophical Concept Of Dharma:

Dharma means anything which sustains or is persistent or upholds, the word comes from the Sanskrit root which means establishing or holding. The statutes and the laws which are given the name of Dharma hold that a particular society and individual residing in such a society has to defend and preserve the right track and also the right path which such an individual would follow; this it can be said that it is also to an extent a moral system.

According to Mahanarayanoupanishad, -

The stability of the universe and the world is with dharma and it is with dharma that the subjects are looked after; dharma removes demerits and everyone's stability is with dharma. Thus, dharma has been called supreme.

India being a subcontinent and very old and its foundation is rich in cultural, legal and political heritage. It was here that the first time an idealistic and pragmatic legal philosophy evolved based on spiritual as well as the material will being.

1. Dharma
2. Artha
3. Kama
4. Moksha

The ring of Dharma or the life will as have described in the ancient Hindu scriptures moved from the attainment of prosperity that is Artha and moving through gratification of senses and desires that is Kama with a view at the end to attain spiritual salvation that is moksh. Indian legal philosophers were not only dreamers about the spiritual world but also they had values related to universalism, humanism, rationalism and above all they were also the moralists who evolved us specific philosophy that was based on the pure concept of Dharma.

The concept of Dharma had a very innate relationship with the concept of state and the ruler in India and the ancient law giver were also clear in their mind as to the limitation that what would be the consequences of one man's rule so they had enunciated principle of limited sovereignty which was assigned to the ruler to administer the state without any legislative power or rule making power. The thinkers always held law or for that matter the concept of Dharma to be the superior thing to any form of state or the government where the state was by no means a source of law as has been said by a number of European legal thinkers as Hobbes and Hegel. It can be said that the Indian kingship was a trust relationship and the Indian kings like Harsha and Ashoka looked upon the throne in that light only and a fear of popular revolt was deterrent for any form of gross misrule. The Mahabharata also sanctioned rebellion against an unjust king. Thus the thinkers in India never ever depicted or made out that the state was a form of evil; it was on the other hand a necessary instrument for the advancement of law and

Dharma. where it was said that human beings can find security and warmth through the instrument of the state and without any sovereign authority to establish law and order, maintenance of peace could not be possible and the stronger will swallow the downtrodden like in the manner of a fish. The paramount duty of the King at that time was to promote the cause of Dharma and if the law was not maintained by the king the righteousness would soon disappear as was said and darkness would prevail everywhere. At the end the society itself would cease to exist and animals would run the street.

In Mahabharat social contract theory is referred where in the ruler was being appointed by the God with the consent of people and a form of sanction or punishment that is dandniti was an instrument that promoted and protected the society and its welfare and for achieving the ends laid down by the law of Dharma. The Hindu also developed what is called as the Rajajdharma, in arthashastra and dharmasastra give a detailed exposition of the concept under which the protection of people and the maintenance of social order was described as the vital duties of the state and the ruler. In the Mahabharatha the Rajanushashan parva is a treasure which is precious house of ideas on the dharrama of the king - arthashastra declares that "of a king, religious vow is his readiness of action; satisfactory discharge of duties is his performance of sacrifices, equal protection to all is his offer of fees" and the ideal king regards the happiness of his subjects as his own happiness which can be realized only through the observance and practice of dharma.

1.2. Societal Philosophy Of Law

Law and society both are intertwined concepts as both exist for each other. In one way we can say that law has been developed for the welfare and sustenance of the society and on the other way we can say that society is necessary for regulation of law and order and maintenance of peace. The concept of law and society in India has its roots in vedic times and has been represented as such in various Upanishad and dharamshastra. However, the philosophy related to law and societal implications and the other way round is not limited to India but is also a universal concept which has been explained by various propounder and thinkers. For example, of course there is no such example of irresponsible or an autocratic or despotic sovereign as of Austin were he says that law is the command of the sovereign, in the Hindu legal philosophy with unlimited powers over subjects without any moral or ethical constraints whatsoever. In the Indian society moral liberty and individual freedom has been guaranteed within the social

law of Dharma. The existence of law within a society is made a compulsion from the times when the state came into existence, the responsibility of the state on one side was to provide security and warmth to its citizens or the people residing in it on the other way round state had also the force and power to compel its citizens or residents to perform such duties and task which was necessary for its perpetuation. Whereas the concept of state society and law has been defined uniquely by thinkers and sociologist and various philosophers in their own manner and style but one thing remains common that for the existence of consent among individuals it is very much necessary that the state should exist which has the force or power to check the individual desires and reaches and also to maintain coherence, law and order in a society for human survival at end. Where Bryce observes the sanction is the power of imposition of penalties were for the state it is not always necessary to make laws or rules of conduct accepted by community. We have instances of certain laws where we can see that as an originator or sustained there was no state and where the breaches of such particular laws were visited by form of public opinion with the power of implementation not inferior to that of the state.

