SOCIOLoGY OF LAW AND LEGAL PROFESSION: A CROSS-CULTURAL THEORETICAL PERSPECTIVE

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Introduction

STUDY OF sociology of law in India attracted attention quite recently when some American and European sociologists, social anthropologists and social historians began their studies in this branch of knowledge. Justice P.B. Gajendragadkar and Professors G.S. Sharma and Upendra Baxi from law schools were the first among those who thought about sociological jurisprudence in the context of India. However, none from among the sociologists and social anthropologists ventured in this field barring a few sketchy analyses of disputes and rules and regulations regarding marriage, division of property and commensality etc. The indologists certainly made serious analyses of traditional customary Hindu law, but their writings lacked empirical validation and substantiation. Marc Galanter and Charles Morrison undertook empirical studies of sociology of law in India from the perspective of the Western society, and have not gone beyond studying clients, munshis (lawyers’ clerks) and touts particularly at the district level.

Lawyers and clients should be seen analytically as independent entities and at the same time as participants in a common system of relations. Study of lawyers and clients refers to a host of social structural problems including class relations, hierarchy, laws of inheritance, joint family, innovations and continuity of traditions etc. In fact, such a spectrum of relations encompasses understanding of socialization, stratification, professionalization and networks. A sociological study necessitates a probe into the functioning of the bar councils, apprenticeship of law graduates, nature of legal education and daily routine of lawyers, courts, munshis and other functionaries. No doubt lawyers have been studied as professionals, scholars and politicians in view of their caste, class and family backgrounds, but the fact that they are solo practitioners of law in spite of their being closely attached to the corporate institutions like caste, class, lineage and family has not been

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investigated even at the surface level. Lawyers in America are not much attached to such primordial institutions, but they are working as law firms. The frame of reference of law firms is in the back of Western scholars and that cannot be applied adequately to the study of legal profession in India as it is rooted in practice by individuals. A blending of structural perspective with historical specificity and processual approach is apt for studying legal profession in India. The present paper focuses on the nature of law, sociology of law as a field of inquiry, approaches to the study of law, trends in the studies on sociology of law, development of sociology of law as a discipline in the U.S.A., U.K. and socialist world, and sociology of law in India.

Nature of Law

Marc Galanter considers law as a cultural phenomenon and a process of change, and in both forms law exhibits social structure and aspirations of its various segments. Undoubtedly law is an instrument of social change as an ethnocentric phenomenon, but this is purely a social anthropological view which even some of the positivists from among the anthropologists do not accept. Hence, a brief account of the philosophy of law as a bearing of sociology of law. John Austin, the famous political theorist, considers law as a command or order whose violation is met by the threat of physical coercion. E.A. Hoebel accepts the Austinian view of law. He observes, “A social norm is legal if its neglect or infraction is regularly met, in threat or in fact, by the application of physical force by an individual or group possessing the socially recognised privilege of so acting.” He refers to primitive, archaic and modern law for primitive, ancient and developed civilizations, respectively. However, he does not agree entirely with the culturological view for studying law. All systems of law, according to him, must have essential elements in common. A similar view is expressed by Eugan Ehrlich as he opines that “a juristic act is never an individual, an isolated thing, it is part of the prevailing social order.” Law must have its proper frame of reference as Hoebel puts it. Since Hoebel accepts Austinian view of law, he gives it the status of a scientific inquiry. It could be called functional realism.

However, Hoebel does not support the logical abstractionism of the Austinian approach, nor does he accept Hans Kelsen’s legal positivism advanced in the so-called pure science of law. Legal positivism is simply

4. Ibid.
a logic for the sake of logical exercise. Hoebel claims that he is in search for the "social relatives" of the law that men have produced. Law without its social context is simply a noteworthy mental exercise. S.P. Simpson and Ruth Field observe, "Law without social content or significance is law without flesh, blood or bowels. It is not even zombie-law."\(^7\) In fact, Hoebel does not deny the role of logic in law, but considers experience as the life of law, that is, the experience of man living in society.\(^8\) But law exists above and beyond the individual. One finds an obvious contradiction in Hoebel's view that legal norms are products of selection, and these norms are subject to the basic postulates of a given society, and at the same time these norms are in isolation of the basic social postulates on which the law system rests.

Malcolm M. Feeley observes that there are two main features of most of the current social science research on law and society: (1) The investigation of the gap between the legal ideal and actual practices, and (2) law is understood as a command supported by sanctions. But Feeley's contention is that these views are inadequate and misleading. The first is theoretically indefensible and the second is too narrow. The language of law is generally vague and its emphasis on a single goal or set of goals leads to serious distortion in the analysis. Therefore, Feeley does not consider law as a fundamental social process.\(^9\) Philip Selznick considers that a legal order is known by the existence of authoritative rules, but Feeley does not accept such a view. According to Selznick law is generic, it is a means of social control based on formal authority and rule-making.\(^10\) Thus, one finds a combine of the theory of law and the theory of authority in Selznick's formulation. In other words, the theory of authority is reduced to the formal law. The implication is that human behaviour is rule-governed, and authority as a means of social control does not prevail outside the formal law. The culturo-logical point of view regarding law does not find a mention in Selznick's formulation.

