**EMILE DURKHEIM: SOCIOLOGICAL SCHOOL OF JURISPRUDENCE**

**Outline of the topic: in the present topic, we are going to discuss about the theory propounded by Durkheim in his contribution towards the sociological school of jurisprudence. His theory is last in this module and with his theory, we will come to an end to Module V of the syllabus.**

Emile Durkheim, a French sociologist, is widely considered to be the father of sociology. While clearly not a lawyer or a student of law, Durkheim wrote on legal issues ranging from criminal process to the law of contracts. His contribution to sociological jurisprudence is undeniable. In his various works, and particularly the book titled “*Division of Labor in Society*” he deals with the issue of law in society.

**DURKHEIM VIEW ON SOCIETY**

Durkheim adopted an evolutionary approach in that he considered society to have developed from a traditional to modern society through the development and expansion of the division of labour.  He compared society to an organism, with different parts that functioned to ensure the smooth and orderly operation and evolution of society.  He is sometimes considered a structural functionalist in that he regarded society as composed of structures that functioned together – in constructing such an approach, he distinguished structure and function.  While he considered society to be composed of individuals, society is not just the sum of individuals and their behaviours, actions, and thoughts.  Rather, society has a structure and existence of its own, apart from the individuals in it.  Further, society and its structures influence, constrain, and even coerce individuals in it – through norms, social facts, common sentiments, and social currents.  While all of these were developed from earlier or current human action, they stand apart from the individual, form themselves into institutions and structures, and affect the individual.

**DURKHEIM’S CONCEPT OF SOCIAL SOLIDARITY**

Durkheim was especially concerned with the issue of social order, how does modern society hold together given that society is composed of many individuals, each acting in an individual and autonomous manner, with separate, distinct, and different interests.  His first book, *The Division of Labour in Society*, was an exploration and explanation of these issues, and he finds the answer in the concept of social solidarity, common consciousness, systems of common morality, and forms of law.

He asserts that law was the standard by which any society could be evaluated since “law reproduces the principal forms of social solidarity. According to him, there are two types of solidarity which are as follows:

* ***Mechanical solidarity*:** According to Durkheim, mechanical solidarity prevails in small scale homogeneous societies. Durkheim assumes that most laws in such societies would be of a penal and repressive nature since the entire society would take an interest in criminal activity and would seek to suppress and deter it. In short, the focus of law in societies that form mechanical solidarity is more on criminal law rather than civil law and is more concerned with punishment and suppressing anti-social activities. In other words, it is not very complex society, but rather one based on shared sentiments and responsibilities.
* ***Organic solidarity*:** Durkheim states the organic solidarity is found in more heterogeneous and differential societies where there is a greater division of labor as well as greater differences between individuals. This more pronounced division of labor means that people advance/are positioned in society based on merit. Moreover, in such societies there is less of a common societal reaction to crime as the people come from many different backgrounds and so law becomes less repressive and more restitutive. In other words, societies characterized by organic solidarity are more secular and individualistic due to the specialization of people in their respective tasks. Put simply, organic solidarity is more complex with a higher division of labour.

According to Durkheim, the societies move from mechanical to organic solidarity through the division of labour. As people began to move into cities and physical density mounted, competition for resources began to grow. Like in any competition, some people won and got to keep their jobs, whereas others lost and were forced to specialize. As a consequence, the division of labour generated all sorts of interdependencies between people which is a key element of organic solidarity. Thus, following the above discussion, he argued that societies characterized by organic solidarity generated social solidarity not through sameness, but through interdependence.

**ROLE OF LAW IN PRESERVING SOCIAL SOLIDARITY**

For Durkheim, the laws of a society are the most visible symbol of social solidarity and the organization of social life in its most precise and stable form.

Law plays a part in a society that is analogous to the nervous system in organisms. The nervous system regulates various bodily functions so they work together in harmony. Likewise, the legal system regulates all parts of society so that they work together effectively.

According to him, two types of law are present in human societies: repressive law (moral) and restitutive law (organic).

**Repressive Law**

Repressive law is related to the center of common consciousness and everyone participates in judging and punishing the perpetrator. The severity of a crime is not measured necessarily by the damage incurred to an individual victim, but rather gauged as the damage caused to the society or social order as a whole. Punishments for crimes against the collective are typically harsh. Repressive law, says Durkheim, is practiced in mechanical forms of society.

**Restitutive Law**

The second type of law is restitutive law, which does focus on the victim when there is a crime since there are no commonly shared beliefs about what damages society. Restitutive law corresponds to the organic state of society and is made possible by more specialized bodies of society such as courts and lawyers.

**CRITICISM**

* Firstly, Durkheim is not concerned about the negative effects of the dependencies created by the division of labour. For him, these mutual interdependences produce solidarity, which is the ‘glue’ for society, societies’ moral. One might object, however, that there is also a negative side. Considering this further, it is possible to argue that for example in terms of the purchase of everyday products, such as food or clothes; the division of labour has led to complications. Families in primitive societies were self-supporters – completely independent from other producers. In the modern age on the other hand, one is not able to live without ‘depending’ on the products of others. One has to be in contact, in exchange, in contract with other parties – whether welcome or not. There is no choice between independence and dependence in this sense. Although man is liberated, he is at the same time caught in a net of interdependencies, a net of binding contracts, in the modern age.
* Secondly, Durkheim’s ideas of social solidarity like the idealist and natural law methodologies is capable of being filled with whatever content one wishes of it, ranging from liberty to the suppression of liberty, from social progress to social reactions and so on. This makes the theory somewhat too ambiguous in one sense where clearer parameters would have been useful.