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Subject- Jurisprudence
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Concept- Philosophical school

THE PHILOSOPHICAL SCHOOL OF JURISPRUDENCE

GROTIUS (1583-1645)

Hugo Grotius was a Dutch national and a Republican philosopher. He is regarded as the father of philosophic al school of jurisprudence. In his famous work 'The Law of War and Peace', Grotius stated that natural law springs from the social nature of man and the natural law as well as positive morality, both are based on the nation of righteousness. Natural justice is the justice indeed with truth. The rules of human conduct emerge from right reason and they receive public support of the coercive force of the state but the census of public disapprobation. The view of Grotius was that the agreement of mankind concerning certain rules of conduct is an indication that those rules originated in right reason.

In detaching the science of law from theology and religion, he prepared the ground for the secular, rationalistic version of modern natural law. Among the traits characteristic of man, he pointed out, was an impelling desire for society, that is, for the social life- "not of any and every sort, but peaceful, and organised according to the measure of his intelligence l, with those who are of his own kind." He refuted the assumption of the Greek Skeptic Carneades that man was actuated by nature to seek only his own advantage, believing that there was an inborn sociability in human beings which enabled them to live peacefully together in society. Whatever conformed to this social impulse and to the nature of man as a rational social being was right and just; whatever opposed it by disturbing the social harmony was wrong and unjust.

Grotius defined

natural law as "a dictate of right reason which points out that an act, according as it is or is not in conformity with rational nature, has in it a quality of moral baseness or moral necessity." This law of nature would obtain "even if we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to Him."

Grotius thereby grounded the natural law on an eternal reason pervading the cosmos, although he admitted the alternative possibility of a theist foundation.

Grotius pointed out that two methods existed for proving whether something was or was not in accordance with the law of nature. "Proof a priori consists in demonstrating the necessary agreement or disagreement of anything with a rational or social nature; proof a posteriori, in concluding if not with absolute assurance, at least with every probability, that that is according to the law of nature which is believed to be such among all nations, or among all those that are more advanced in civilisation." Grotius added that no conclusion unfavourable to human nature needed to be drawn from the practices of nations that were savage or inhuman. He agreed with Aristotle that in order to find out what was natural, we must look to those things which are in asound condition, not to those that are corrupted.

Among the chief axioms of natural law enumerated by Grotius are the following: to abstain from that which belongs to other persons; to restore to another any goods of his which we may have; to abide by pacts and to fulfill promises made to other persons; to repay any damage done to another through fault; and to inflict punishment upon men who deserve it. Many of the

more detailed and special rules of the law, in his opinion, represented merely necessary derivations nfrom these general precepts.

The state was defined by Grotius as "a complete association of free men, joined together for the enjoyment of rights and for their common interest." It originated in a contract, but usually the people had transferred their sovereign power to a ruler who acquired it as his private right and whose actions were ordinarily not subject to legal control. The ruler is bound, however, to observe the principles of natural law and of the law of nations. If he misuses his power, his subjects, as a general rule, have no right to revolt against him. But in some clear cases of usurpation or flagrant abuse of power Grotius was willing to recognise a right of resistance.

EMMANUEL KANT (1724-1804)

Kant gave modern thinking a new basis which no subsequent philosophy could ignore. The Copernican Turn' which he gave to philosophy was to replace the psychological and empirical method by the critical method by an attempt to base the rational character of life and world not on the observation of facts and matter but on human consciousness itself.

Kant, in his Critique of Pure Reason tried to draw a distinction between form and matter. He observed that the impression of our senses is the matter of human experience which are brought into order and shaped by human mind. According to him "the freedom of man act according to his will and the ethical postulates are mutually co-relative because no ethical postulate is possible without man's freedom of self determination". Kant calls substance of ethical postulate as “Categorical Imperative" which is the basis of his moral and legal theory.