Further, Feeley observes two weaknesses of Selznick's view. These are: (1) The conception of law as command is overly static, and (2) it is so preoccupied with a criminal law model that it ignores other forms of laws.\(^11\) The laws of command are distinguishable from the laws that are status conforming rules and the laws related to selective incentives. Thus, the Austinian conception of law is too narrow. This narrowness of concept has its parallel in contraction of empirical investigation and

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8. Supra note 3 at 5.
11. Supra note 9 at 504.
generalization. Social scientists have also failed to see the functions of law in structuring inequalities. The degree of differential access to the resources of law has not been adequately focused. It is necessary to focus on the structural features of the legal system itself. According to Shapiro all laws are by definition political; they allocate values, are authoritative, and hence are policy. Thus, all law-making from whatever source is political policymaking. Donald Black suggests that a major focus should be on the process of legal mobilization. But the fact is contrary to Black's view as law is used as last resort by the people and that too without benefit of explicit mobilization of legal institutions. Black's view also has the overtones of the Austinian view of law. Feeley's view is that law can be conceived of as an elaborate and subtle pricing mechanism which can supplement and shape natural systems of exchange and interaction; hence one of a number of interrelated factors in complicated systems of interaction. This model of law is familiar to economists and the exchange theorists and to sociology and social anthropology as it refers to concepts such as supply, demand, opportunity, alternatives, transaction costs etc. Feeley claims that his (this) view of law also fulfils the requirements of a Marxist view of law. George Gurvitch, a well known authority on sociology of law, refers to points of relationship between jural facts and social facts, and defines law as an attempt to seek justice through regulative mechanisms in a given social environment.

The generic question is: What is law? The debate which we have highlighted is in the realm of the philosophy of law. The philosophy of law looks at law in its working—the suitability of legal instruments, negative consequences of law, and the myths about functioning of law and truth about its role. Such a philosophy of law is also partial as it rejects the positivist legal philosophy which states a positive relationship between the state and law. The positivist philosophy of law does not concern itself with law as dealing with social reality though law as a command has been found as a reality, historically speaking.

There are a number of scholars who have considered law as a means to define an end rather than an order in itself. Ehrlich rightly observes that legal behaviour and its development do not depend on legislation, legal sciences or judge's decisions, but on society itself. Thus he considers law as a dependent variable.

13. Quoting from Feeley, supra note 9 at 513.
16. Supra note 5 at 14.
Roscoe Pound's view is that law should be studied in its actual working and not as it stands in the book; it should be analysed in terms of its consequences or effects, and related to the economic factors.\(^{17}\) The Scandinavian school of law emphasizes the social origin of law and encourages studying law as a social fact. Some other scholars have argued that law should be studied as a social and psychological phenomenon.\(^{18}\) The Marxian view of law refers to the social and particularly the class origin of law and its use by the classes in power for their vested interests.

There is no conflict between the philosophy of law and the sociology of law if the two cling to a radical empiricism with an institutional basis.\(^{19}\) It enhances the objective validity of the spiritual data. The tasks of the philosophy of law are: (1) To lead back from constructed and symbolic jural experience in its various layers; (2) to point out the specific nature of jural experience as contrasted with other kinds of integral experience—moral, religious, aesthetic, intellectual; and (3) to distinguish within jural values between illusions—subjective projections of the collective mentality and objectively valid ideal structures. Gurvitch further observes, “The philosophy of law, thus understood, deduces nothing and prescribes nothing. It provides no judgments of values, but merely theoretical judgments about jural values which have really been grasped or embodied, whose objective validity it only verifies and whose specific nature it defines”.\(^{20}\)

Legal philosophers are interested in a variety of problems, both philosophical or unphilosophical, and criticism. The theory or philosophy of law may become the point of criticism particularly in the context of empirical reality. To whom the theories or frameworks of law refer—to the laymen, to the lawyers, to the legal philosophers? There are several points which are debated under the rubric of the philosophy of law, but a critical point of view looks at a legal phenomenon in terms of its social significance; hence sociology of law emanates from the philosophy of law.

**Sociology of Law as Field of Inquiry**

Emphasis in the sociology of law is on investigation of the operation of interests, passions and prejudices of lawyers, clients, judges and citizens in relation to law. Many of the values, performances and explanations of social groups are embodied in law, in substantive rules

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18. *Id.* at 14.
20. *Id.* at 243.
as well as in guiding procedural principles. Relationship between law and society is seen not only in terms of positive forms of law, but also in terms of law as a tool in the hands of vested interests. When law is causally determined by the social structure, it becomes a dependent variable. But law is also an independent variable as a vehicle of social engineering. Law as such is seen as a means of communicating with the public. The relationship between law and society is a two-way affair.

