

EPILOGURA PLEA FOR SPIRITUAL JURISPRUDENCE

The ancient India legal philosophy has revealed to us its metaphysical base and spiritual characters, from which ensue the concepts and theories which make it an integrated whole and a great synthesis of law, life and experience. From its metaphysical base ensues the theory of reality as Existence pervaded by consciousness, which the Upanisads proclaim as 'Atman or 'Brahman'. This Reality is imminent. Behind all the names and forms, facts and experiences, "theories and ideas there is one which is the substratum of all and that alone lends unity inspite of diversity. The reality is not the material essence but with its sentence, consciousness, and purposiveness, allows man who is endowed with rational will and capacity for highest knowledge, to participate in the conscious purposes of this universe. He can identify himself with the reality itself, merge himself in it, and thereby can attain oneness and unity in the realm of actual experience which is called spiritual experience. In such experience lies man's highest realisation. But in order that a greater part of mankind can attain to such a state spiritual realisation, all our institutions, organisations, ideas, and human relations have to be oriented in such a manner as would make this realisation possible. Law is an instrument of social control and organisation and means of human welfare and happiness. But at the same time, it is a part, nay, a vital part of the reality itself. The ancients this and were, therefore, able to formulate a legal theory which subserved the highest purposes of life. In the present age, this aspect of law which, if I were to express frankly and fearlessly, though humbly, has been totally ignored. The consequences of this lapse are disastrous for the whole human race, despite all advancement which is claimed for it. It is, therefore, humbly submitted that law must be so understood, interpreted and constructed as to perform the therapeutic function of saving us from the baneful influence of this materialistic civilization which has already dehumanised us. Law can perform this function only if the legal theory itself is to be rescued from the octopus, of Western Influence and spiritualised in the light of ancient legal philosophy and concepts.

The necessary consequence of a spiritual view is that all divisions, departmentalisms, water-tight compartments and reactionary views become unnecessary and our limited views are changed into a total perspective which brings interation, harmonisation and synthesis. Spiritual jurisprudence of India does not give a distorted and broken view but a higher perspective synthetical understanding, and an integrated study.

Law, in order to be law, must exist as a reality which manifolds itself in different forms, which manifests and grew endlessly to realise the higher purposes of life. it

is not. Merely precept or formulation but is a living law, a working principle and an enlightened guidance which is conducive to happiness and welfare. Law partakes of the Reality, nay, it is the Reality itself. In the Vedas, law is expressed as Eternal law or Order (Rit), and is identified with Reality or God. The vision of law is not a revelation of a limited particularised truth. Jurisprudence is not a run-away attempt in solitude or Seclusion. Even the analysis of concepts has to serve as the method of understanding of the whole. When we consider law in this prospective, it appears fruitless to quarrel about theories and schools as it would then be tantamount to a negation of jurisprudence and its integrative potentiality.

arise administration, enforcement etc., but from a total concern with life and its problems-. It is knowledge, practice and welfare activity. The way of study of law lies through logic, history, and ethics but does not end with them. All the particular is manifestations cannot reveal the inexhaustible "Beyond" and the implicit "Within" or "Behind". Reason, faith, practice, experience, value, expediency, utility are means for its study and understanding and realisation without any exclusiveness, or sovereignty of any one of them. It is a healthy union of form and matter, theory and technique, interpretation and adjudication, manifest and mysterious and stability and change.

Modern antagonisms of schools and theories are nothing but the projections of our individual and social imbalances and complexes. We need an interpretative science of jurisprudence which resolves all problems removes all confusion reconciles all conflicts and re-channelise our energies to the task of legal development and law-reform. That is how jurisprudence can become meaningful to us. It becomes then the Yoga of law, life and experience; hence a theory of individual and social existence and an expression of progress and a project of welfare and happiness. The jurist, as legislator, historian, moralist, utilitarian, pragmatist, liberalist, pacifist, engineer, solidarist, law maker, practitioner etc. is partner and a participant with others in the great 'Yajna' of law. Spiritual jurisprudence of ancient India looks to law as the multi-dimensional reality with all its forms, functions and meanings, law is the manifestation of One which is the True, the Good and the Beautiful which is Sat (Existence), Chit (Consciousness) and Anand (Bliss), Its knowledge lies in its realisation only by realisation alone it is known. In this knowledge lies man's real happiness. Law as part and parcel of reality has to be known from within as well as from without. The truths of Indian legal philosophy are grounded in the theory of existence and are realised through spiritual experience of our sages, seers and legal philosophers who actually said, and felt in their moments of spiritual experience the throbs of the great Existence', as an Irrefutable fact. The authenticity and verifiability of this experience was so great valuable that all their conception of law, prescriptions and regulations about behaviour theorising of man and society are founded on this truth of spiritual experience. It is due to that it

ennobles knowledge, refines sentiment, sublimates passions and inculcates the sense of service and sacrifice and thus transforms our social and political existence. By evolution of a method called Yoga they have opened the doors of spiritual realisation to all those who have spiritual thirst. It is under the impact of this spiritual thirst. It is under the impact of this spiritual culture Indian mind merges and obliterates differences and integrates all in one and seeks in them great unity in all its diversity. This is reflected in all the facts of Indian culture and law.