JOHANN GOTTLIEB FICHTE (1762-1814)

Transcendental idealism presented itself in a pure and uncompromising form in the philosophy of Johann Gottlieb Fichte. To him, the starting point and center of all philosophical thinking is and must be the intelligent human ego. Not only the forms of our cognition, as Kant had taught, but also the content of our perceptions and sensations, were regarded by Fichte as the product of our consciousness. “All being, that of the ego as well as that of the non-ego, is a certain modality of consciousness; and without consciousness there is no being.” The non-ego, that is, the word of objects, is in Fichte’s view, nothing but a target for human action, a domain for the exertion of the human will which is able to shape and transform this world. Fichte’s philosophy is one of the human activism without bounds, and it represents an enthusiastic affirmation of the sovereign power of human intelligence.

The rational human ego is viewed as free by Fichte in the sense that it sets its own goals and is capable of attaining them; in other words, the actions of human beings are determined solely by their own will. Since, however, human egos stand in relations of interaction with other human egos, their respective spheres of freedom must be adjusted and harmonised. Thus Ficthe, like Kant, considered law as a device for securing the coexistence of free individuals. Every man must respect the freedom of every other man.

The legal philosophy of Ficthe is deduced from the self consciousness of the reasonable being, no reasonable being can think himself without ascribing the activity to himself. Freedom is a necessity of mutual. The sphere of legal relation is that part of mutual personal relations which regulates the recognition and definitions of the respective spheres of liberty on the basis of free individuality as the relation between individual and the state. Fichte points out that it is regulatedby three basic principles, namely:-

 An individual becomes a member of the state through fulfillment of civic duties.
 The law limits and assures the rights of the individuals.
 Outside his sphere of civic duties, an individual is free and honky responsible to himself.

DEL VECCHIO

The Italian legal philosopher George Del Vecchio (1878-1970) distinguishes sharply between the concept of law and the ideal of law. The concept of law he maintains, is logically anterior to juridical experience, that is, constitutes a priori datum. The essential characteristics of law, according to him, are first, objective coordination of the actions of several individuals pursuant to an ethical principle, and sound of the actions of several individuals pursuant to an ethical principle, and second, bilateralness, imperativeness, and coercibility.

Del Vecchio developed independently of Stammler, a theory of law on essentially similar foundations. He was a jurist of much greater elegance and university than Stammler. His writings display a professing of philosophical, historical and juristic learning.

According to Del Vecchio, the concept of law must have reference only to its form, to the logical form of law is more comprehensive than the sum of judicial propositions. The concept of law is juridical neutral. It cannot distinguish between good and bad law and just and unjust law. Law is not only formal but has a special meaning and an implicit faculty of valuation. Law is a phenomenon of nature and collected by history. It is also an expression of human liberty which comprises and masters nature and directs it to a purpose. Law is the subject of a qualitative progress of phenomenon from mere formless matter to progressive organisation and individualization. The aim is perfect autonomy of the spirit.

The absolute value of the person, equal liberty of all men, the right of each of the associates to be an active, not just a passive, participant in legislation, liberty of conscience, and in general the principles in which is summed up, eve amid accidental fallacies, the true substance of the classical philosophy of law, juris naturalis scientia, have already received important confirmations in the positive juridical orders, and will receive others soon or in the course of time, whatever may be the resistance and the oppositions which they still encounter.

HEGEL (1770-1831)

Hegel was the most influential thinker of the philosophical school. His system is a necrotic one.

According to him "the state and law both are evolutionary."

The great contribution of Hegel to philosophical school is the development of the idea of evolution. According to him, the various manifestations of social life, including law are the product of an evolutionary, dynamic process. This process takes on a dialectical form, revealing itself in thesis, antithesis and synthesis. The human spirit sets a thesis which becomes current as the leading idea of a particular historical epoch.

In this historical process, law and the state plays a vital role, according to Hegel. The system of law, he asserted, is designed to realise the ideal of freedom in its external manifestations. It bears emphasis, however, that for Hegel freedom did not signify the right of a person to do as he pleased. A free person, in his view, is one whose mind is in control of his body, one who subordinates his natural passions, irrational desires, and purely material interests to the superior demands of his rational and spiritual self. Hegel admonished men to lead a life governed by reason and pointed out that one of the cardinal postulates of reason was to accord respect to the personality and rights of other human beings. The law was considered by him as one of the chief instruments to devise to reinforce and secure such respect.