Conceptual and definitional wrangles are well known regarding sociology of law. Black, "an uncompromising adherent of the positivist approach", argues for the formulation of a "general theory of law". He does not consider his ideas as a philosophical point of view. 21 Nonet considers Black’s view "less than a model of philosophical lucidity". His (Black’s) view is loose, inconsistent, and lacks a proper articulation of the positivist doctrine; hence intellectually sterile. 22 But Black’s view is quite widely shared as a way of thinking, and as a programme for future development of sociology of law. In fact, Nonet advocates a sociology of law that has a policy dimension, and abhors dogmatic integrity and orthodoxy of the present social science enterprise. Black’s orientation goes back to the legal realism movement, but Nonet pleads for liberation of sociology of law from a notion of “hard” sciences. Nonet calls it advocacy for “prescribed ignorance” and “bias and ideology”. As we mentioned earlier, Gurvitch considers sociology of law as part of the sociology of the human spirit which studies the full social reality of law, beginning its tangible and externally observable expressions, in effective collective behaviours, and in the material basis. Thus, he also rejects “positivist strategy” of Black. According to him, “...legal sociology envisages the quasi-infinite variety of the experiences of all societies and all groups, describing the concrete contents of each type of experience...and revealing the full reality of law which patterns and symbols veil more than they express.” 23

Thus, sociology of law is part of the “depth sociology” as advocated by Gurvitch. Gurvitch refers to three problems of the sociology of law: (1) Problems of systematic sociology of law; (2) problems of the differential sociology of law; and (3) problems of the genetic sociology of law. Thus, he refers to the study of groups as collectivities. All laws correspond to respective societies in terms of their fundamental character such as feudal, bourgeoisie, American, Oriental, European, trade union law and state law etc. Gurvitch distinguishes between the microphysical and macrophysical sociology of law for studying perpetual tensions and sharp conflicts. He states that the sociology of law cannot take the place

21. Supra note 14 at 1096.
23. Supra note 19 at 48.
of a theory of law as it provides the positivistic interpretation of the philosophy of law.  

The structural-functional viewpoint about legal profession is upheld by Talcott Parsons.  

However, Parsons considers law as a part of cultural tradition in a given society. According to this view law as a profession has at least three characteristics: (1) It is in a curiously ambiguous position of dependence and independence with reference to the state; (2) at the same time, the profession is independent of political authority; and (3) the position of the legal profession in the social structure is thus an “interstitial” one. Parsons observes that the legal profession is, to an important degree, “integrated with” the social structure of political authority, and at the same time, it is organized around partly independent trusteeship of the legal profession. Further, the profession has most of its dealings with private persons, individual and corporate. The Parsonian view has specifically lawyer-client relationship in American society in the background.

While having the Polish society in view, Podgorecki has listed the following functions of the sociology of law:

(1) The sociology of law aims at grasping law in its working;
(2) it is to provide expert advice for social engineering;
(3) the sociology of law makes an attempt to shape its studies so as to make them useful for practical applications; and
(4) the sociology of law struggles with reality.

Thus, the sociology of law aims at the understanding of legal and social phenomena, whereas the main concern of traditional approach to jurisprudence is to undertake analytical-linguistic studies. The latter approach needs a radical change. Podgorecki’s approach is based on interdependence of society on law and vice versa. Selznick also refers to a societal view. He mentions three stages of the development of the sociology of law. These are: (1) The primitive or missionary stage; (2) the sociological craftsman stage; and (3) the “social engineering” stage. But the implication of Podgorecki’s view is that the interdependence between law and society should result into the development of a general theory to explain social processes in which the law is involved and hence linkage of law with the bulk of sociological knowledge.

Finally, I will refer to the view of Jonathan Caplan regarding lawyers and litigants. The profession of law has invented a language and a

24. Id. at 48-52.
26. Supra note 15 at 7-10.
27. Supra note 10 at 2-3.
procedure which are unintelligible to the layman resulting into its monopoly by some—the so-called legal pundits. What Caplan says is that even the administration of the routine human affairs is in the firm grip of lawyers; hence law is not a great reservoir of emotionally important social symbols or the leveller of social relations. Legal assistance (consultation) has become part of human life like hospital assistance. As such, lawyers rigorously preserve the status quo and act as powerful force against social change, particularly changes in relations of production and property ownership.28 Thus, he provides a Marxian interpretation of law and society in the idiom of Ivan Illich.29 But this view is perhaps more applicable to the Western society where consulting a lawyer has become a cult viewing him as a saviour of crises in some routines. The legal aid scheme extended to the poor in countries like India could promote the cult of consulting a lawyer. Contrarily, it could also make law in a realistic sense as a “service profession”. However, legal assistance in India continues to be rational market-situation oriented system mainly due to the colonial legacy of legal profession.

**Approaches to the Study of Sociology of Law**

The following approaches have been used for studying relationship between law and society:

1. Legal positivism;
2. culturo-logical approach;
3. functional approach;
4. process approach; and
5. Marxian approach.

Kelsen advocates pure science of law, but Hoebel and some others consider his legal position as sociological abstractionism, which is, in fact, based on the Austinian notion of law as a command or order. Such a notion of law has been considered as a mental exercise. Black is the most prominent protagonist of the positivist view. His view is that pure sociological concepts should be applied to the study of law. He advocates a general theory of law regardless of the variations in the patterns of law in different cultural environs. We have stated earlier that Nonet has critically examined the positivist view of Black in regard to its philosophical and empirical relevance. Feeley has also strongly criticized Black’s “legal positivism” and Austin’s and Selznick’s view. According to Feeley all laws are culturally oriented (and politically as well). Thus, law is an

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instrument of social relations rather than a whip for the deviants only. According to Gurvitch law is culture-specific.