Today, if we want that we should live in this world in peace and, harmony, with mutual concern and mutual respect; that goods of existence are apportioned and shared by all in the interest of all; that people should participate in plans, and projects of government; that the worth and significance of human life be recognised and valued; that governments be run in the interests of its people; that classes and individuals cease to exploit each other; that citizens think in terms of their duty and become responsible; that there be no distrust between the individual and the State; all resources of matter and energy and human organisation be pooled for the greater benefit of the whole if we aspire for all these, we should spiritualise all our jural, social, political and economic existence in all its theory and practice.

In pursuit of science the prevalent trend of the Western Culture is more towards the exploration of matter and phenomena. The dominant characteristic of materialism is that it considers atomistic plurality as final and ultimate which is disconcerting to unity and integration. As a result of this, in life, a particularist and separatist view point is asserted- In the field of law arises one-sided theories; self-interest is boosted; schism and departmentalism is justified; conflicting interests become the permanent subjects of jurisprudence which cannot be reconciled and no workable theory is put forth. 'Duty' is viewed as bondage or slavery and Right is pluralized into rights to be appropriated by individuals to forge the weapon in the war against state and other individuals. Law is viewed, either as an aspect of government and the enforcement of its policies or is viewed as a mere ritual devoid of all reality and sanctity. In the absence of the master-concept the contract, property, procedure and rule of law are heightened to such an extent with their smuggled ideological content that the integrated or synthetic view of law becomes impossible.

The irony and tragedy of this materialistic civilisation is that in spite of the progress of science and accrual of the greatest amount of material comforts, in it, lurk disquiet, dissatisfaction, frustration and weariness amidst all the so-called prosperity and affluence. There is reaction against this overpowering influence of materialism. To make this thralldom more graceful and honourable, the ideas of

self-preservation, coexistence, interdependence, social solidarity balancing, of interests, the greatest good of the greatest number, perforce are propagated and adopted, and a somewhat different and wider perspective of law is taken and its canvas is made large and a certain mystique is employed in disguise and is expressed in guarded language to bring about harmony, intergration and cohesion, The natural law doctrine thrives upon this felt-insufficiency of materialistic jurisprudence. But all these devices by which unity is sought, fail in a large measure, because they are incomplete and imperfect. If there is no conviction and faith in the soiritual reality of law or if there is no conception of law as a total human concern, all these broad and liberal approaches are liable to be in vain and are bound to be exploited by the state, society, individual or class. However, being conscious of its weakness 'Scientism' and 'Positivism' have been modified to a very large extent in such a way that ethical or other value-considerations have been introduced in one form or the other. The legal theory is taking a dangerous turns. Historicism, putting more credence on instinct and feeling, has faith in collective consciousness, general will and spirit of the people, etc., as a result of which irrationalism has begun to undermine the systematic study of law. American realism, as juducial empiricism, puts the whole theory of law in a melting pot. All these abnormal developments and juristic hostilities are due to the extraordinary course, which has been taken by conflict-ridden civilisation of the West. All the conflicts, between State, individual, society and church inter se, have been reflected in juristic, political and social theories. This is the reson why there is separation between law morality, religion, and metaphysics. All the distractions, in the theory of law, are the progeny of materialistic approach to life which has reached its saturation point.

It seems that a counter-reaction, against mechanical uniformity and commercialisation of human relationships and erosion of human values has also started. In the field of law, jurists have begun to realize the need for a wholesome view of law. Efforts are being made for a constructive juridique which can take intergrating and synthetic view of jurisprudence. But the jurists have not yet left the materialistic pretensions and are still haunted by positivistic view points. Herbert Spencer realised that unification of knowledge should be the mission of philosophy. Jerome Hall pleaded for the integrativ jurisprudence and has castigated the particularist tendency in jurisprudence. "What is needed today, in the opinion of Hall, is an integration analytical jurisprudence, realistic interpretations of social and culture facts, and the valuable ingredients of natural law doctrine. All these divisions of jurisprudence are intimately related to, and dependent on, one another". He sees integration of fact and thought in man who is 'simultaneously rational-valuing-physical animal' In human mind there is unification of 'otherwise

disparate processes. Which Fechner finds in law a mixture of idealistic and realistic elements. He has tried to demonstrate the inter-relations and connection between these elements in a legal order. Timesheff has shown in law there is ethico-imperative co-ordination. Law presents a combination of organised power and groups conviction. The power mechanism is not more important than ethical and social considerations of law. In fact, it seems that people are dismayed by the 'single track and one-dimensional theories about law. Professor Dennis Lloyd has also realised the need of a synthetic approach to the study of jurisprudence. In our own country, as early as 1955, Dr.Sethna, M.J., has laid the foundation of the Indian School of Synthetic Jurisprudence. Sethna wants to synthesize and harmonise conflicting ideas by merely taking a mid-way view by avoiding extremes and effecting compromises. He is in search of connecting links and wants to steer only a middle course, his endeavour is to bring compromises amidst rival extremes. All that he wants is to see all jurisprudence aspects at one time or at one place. In view of boscoe Pound Sethna wants to bring all the approaches to a common focus. Jurisprudence is viewed as the harp that "produces the melody of law, and the legislation, judges and lawyers are musicians who play (and sing) on the strings (the fundamental principles) of this harp". To him, the end of law is the greatest good of the largest number of society. The greatest value of law is love."Love is truth, love is beauty; love is sublime". Again he wants law to represent "the general will of people, and that judges would respect reasonable traditions, customs and usages of long standing".