It should be kept in view that Indian view of society has been to eschew class war and postulate social harmony by reconciling the claims of conflicting interests from the stand point of dharma or higher law of morality. The acquisitive west has been unable to transcend the maxim "greatest good, largest numbers." Indian scholars, philosophers, and jurists, on the other hand, were the first to consider world oneness and universal welfare. Indeed, long before the introduction of so-called modern European civilization and ideals, Indian philosophers had pondered this crucial issue. Since time immemorial, the vision of human togetherness and a world free of wars and pain has touched Indian hearts. Throughout the decades, our one continuous prayer has remained- "*Lei everyone be free from all ills*". Indian ideal of service and sacrifice always placed material acquisitions and possessions as offerings at the service of society.

1.3. Crime, Society And Law

Law within the fashionable context is confined to rights, legal obligations, duties, etc. it's during this sense that law is completely different from Dharma or 'sadachar' as a result of the previous sustains in particular society however the latter is all-pervasive and applies to the whole universe. Further, law reach itself to solely such obligations as square measure created by the sovereign or the state however dharma includes an abundant wider connotation and includes spiritual, moral, social and legal activities of group. once more terribly improper or undesirable conduct is against "sadachara" and thus against "dharma" additionally, however not by fashionable law unless it's specifically a prohibited conduct. It must, however, be reiterated that "sadachar" although cannot be equated with law however resembles the trendy law. The idea of i.e. virtuous conduct is uniformly applicable throughout, however it's not therefore with the electronic equipment law. what's lawful at an area might not be necessarily therefore at another as a result of law being a dynamic idea, varies in keeping with place and time betting on the values, customs, physical conditions, etc.

Thus we see that in Indian the history itself speaks multitude of its legacy in development of law and society in general and not only that it has also provided theories and ideas that were used and are now also used were prominent thinkers of the west have based their conception of society, law and morals for that matter. But the point of concern is basically that for the ultimate perpetuation of the society in general and efforts put so that individuals residing herein live in perfect harmony and vigour it is very much necessary that such tendencies of delinquency and crime that may emerge in minds of certain individual out of whim or desire must be curbed and stopped. For that sole purpose it is necessary that the state structure that have been talked of from Socrates till now is given certain superior powers so that it can formulate laws and make regulations with respect to curbing these kinds of tendencies, not only that the state is also responsible for providing education and health and other social services which are necessary for growth and survival of human beings so that they that they do not turn towards wrong means for substantiating their desires and needs. For that matter we would be analysing certain thinkers and their aspects in this area of law and sociology and certainly their philosophy about what they have to say about these things and to what extent their ideas. and conception would be feasible in present context. It may be said that what we are about to relate is a concept term called Anthropological Criminology which may also have

certain aspects of sociology as well. A combination were we shall make out human nature and criminology for that matter, a field of offending standards based on grasping the relation that may exist between the nature of a certain crime and offence and an individual's disposition or inclination to commit a crime Charles Robert Darwin's (1809–1882) ideas profoundly affected the notion of social science sociology. However, the philosophy developed from Darwin's theory of evolution, notably that some species were virtuously superior to others, was a major impact. This concept was inspired by the Social Theory of Organic Evolution, but it has since become an important aspect of social scientific sociology. Between 1881 and 1911, Social Darwinists in the United States continued the effort.

1.4. Sociological Theories

- These theories make out that a particular situation or environment that may exist in society is a cause for committing a crime
- Another school contends that any form of disorganisation is a perfect cause for deviation from set standards of the society
- Edwin Sutherland who propounded the Differential Association theory makes that a crime is a thing that is specifically learned.
- Robert Merton sociologist maintains strain theory of crime and delinquency which was also a theory heavily influenced by theories of Durkheim's 'Normlessness' and the concept of anomie
- Travis Hirschi gave a theory as social control which made out that why there is more tendency among people who do not commit crimes.
- Neutralization theory by sociologist describes that why people who are committing crimes shed feelings of blame and shame.
- Edwin Lemert propounded the labelling theory which explained that certain people consider themselves outsiders and not among a particular group and turn towards crime to live up to that standards.