The functional approach to the study of law has been advocated by Bronislaw Malinowski and carried forward by Hoebel, Parsons and Ehrlich. According to Malinowski all custom is law to the savage. All custom is obeyed automatically and rigidly by sheer interests. There is no civil or criminal law as such among the Malanesian tribes. He defines man’s position in relation to society and vice versa as he refers to "reciprocity" as the basic tenet of primitive law.\textsuperscript{30}

Hoebel does not agree totally with the culturo-logical approach to the study of law. Law has certain elements in common, yet culturally and historically it is specific. Hoebel defines his approach as functional realism. Experience is the life of law, and logic is secondary to experience in law. Ehrlich says that law is a social phenomenon; it is a part of prevailing social order. Though Parsons derives his yardstick to test the assumptions about the legal professions from the structural-functional approach, yet he considers law as a part of cultural tradition in a particular given society. Parsons mentions about the impact of feudalism on the legal profession and legal system. However, he looks at the legal profession not as an isolated part but an integrated one with the social structure and political authority.

The process perspective outlines that law should be used as the process of “legal mobilization” to ensure a better understanding between the law and the people. In other words, law should be used as an instrument of the dynamic relationship between the percepts and the society in question. Therefore, the meaning of law should not be taken as maintaining order in a given society as it has been perceived by the functionalists. Law is both dependent and independent variable. It should be used as a policy instrument to ensure social engineering and welfare.

The basic tenet of the Marxian approach to the sociology of law is that even if the given social system is structured by the legal system in terms of equilibrium, it does not mean that the law has ensured the just distribution of rewards and punishments. The “living law” would not permit a law which contradicts this existing one. Therefore, it is necessary to examine the coercive nature of the existing law which has survived in the name of consensus and functional harmony of different segments of the population of a given society. The orthodox Marxian approach to the study of law refers to class origin of law and its instrumental character as it is more or less consciously applied by the classes in power.\textsuperscript{30a}


\textsuperscript{30a} Supra note 15.
The Soviet view about sociology of law, which is also shared by some Polish scholars, is that law studies the general regularities of the development of state and law. Besides this, the sociology of law attempts to achieve knowledge on how law contributes to the construction of communism. Caplan observes that law is used to represent a litigant; hence it creates dependency. A lawyer offers himself as a legalized strongman like protection rackets. Thus, most legal systems create chaotic situation of relationships. It is a burden on client and the tax-payer. A sense of waiter-service, dependency, legal ritualism, lack of personal attention, and the cult of legalism are some of the problems of the modern legal systems. Caplan’s approach is not Marxian as such, but it exposes basically the problems of routinization and ritual formation of legal practices which prevail in the modern society at the expense of the litigants, the layman and the tax-payer.

**Trends in the Studies of Sociology of Law**

Legal profession is highly stratified in almost all countries in terms of more skilled or reputed and senior lawyers and less skilled or junior lawyers. But the legal profession is also culture-bound. In America law firms dominate the profession and not the individual legal practitioners. In England, the legal profession is less commercially oriented as it has more service ideal than the mere pecuniary mission. Law is considered as a tool of social engineering and social development in the socialist countries. In the countries of the Third World and particularly in India the legal profession is not only highly stratified at each level of its functioning, it is also culture-specific and familial in nature and lacks corporateness of the American law firm type. In India, legal profession had/has dominance of the members of the upper castes. However, sociology of law has not become popular as a field of inquiry.

Lawrence M. Friedman treats American law as a mirror of society. American law takes nothing as historical accident, nothing as autonomous, and everything as relative and moulded by economy and society. The legal system works like a blind, insensate machine. It does bidding of those whose hands are on the controls. It is concerned with the present, current emotions, real economic interest, and concrete political groups. Friedman recognizes autonomy of legal order with legitimacy, which he calls as part of a society’s legal culture. These legal values and attitudes determine the place of the legal system in the culture of the society as a whole. Most scholars in the field of sociology of law have

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not emphasized the legal historiography.

Nonet suggests that sociology should enlarge the intellectual horizons of legal, political, economic and other modes of economic thought. It should confine itself to its specialized institutional domains. The boundaries should be drawn out between fact and value, law and politics, economy and society, policy and administration with a view to realise the relevance of facts, problems, interests, and values. Nonet further suggests that there is a need for jurisprudential sociology. Such a sociology recognizes the continuity of analytical, descriptive and evaluative theory.\textsuperscript{34} The study of variables of law through empiricism is the main point focused by Nonet. Parsons observes, “Law...consists in a body of norms of rules governing human conduct in social situations, that is, involving the relations of man to other man.”\textsuperscript{35} Thus, law is considered as a cultural tradition; hence the position of the legal profession in the social structure is an “interstitial” one.

**Evolution of Sociology of Law as a Discipline in U.S.A., Britain and Socialist World**

Legal profession in America has flourished through large law firms. Lawyers in law firms are either partners or associates (employees) who work for partners. “Law factory” is the reality of legal profession. The lawyers are spokesmen for big business as advisors and policy-makers. These lawyers as such become part of the power-elite. The lawyer serves as the conscience of big business. He suggests his client what is permissible and what is desirable. The lawyer should regard himself as more than predictor of legal consequences. His duty to society as well as to his client involves many relevant social, economic and philosophical considerations. Some of these functions have been listed by Edwin D. Smigel\textsuperscript{36} and Beryl Harold Levy\textsuperscript{37} in their studies of law firms.