All these approaches to untile juristic schools, theories, attitudes and method, without having a theory of unity of the whole Existence with law, are liable to fail. These efforts are directed. it seems to make a digest to jurisprudence theories, schools and methods which may serve as 'Reader's digest'. This is an admixture of various theories, and with due respect to the learned auther, it has to be stated that it is far from being the synthetic jurisprudence. All these attempts represent a materialistic reaction against a materialistic jurisprudence. They are inspired by utilitarian motive and do not provide us with any philosophic justification. What is needed is a complete recasting and overhauling of views about jurisprudence and its problems.

Without the faith and belief in the unity of the whole existence, which is represented and reflected in law, we cannot provide rational grounds for forging the, bonds of social unity through law. In absence of metaphysical and spiritual approach all the approaches to law are half hearted and inadequate. They are also alien to us because they do not take into consideration our culture which is predominantly spiritual. As spiritualism has unravelled the mystery of life it will

certainly engage in unravelling the mystery of law Thirst for knowing what is mysterious and unknown is still In us. Law has derived its power and hold in the past from magic, myth, music, ritual and religion and still, in a measure, assisted by them. the Indian juristic mind of the past has also cognized suprasensible world and a state of spiritual realisation which transforms man's view about man, society . and universe. The enlightened one sees the whole world as ONE and the mankind as brotherhood and on this basis devotes his life in service. He has compassion for all. All the property, power, position, and authority which create legal problems, hard to solve, become irrelevant. All the differences appear unreal and with this they seem to vanish. Man, in such a state, gets the real and unadulterated knowledge. if law has to accomplish the goals set by it for the development, progress and reformation of the individual and society it must develop according to the spiritual vision of one world, one community and one law. Man's life, then, will be full of love, sacrifice and service.

We have to realise that matter divides, disintegrates, isolates and frustrates, while spirit unites and integrates. Spritual jurisprudence gives such a unity that all the views doctrines and parts of law are 'one' from the point of view of their nature and are many only for the sake of convenience and they never cease to represent the whole. All the distinctions and divisions then become provisional because, in essence, they represent the one. The matter of law is impregnated with spirit or reality or higher purposes of life. What is real is what is good and conducive to welfare. The real is actual as well as ideal, i.e. value. Existence itself is value; value is inherent in existence. The spiritual base of the Indian jurisprudence is quite manifest and clear. Law arises, as has been mentioned above, as an expression of this sentient universe, possessing consciousness or 'Karma, Rit is not only the order but is said to have magical binding force. Dharma is also described as the mystic force of this world. Satya or Existence is the existence and Reality itself, which has to be realised by the truth of spiritual experience. 'Danda' is not only a raw force but is the variant of Dharma. Yajna is not mere Sacrifice or ritual but a participation in the higher purposes of the spirit; it is as good as Yoga or merger by means of action. Karma is also causative aspect of the conscious reality which becomes the principle or moral retribution. the ultimate authority of law lies in the Vedas which are said to be revealed texts and are said to be impersonal. Even Mimansa or interpretation, with its faith in Apurva, and Vyavahar as analogical extension of Yajna and Satya (inquiry for truth) are indicative of spritual elementsa. Thus ancient Indian legal philosophy can be seen as the spiritualisation of the reality of law.

The peculiar characteristic of spiritual jurisprudence of India is that all the

important concepts partake of the nature of each other. Rit (or Dharma), Satya and Yajna express order, right, duty and welfare. They can be substituted for one another. They enforce each other. In them, there is interconnection, interpenetration and mutual relevance. These are the aspects of the same reality, I.e., law.

If we believe that Indian Culture is predominantly a spiritual culture and the Indian bent of mind is still attuned to the spiritualistic thinking; if we realise that spiritualism unifies and dissolves all differences and merges man's interests into those of the community or society, and encourages co-operation and co-ordination, and resolves conflicts; if its cult does away with all the injuries, harms, malpractices and wrongs of human life; if it provides the outlet for the highest type of pleasure, called bliss; if law can be a doctrine as well as practice, and a way of life and living; let there be spiritual jurisprudence to fulfil the needs of spiritual culture of India and thereby to rescue it from degeneration and degradation. Let us model our concept of law on the spiritual foundation of our culture.

It has already blessed us with legal concepts in the past which ushered in an era of peace, tranquility, harmony and good will. Let us hope that in our efforts to make this life happier now, we do not miss to build on the wisdom of the past which, if suitably and appropriately utilized will consecrate our whole legal system.