1.4.1. Critical Sociological Theory Of Crime:

- Critical theory is made to be describing perspectives that range that ultimately consider social justice as a purposeful and legitimate end
- Criminologists who study ideas and conceptions in view of Marx's principles make out that basically those in power have full control over law and its enforcement.
- Feminism has also developed its own theory where it says that females are differently treated in a society made up of male power structure
- There is another theory as critical race theory which makes out that people of a specific color are over-represented and are in power than others. Here it is also made out that race is an important variable in attempting to explain various dynamics of the criminal justice system.

1.4.2. Differential Association Theory

This theory in literal meaning would imply that when individuals in the particular society base their conduct or the behaviors by association and upon interaction with each other. In criminology the theory is developed by Edwin Sutherland, who made out that people and individuals learn values and attitudes, various techniques for that matter and motives by purposeful interaction with other people which may also include learning out a criminal behavior. It makes out and is most of the talked theories of crime and deviance where it focuses on how any individual may learn criminal attitude. The main theory makes that a person may choose a path that may be criminal when the balance that exists between the law-breaking exceeds the law-abiding scenario, with manifold increase in tendency to choose path if that individual is surrounded by the like-minded people. However, this might not be true that this theory would deny any intention or personal reasons that exist for committing a particular crime. For example, if an individual is hungry in any case he will try to steal food if he finds that to be necessary for survival, where it can be said that both criminal-minded and non-criminal persons are motivated by need for money and gain. Were Sutherland maintaining that individuals encounter untoward situations which are non-harmonious and see influences where they get involved in criminalistic norms and behave similarly. His main points could be as below:

- The behaviours as regards crime is a learning process that is learned.
- In the process of interaction and communication as a consequence criminal behaviour is learned
- There exists a personal group in which principal art of the criminal behaviour gets inculcated in an individual.
- Criminal behaviour learning includes learning techniques of crime committing, and per se motive formation, direction to commit specific offence, attitudes and rationalization
- What may be a specific direction of committing a crime is learned from the legal codes that define the favourable and non-favourable pathways.
- Differential associations vary in frequency etc.
- The same kind of learning a criminal behaviour exist as there exist in other forms of other specific areas of learning.
- The general needs and values, desires do not specifically explain the criminal behaviour though those are motivated by the same.

The frequency and intensity of interaction are two fundamental characteristics of differential associations. For explaining criminal behaviour, the number of times someone is exposed to a given concept and the intent for which the interaction began are both critical. The process of learning criminal behaviour is comparable to that of learning any other sort of behaviour. According to Sutherland, there is no one-size-fits-all method for learning non-normative behaviours. One of the most striking features of this theory is that it aims to explain more than just delinquency and crime committed by people from lower socioeconomic groups. Because crime is thought to be a learned behaviour, the theory also applies to white-collar, corporate, and organised crime.

1.4.3. Economic Theory

There is no specific definition given by any Criminologists relating to the term 'economic crime'. the foremost unremarkably accepted definition relating to the term is that economic crimes are done by the offenders principally upon a motivation for economic gain. An economic crime is planned of as an offense upon that people or cluster of people purposefully act in a criminal manner to realize money returns. the most feature of those styles of crimes is that the offenders in several cases won't be ready to distinguish between the explanations that persuaded them to try to the crime and also the realizations and justifications that follow them.

Many social scientists argue that crime is closely associated with work, education, and financial condition. state and crime area unit by-products or perhaps measures of social exclusion. several of the criminals typically have restricted education or possess restricted labour market skills. Another major facet concerning the commission of crimes is that a lot of of the offenders contemplate crime as a paid employment wherever they will generate financial gain. a number of the persons commit crime strictly for meeting their wants. Thus, the theory of crime has targeted on sanction effects and also the relationship between work and crime. except for this, there are a unit sure different factors that lead someone to commit a crime:

- Expected gains from crime in comparison with legal works
- probability of being caught and condemned
- Extend of penalty
- Opportunities in legal activities.

The influence of society on a person's personality is significant. The character of a community is quickly mirrored in the character of an individual. As a result, someone who lives in a smart and healthy society may have a smarter personality than someone who lives in a slum or similar environment. This comment was well-established in Bonger's theory of economic guilt. There is a causal link between crime and contemporary economic and social situations, according to William Adriaan Bonger. He maintained that crime is a natural response to existing cultural conditions and that it is a social phenomenon. In a more primitive or extra-social civilization, he said, survival demands more selfless unselfishness within the community.