Smigel’s findings about large law firms have been corroborated in a study of Chicago lawyers by Jerome E. Carlin. Carlin observes that the lawyer practising by himself and not as a member of a law firm is generally at the bottom of the status ladder of the metropolitan bar. He is found at the margin of his profession. Once upon a time the individual legal practitioner was held in the highest esteem as the model of a free and independent professional. Today he enjoys little freedom in choice of clients, type of work or conditions of practice because of the roaring legal business being done by the law firms.\textsuperscript{38}

\textsuperscript{34} Supra note 22 at 543.

\textsuperscript{35} Supra note 25 at 372-73.


\textsuperscript{37} Corporation Lawyers : Saints or Sinners? (Philadelphia, Chilton, 1961).

\textsuperscript{38} Lawyers on Their Own 206-11 (New Rutgers Union Press, New Burnswik, 1962).
Carlin’s study shows that the individual lawyer is rarely called upon to exercise a high level of professional skill. This is so due to his low quality of professional skill. He does a lot of routine work which otherwise could be done by a non-technical person. The situation in India is quite different from that of America. Legal profession in India is not transacted through large law firms; it is mainly dependent upon individual legal practitioners, and some of them occupy very high positions in the hierarchy of legal practitioners. Their support base is not the colleagues or seniors, but it is outside the legal system including their family background and networks.

C.M. Campbell and Paul Wiles state that sociological research in Britain could be characterised in terms of two features: (1) The hegemony of law is accepted and furthered; and (2) the nature of the legal order is treated as unproblematic. The general functions of law are assumed to involve the balancing and regulating of different social groups and their interests. In other words, law is seen as having liberal and reformist sentiments. Technical and legal considerations are not considered important in socio-legal studies. In Britain, Campbell and Wiles observe: “The focus is no longer on the legal system, known and accepted, but on understanding the nature of social order through a study of law...The goal is not primarily to improve the legal system, but rather to construct a theoretical understanding of the legal system in terms of the wider social structure.”

Distinction has been made between socio-legal studies and sociology of law. In sociology of law there is no orthodoxy in methodology, and discussions include concern with most basic philosophical questions of social science methodology such as the epistemological status of alternative research procedures. Understanding of law is thus different from “the law in action”.

Sociology of law is now considered as a conscious area of study. One has to look to specific academic disciplines and to other factors. Education and development in the fields of criminology and jurisprudence have also contributed to the interest in law and society studies. Industrialization has also contributed to the interest in the study of law and society. Consequently legal education became popular and further contributed to these studies. Thus, in Britain the genesis of law and society studies could be related to intellectual, institutional and political sources.

The students of sociology of law have stressed the need for explanation and theory in regard to certain basic questions of relation between

40. Id. at 553.
law and society, and the methodologies used to seek answers to these questions. The questions of relation between law and society refer to the legitimacy of the law and legal institutions, and legal definitions. The following concerns may be mentioned:

1. An initial interest in historical studies of law stimulated examination of the emergence of specific statutes and the forces that allowed or controlled their enactment. The nature of legal order and control have been examined.

2. The nature of the state is another prime concern of interest. To a large extent this interest flows from Marxist theories of the state. In fact, Marxist and, to some extent, anarchist view continue as popular areas of law.

3. The third area of interest is the analysis of the influence of deviacy theory on sociology of law.

Thus, sociology of law in Britain reflects the divergencies and controversies prevalent in contemporary sociology. One should think of a multiplicity of approaches to the study of sociology of law. However, the theoretical disagreements in sociology also become an obstacle in conducting studies on relations between law and society. Sociology of law demands commitment and application.

The main concern of the sociology of law in the U.S.S.R. was the study of the social position of deputies to the Supreme Soviet and to the Soviet of Nationalities, the problems of labour law, the fluctuation of factory personnel, the problems of marriage and family, causes of delinquent behaviour, and the problem of public opinion towards law. Researches were conducted with some unconventional means for certain social and political reasons. In Poland, law is viewed in its economic and political backgrounds; it is considered as an instrument of social policy and a tool of social change.

Thus, the idea behind the present discussion is that the sociology of law emanates from the theoretical streams, namely, from the study of law, and from the study of professions. Sociology of law combines the features of law and sociology. The nature of relationship between the two varies from society to society; hence dependent upon historical and cultural specificity.

Sociology of Law in India

Sociology of law in India as a field of inquiry is a very recent phenomenon, and still remains a virgin area of sociological study. Veena

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41. Supra note 22 at 503.
42. Supra note 15 at 24:
Das has written a trend report on the subject for the Indian Council of Social Science Research.\textsuperscript{43} Upendra Baxi has also written a monograph \textit{Socio-Legal Research in India: A Programsschrift.}\textsuperscript{44} Baxi's work focuses on the problems of research in regard to legal profession, while Das focuses on sociology of law as such in India covering various aspects of relationships between law and society. Some American sociologists\textsuperscript{45} have shown interest, though scanty, in the problems of sociology of law in India.

