
DUGUIT'S SOCIAL SOLIDARITY

Panya Sethi, Symbiosis Law School, NOIDA

INTRODUCTION

Leon Duguit was a jurist of sociological jurisprudence who belonged to the age of collective legislation. He attacked traditional conceptions of state, sovereignty, law and legitimate character as they are not founded on social reality. He sought to fashion a new approach to these matters from the point of view of the society. His theory highlighted the fact that the interdependence of men is the fabric of society, as indicated by the standards of division of work with the end goal of social attachment. Duguit proceeds with the idea that solidarity occurs through the division of labour and that it assigns each person a social obligation. He thus welcomes all types of corporations, associations, various organizations and wants them to be a part of social integration.

He also stated that law serves the same purpose, that of being based on mutual interdependence between individuals. The aim was to create a science of law and politics, free from the notion of natural law and establish it in a way that involves limited interference by the state.

Duguit highlighted the difference between two sorts of necessities of men in the public eye. There are common necessities of people which are fulfilled by common help. Secondly, there are different necessities of people which are fulfilled by the trading of administration.

Durkheim recognized two kinds of social fortitude, what he calls mechanical solidarity and organic fortitude. In undeveloped societies, men perceived the requirement for common help and the consolidating of their aptitudes.

Individuals are bound together by the way that they have shared a common consciousness.

To tentatively glance at the difference in the public arena from the mechanical to the natural sort, Durkheim went to the improvement of law as a marker of the changing foundations of society. Durkheim's central concern, to show that present day culture is portrayed by a fortitude that give emphasis to individualism.

All organizations are to be decided by how they contribute towards social solidarity. The state can along these lines guarantee no exceptional position or advantage. It isn't some mysterious substance, however an association of men, which must be supported so far as it promotes social fortitude. At the point when it stops to do this there is an obligation to revolt against it.

He drew attention to notice the move towards decentralization and away from the centralized mechanism taking into account the undeniably complicated construction of current culture. He likewise denied the personality of corporations and similar groups. The coherence of all such association lies, in social solidarity.

ANALYSIS

Social solidarity and the state: Because all human activity and organisations are judged based on how they contribute to social solidarity, the state cannot claim any special position or privileges. It is only one of many human organisations required to protect the principle of social solidarity. It is justifiable insofar as it defends and advances the principle of social solidarity. It is nothing more than a group of men who issue orders backed up by force. If the state acts in a way that fosters social solidarity, it has the right to be supported and encouraged. If it fails to fulfil that function, the people have the right to revolt against the state and suppress it.

The concept of sovereignty itself is meaningless. The test of social solidarity limits all power. Every man and every group of men has a duty that stems from the facts of social existence. This duty is to promote social solidarity.

IMPLICATIONS OF THE THEORY

1.Limited interference by the state

The concept of state has not been recognized by Duguit as he feels that individuals must be governed by social fortitude. He rejects the notion of the personality of state as the state merely consists of a few individuals who govern the society and the other obey. He was in favour of limited the power of the state and wanted to keep a check on its power so to avoid abuse and arbitrary usage of power. No special position should be attached to the state since they are also under the obligation to maintain solidarity. He is in favour of decentralization.

2.Rights are not recognized

He fails to recognize rights of the individual and was of the view that the only right that individuals possess is the right to do his duty. He rejected the notion of individual rights and was in favour of collective rights. What are known as rights are dependent on relationship shared between individuals in a society. For him law is not a body of rights but a collection of duties.

3.No difference between public and private laws

His view of the state and its role had made him deny the existence of public and private laws. All laws are meant for serving the same purpose of social Solidarity. There is no distinction in their function. This can lead to the elevation of the state above the rest of the individuals.

CRITICISM OF THE THEORY

1.Social solidarity is a part of natural law

It excludes all metaphysical considerations of law and it is itself based on the idea of natural law. His emphasis on the relationship between society and individuals become a part of the theory of justice. He establishes a way through which the positive law must function in the society just like natural Law philosophers.

2.Vague definition of law

He does not clarify what he thinks of law. He does not define law and what it ought to be and in contemporary society what role should it play. For him, anything which opposes the principle of social solidarity is not to be considered

3.Interpretation of social fortitude by the judges

The interpretation of the term needs to be made by the judiciary. The term would be personally interpreted by the judges which would not be a favourable outcome since even the judges have their own shortcomings which can weaken the entire system. It may not serve the purpose that was intended by Duguit.

4.Overlooking the state

He fails to take into account that in contemporary times, the state plays a fundamental role in governing the people and helps to maintain law and order.

By rejecting the idea of state, he overlooked the fact that complexities of law and political and social upheavals can be better resolved by the state.

CONCLUSION

Though the law does have some shortcomings present in it, it has contributed significantly to formulate a theory based on justice in social solidarity. Its biggest strength is that it relies on the interdependence of individuals and aims to create social fortitude. Its weakness lies in the fact that it dismisses the idea of law and state, which in the contemporary era plays a significant role to govern the individuals. Over the years, his theory has been used by many otherscholars and is known for its original approach.

REFERENCES

1. Concept of Social solidarity (Sep. 28, 2020), <https://nyaydristi.in/concept-of-social-solidarity/>.
2. N Srivastava, Duguit's Principles of Social Solidarity, <https://unacademy.com/lesson/duguits-principles-of-social-solidarity/D2KW40RN>.
3. P Thakurai, Concept of Social solidarity (Nov. , 2017), https://www.academia.edu/35130712/THEORY_OF_LEON_DUGUIT_JURISPRUDENCE_and_LEGAL_THEORY