When capitalist economy emerges, there have been social forces of competition and wealth, leading to associate degree unequal distribution of resources that conjointly result in individualism. Once self-interest and additional self-centred impulses assert during a person, crime emerges. folks with an occasional economic background would commit a criminal offense out of would like or out of a way of injustice. Out of a desire or a sense of unfairness, someone from a lower socioeconomic background might commit a criminal offence. Those who exercise power and impose punishment equate the notion of crime with damage or danger of damage to the powerful property and financial interests. Bonger also argued that street crime was the outcome of a variety of circumstances in which employees were in rivalry with one

another. He argued that poverty alone could not be a justification for crime, but that individualism, consumerism, misguided desires, racism, and incorrect beliefs about violence may all be factors.

1.4.4. The Multiple Factor Theory

Throughout history, numerous sociologists and criminologists have proposed diverse theories expressing differing viewpoints in order to develop a particular theoretical explanation for any sort of criminal activity, but no single hypothesis has been able to fully explain the issue. As a result, several sociologists decided to take a new approach, combining numerous ideas and conceptions into a theory known as Multiple Factor Theory.

Supporters of this theory say that crime is caused by a complex interplay of causes that cannot be explained in simple words. This position is supported by the writings of renowned American specialist William Healy, who articulated his beliefs on the multiple causes theory. Prof. Healy established that a person's delinquency is the result of a set of circumstances—say, eight or ten—that push him to engage in criminal behaviour.

He did agree, however, that not all of the conditions surrounding a crime are equally relevant as a cause of the crime. The extent to which they influence crime may also differ, with some having a stronger impact than others. On the other side, Albert Francis Charles Augustus Emmanuel Cohen has slammed this theory, stating that it gives no single clarification that can be used to build a case.

It is clear from the preceding study that sociologists consider that crime to be a particular result of environmental aberrations and a wide range of social situations. Under the following headings, the inter-relationship between criminalism and a number of these factors is also discussed:

a. Mobility

In recent years, the emergence of industrial activity and urbanisation has led to an increase in communication, transit facilities, and the dissemination of ideas through the press and platform. As a result, human interaction has moved away from close relationships and toward quality possibilities. People who move to new places, especially places where they are

strangers, are more likely to commit crimes because their chances of being detected are considerably reduced. As a result, mobility can be a source of social disorganisation, leading to deviant behaviour as a result of a lack of parental control.

The impact of newspaper crime reporting on guiltiness supports crime and delinquency in two ways, according to Barnes & Teeters. To begin with, criminals with unstable minds and psychopaths are naturally driven to such acts; and, as a result of the continual broadcasting of crime-news, people begin to lose faith in the police and law-enforcement agencies. Aside from that, deviants pick up new illegal habits via crime-news items in newspapers and magazines.

b. Cultural Conflict:

The society in which we live is always evolving, and this is an unavoidable phenomenon. The impact of modernity, urbanisation, and other variables in today's fast-paced society can sometimes lead to social disorganisation, which can lead to cultural clashes between different sections. There's also a contrast to be made between old and modern values, native and foreign values, and ancient values, as well as government-imposed values.

The Cultural Transmission Theory of Crime, developed by Shah and McKay, was a dominant sociology theory of the twentieth century, and it accurately explained how criminality arises from cultural conflict. "Traditions of delinquency are passed via recurrent generations of similar tenancy in the same way that language and attitudes are conveyed," the notion simply explains.

The incapacity of native communities to understand their people's common beliefs or address difficulties without being exceptionally knowledgeable about them produces friction, which leads to deviant behaviour. Criminal traditions, on the other hand, are frequently rooted in the operation of a society and coexist with normal ideals.

Sutherland coined the term "differential social disorganisation" to characterise the type of development that occurs frequently in lower-class neighbourhoods. He identifies three major sources of cultural conflict:

- residential instability;
- social or ethnic heterogeneity; and
- impoverishment.

c. Family Background:

The basic desires of children are expected to be met in the creation of a family. As a result, the youngster should feel like he has particular privileges and protection in his family, and that his parents and other family members love and like him. Children are taught the values of affection, respect, and responsibility toward others as a result of this sense of safety, warmth, and reliance.

Thus, via his own life experiences and the construction of home, the child instinctively learns to adapt to his environment and adopts life values such as respect for others, quality, trait, and collaboration. As a result, a toddler reared in a dysfunctional family is almost guaranteed to develop feelings of guilt.

Lack of parental control over children as a result of a parent's death, divorce, or desertion, or their content or disease, may give a safe haven for children to engage in criminal behaviour. Again, frequent quarrels among elders, undue dominance of one over the other, stepmotherly treatment of children, frequent births within the family, elder immorality, misery, financial condition, or an unhealthy family environment, and the like may lead to the neglect of a child, who, lacking an adequate outlet for his skills, may turn to crime. To add to the preceding points, kid delinquency can be caused by the state, a lack of financial gain, or a parent's ongoing long absence from home for the sake of survival.