Das divides sociology of law into four major fields: (1) Processes of dispute settlement, (2) Judicial behaviours, (3) the legal profession, and (4) law and the wider society. Her analysis is based on the available studies of the land disputes, tribal communities and Sanskrit literature \textit{etc}. She suggests use of the studies of reports and judgments on dispute settlements among different communities and groups including the minority religious groups, legislative acts and their effectiveness, study of the police, the legal profession and judiciary.\textsuperscript{46}

Baxi refers to three areas in which legal systems can be conceptualized: (1) as an aggregate of legal norms, as a sum of its parts; (2) as systems of social behaviours, of rules, statutes, and institutions as involving patterned interactions between the makers, interpreters, breakers, enforcers, and compliers of the norms of law, and (3) as social control of systems, involving differential bases of social authority and power, different normative requirements and sanctions, and distinctive institutional complexes.\textsuperscript{47} According to Baxi there are two different systems of control and command, namely, the state with its formal rules and regulations and the indigenous legal systems operating informally. Thus, the two systems may have contradictory values, at least, theoretically. There are three aspects of legal systems as observed by him: (1) Legal system as a normative/cultural system, (2) legal system as a congeries of formal/national legal systems under the state auspices, and (3) legal system as a congeries of informal/regional systems under non-state auspices. Thus, legal systems are studied by academic lawyers, sociologists and anthropologists respectively. For a sociologist, the formal legal system is more than adjudicatory. The formal legal system encompasses all institutions engaged in social control, and in promoting planned or spontaneous social change. Such a conception will also include the legislative institutions, local self government institutions, and institutions of agrarian and economic development. Legal profession and

\textsuperscript{43} Indian Council of Social Science Research (ICSSR), \textit{"Sociology of Law"}, \textit{A Survey of Research in Sociology and Social Anthropology} 367-400 (New Delhi, 1974).
\textsuperscript{44} Occasional monograph series 12 published by ICSSR, 1975.
\textsuperscript{46} \textit{Supra} note 43 at 360.
\textsuperscript{47} \textit{Supra} note 44 at 19-20.
legal education come under this domain. Baxi focuses on the social context of the organisation and functioning of the institutions of the formal legal system in terms of stability, growth, change and social justice. Though Baxi emphasizes region-specific studies with considerable degree of cultural empathy, his perspective remains mainly functional. His frame of reference includes concepts which are quite common to the sociology of law in American studies.

Both Baxi and Das have simply indicated the areas of research interest in sociology of law. They have not, in fact, reviewed the studies on sociology of law perhaps because of the non-availability of adequate researches. A few commentaries and analyses of indological variety are available in the texts on caste, religion and family. Since Independence some studies of social welfare measures, law-making, law-interpretation and law-enforcement have also been made. Studies of primitive law by anthropologists have been undertaken. Legal education has also been studied. Some American and Indian scholars have studied district court systems and relations between lawyers and their clients. A couple of studies about the Indian lawyer and his relations with the clients are reported in the Law and Society Review (volume III) (1968-69).

**Legal Profession and Society in India**

I have conducted recently a study of the relations between the lawyers of Jaipur in Rajasthan (India) with their clients in terms of their socialization, stratification, professionalization and networks. The study focuses on the following points:

1. Theoretically and legally lawyers do not constitute an internal stratification. Law treats all lawyers at par. However, in reality, lawyers are a highly stratified professional community on the basis of income, competence and esteem. They are generally divided informally into seniors and juniors, and the established ones and strugglers.

2. The internal stratification of the bar could be explained in terms of different clientele milieu also. In other words, the nature of clientele would reflect the position of lawyers.

3. The different patterns of internalization of common value-orientations through the process of socialization towards professionalization have also been studied. One could think of a continuum of conformists-deviants in terms of acquisition of professional skills.

48. *Id.* at 23.


50 See e.g., J.S. Gandhi, *Lawyers and Touts* (Hindustan Publishing House, New Delhi, 1982).
The heterogeneity of learning could be related to social class structure and the internal stratification of the bar. The emphasis is on the mechanisms of recruitment and the process of socialization of lawyers.

(4) The corollary of the above points is that differential socialization results into corresponding professionalization of lawyers. Even the "reference values" of legal profession are a creation of class background of lawyers. Thus, legal culture could be characterized by class structure.

The offshoots of these assumptions are some empirically relevant points such as legal and extra-legal attitudes of lawyers, lawyer's image in the public, his role as a social engineer, and as a catalyst of social change, lawyer's involvement in politics, conflict among lawyers, their academic values and interest, and lawyer's professional strains and conflicts etc. I have undertaken a study of 140 lawyers and 125 clients. Out of 140 lawyers 121 belonged to four upper castes, namely, Brahmins, Baniyas (including Jains), Rajputs and Kayasthas. Only 19 lawyers belonged to intermediate and lower castes and to the communities such as Punjabis, Sindhis, Sikhs and Muslims. However, only 58 clients belonged to upper castes, namely, Brahmins and Baniyas; 20 belonged to intermediate castes, and the remaining belonged to the lower castes, tribes and the communities such as Sindhis, Sikhs and Muslims. It is clear that the upper castes have more lawyers and less clients and vice versa. However, there is no corresponding relation between numerical strength of a caste and the number of lawyers and clients that belong to it. Lawyers are more from among the upper castes obviously due to their overall privileged position in Indian society.

Legal practice calls upon study of law, apprenticeship, finding a clientele, establishing colleague-relationship, enjoying professional autonomy, compliance to authority, and relating the culture-bound laws and conventions with the universal norms. We have studied the lawyers of Jaipur from this point of view. Law has been viewed as an instrument of social change and also as a dependent variable. However, lawyers as a professional community have not contributed much to social change in India after Independence though they played a vital role in the national movement in the pre-Independence period.

It is interesting to note that lawyers are an organized group in India as bar councils are the main instruments of their solidarity. They are not found united for social service. Sometimes, they are accused of being swindlers and sharks. Legal profession still enjoys a great deal of autonomy, but this has not been used to promote the interests of the poor; it has rather been exploited in favour of the rich and for politicizing the legal profession itself. Indian lawyer practises on his own and not as a member of a law firm. He is traditional in the sense that law in India itself has the colonial heritage, and it is this law which he practises; however, he is modern in the sense that legal profession enjoys more
autonomy, formally less stratified than under the British rule, and lawyers are now a more diversified lot compared to the pre-Independence period.

The Indian lawyer is litigious, individualistic, and unprofessional because of the British colonialism. An understanding of the historicity of Indian society reveals the unhistoricity of Indian legal profession. The Indian lawyers are not standing on their own feet. Consequently, the lawyer is behaving as a formal functionary without having any concern of the sort of social engineering for the problems of the people. The people look at them as intermediaries between them and judiciary. They do not treat them as advisors, negotiators and planners. It is not due to unprofessionalism of legal profession, but mainly due to the structural compulsions of Indian society.

The lawyers in India are stratified not only on the basis of their skill, influence, prestige and wealth, but also in terms of their caste/community, family status, religion, rural-urban background and affiliation to a political party. In India, individual's own standing and his corporate social bonds reinforce each other rather than cutting across.

It has been noted that lawyers were more of philosophers and law-makers in the ancient and medieval India, and they were more of social workers, men of praxis and freedom fighters in the British period, and they have mainly been individual practitioners of law and power-seeking manipulators in the post-Independence period. Academic scholarship is also not a concern of the practising lawyers of today.

The non-legal factors such as family, caste, friends and networks contribute a lot to legal practice in Indian context. It was found that 54 lawyers out of 140 had their relatives in the legal profession and other allied fields such as judiciary. However, it is revealed by the lawyers that they took up legal practice as their career either incidently or unwillingly. A good number of them did not have satisfactory performance at the graduation level and, therefore, they could not seek admission for postgraduate studies in disciplines other than law. It is a fact that some of the reputed lawyers inducted their sons and relatives into the legal profession in order to extend the benefit of their established practice and clientele. Some lawyers have used their position in the profession for making inroads into power-politics for themselves and their relatives. Lawyers-turned-politicians have become a pronounced feature which has in turn adverse effect on the professionalism of legal practice. Consequently, some lawyers have proved themselves as successful politicians and second or third rate legal practitioners. Study of law provides cognition about politics, and practice of law takes lawyers closer to the people. This fact can be better understood by having the ethno-methodological ideology in the study of legal profession.

Clients are from all caste categories, and they are more from among the upper castes, though proportionately less than lawyers. Fathers of
about one-third of the clients were involved in litigation. Generally, the litigants belonged to the same kin, caste, neighbourhood and professional groups. Compromise was not quite common after formal involvement in litigation. There is a culture of litigation, but there is nothing like professionalization of litigants. However, there were some persons who would instigate others for getting into litigation with a view to extort money from them by taking advantage of their false hope of solution of their problems through litigation. Generally, a litigant is familiar with the structure and functioning of courts. He knows about the importance of the munshi and the clerk in the court who deals with his file, and also about the touts who might have connivance with the legal functionaries including the lawyers.

A close look at the historicity of law practice, legal education and the bar councils reveals that the indigenous Indian lawyers were rigorously kept out of the higher courts for a long period in the pre-Independence era. Under the cover “justice, equity and good conscience” the British rulers applied the local laws, and at the same time kept the higher courts under their full command. It was a well thought of policy of divide and rule. In fact, the British rulers deliberately created a hierarchy among legal practitioners as there were two classes of pleaders: (1) Pleaders of the first grade entitled to practice before the chief court; and (2) pleaders of the second grade entitled to practice before subordinate courts. In addition to these two types of pleaders there were attorneys at the level of High Courts. Besides attorneys, there were advocates and vakils. The advocates were mainly barristers of England or Ireland or Scotland. The qualifications and conditions for practising varied from court to court. At the lower courts there were also third grade pleaders and revenue agents. On the original side the vakils were not allowed to practise. Despite this notoriety of hierarchy which was introduced by the British rule, the legal profession in India from its low prestige evolved into the highly respected and domineering profession. It drew talented Indians who had high respectability and legal knowledge. It is said that the Indian lawyers have become more litigious and less rationalistic after Independence.

In India the legal education has been less technical compared to the education in the fields of science, technology and medicine. Knowledge about rules and regulations has been the main focus in the study of law rather than the philosophies and principles of law. The study of law was made a part of the studies in liberal arts in the second half of the last century. However, in the West European countries and U.S.A. the legal education is considered to be a highly specialized field of study.

The Bar Council of India has been demanding abolition of ranks among legal practitioners. However, the ranks still exist. The bar is highly differentiated because a dual system exists in Calcutta and Bombay...
High Courts, and in a modified form in the Supreme Court. One view is that such a differentiation ensures a proper division of labour between various categories of legal practitioners. Clients associate themselves with the lawyers corresponding to their position and requirement. Thus, stratification existed in the bar in the form of the English and the indigenous advocates, advocates practising at the original side and those who were not allowed to practise at this level, advocates practising at the various levels of judiciary, and finally the differentiation based on the nature of specialization and professional esteem.

About fifty per cent of the lawyers who took up legal practice as their choice with a view to make a career considered that prestige, autonomy and freedom were the salient attributes of the legal profession. However, the successful lawyers have been those who have taken enough pains to understand the problems of clients and created a genuine image among the public about their sincerity, integrity, hard work and professional competence. Fifteen top-ranking lawyers have been mentioned on the basis of their generalized status.

The initial phase in a lawyer's career is very critical. He is required to undergo a process of tantrums to be on his own. He needs a sort of patronage of someone who is well established in the legal profession. Legal practice is a kind of enterprise and in some cases it is a phase of struggle in the legal profession as a lawyer faces several problems such as getting clientele, meagre income, inadequacy of books, lack of guidance and cognition about legal culture. Once a lawyer is able to come out of these problems, he can claim some degree of professionalization. In terms of praxis of law, it is considered more or less an art in court culture, an ability to argue out skilfully the client's case.

Today lawyers do not come from aristocratic background as they did before Independence. They are comparable with businessmen of various sorts who rub shoulders with clients belonging to different sections of society. However, the top ranking lawyers derive power mainly from their professional esteem and income. The lawyers at middle and lower level derive power from their hard work, sincerity and professional knowledge. It is also a fact that some of the lawyers are mediocre, but enjoy power due to their connections with some professional dons and persons in positions of power. Legal professionalism is also linked with political problems; hence relations between lawyers and politicians. Lawyers have a great deal of understanding of the problems of people, and they take full advantage of this for extracting monetary gains. The bar councils do not have any effective control over such extortions by lawyers. The lawyers take full advantage of the professional autonomy for indulging in such unprofessional activities.
Concluding Remarks

We have stated earlier that the present paper focuses on the nature of law, sociology of law as a field of inquiry, approaches to the study of law, trends in the studies on sociology of law, development of sociology of law in various countries and legal profession and society in India. The basic point of contention is about relationship between law and society. Whether law is a command, something of the nature of superorganism and hence beyond the people, or whether it is a social reality—a result of a society’s experience and like any other aspect of the life of its members? We have discussed the philosophy of law and its ramifications with a view to understand the pedagogic aspects of sociology of law and also the existential and experiential bases of law to find out the relationship between these two dimensions in the study of sociology of law. The functional, positivist, Marxian, radical empiricist, institutional and existentialist views have been discussed with a comparative focus. The debate has implications for the methodology of sociology of law and we have discussed that too.

Our main concern is the evolution of legal profession in terms of its sociological dimensions. Legal profession is highly stratified and at the same time it is culture-bound. In America it is a corporate enterprise and in England it is more of a social engineering. In countries of the Third World and particularly in India, legal profession lacks both the aspects, namely, corporateness as well as social engineering; it has dominance of the upper castes, and academically sociology of law has not become a popular field of inquiry. However, the preceding discussion shows that sociology of law emanates from the theoretical streams, namely, from the study of law and the study of professions. Thus, sociology of law combines the features of law and sociology. The nature of relationship between the two varies from society to society; hence a need for structurally specific historical approach.

The study of sociology of law in India is a recent field of inquiry. The advocates of sociological jurisprudence view society from the legal point of view. Gajendragadkar, Sharma and Baxi have had their training in law, and the realization about social relevance of law is a late addition to their thinking and viewpoint. For a professional sociologist law would be a dependent variable; hence analysis of law in terms of social background of law-makers and social constraints. There has not been adequate research in which both the perspectives have been suitably combined from the viewpoint of historicity of Indian situation.

The study of relation between lawyers and their clients reveals that both lawyers and clients are highly stratified. Professionalization of law practice is very important factor in legal profession, but socialization, political contacts and caste background also contribute not only to the
entry to legal profession but also to professionalization itself. The Indian lawyer does not practise as a part of a law firm though in several ways the primordial institutions such as family, neighbourhood, and caste lend a support to the establishment of his practice. The lawyer today is more a man of practice than an academician or philosopher. Lawyers are not engaged today in the task of nation-building and reconstruction. They have become more of enterprisers. One finds now lawyers from various castes and communities whereas in the pre-Independence era they had aristocratic background. The autonomy of the legal profession and individualism in practice have diversified lawyer's interests in extra-legal activities, particularly in the field of politics.