

IDEA OF LAW' AND 'CONCEPT OF LAW' BY STAMMLER

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ABSTRACT

In this article, Rudolf Stammler's legal philosophy is discussed. Rudolf Stammler is credited with transforming legal philosophy into a practical concern of justice in law enforcement. According to Stammler, a historical or analytical approach to jurisprudence is unsatisfactory since it is missing a crucial element of the subject — a benchmark by which the law can be evaluated and criticized. He also criticized the Marxist economic theory, which holds that as production methods change, regulations inevitably adapt to reflect these changes. Stammler's main objective was to establish his theory of social idealism, he believed that society and law are two sides of the same coin.

Keywords: Legal philosophy, Rudolf Stammler, Critical Reasoning, Social Idealism, Concept Analysis, Justice, Positive Law.

INTRODUCTION

The law can be understood as a basic set of rules and regulations to govern a society for better living and management. But to understand the basics of law and gather knowledge from the core of this very interesting subject, Law itself, it is very necessary to understand the idea and the concepts involved in procreating the same. Law is not something that came into existence all of a sudden one day on the other hand, law is something that evolved through a process, a process, or a series of thoughts that led to one thing after another.

“Law is a means of achieving justice, and justice is the end of law. The purpose of the law is to secure the maximum of individual freedom compatible with the freedom of all others.”¹

The ultimate objective of the legal system is to attain justice, and the law is a vehicle for doing so. Justice is frequently viewed as an equitable allocation of rights, resources, and advantages within society as well as a fair and impartial treatment of each individual. However, a balance between one's freedom and the freedom of others is required to achieve justice. Therefore, the

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¹ [Pound, Roscoe. The Spirit of the Common Law. Routledge, 1998. Bowker.](#)

goal of the law is to protect as much personal freedom as is consistent with everyone else's freedom in society. This means that individual conduct that would be harmful to or violate the rights of others must be prohibited by law.

IS IT EVEN LEGAL?

Have you ever wondered what might be the origin or the backing of this question which you must have thought once in a lifetime?

How does legality come into the picture? If it is the law that brought legality into the picture then what is the law? How law came into being?

Professor H.L.A. Hart in his book *THE CONCEPT OF LAW* tried to explain the meaning of law in his opening sentence which constitutes "a situation not paralleled in any other subject systematically studied as a separate academic discipline."

Furthermore, to understand the existence of law and from where it evolved and what the base of law was, the idea and the concept about the same.

There must be the existence of something which brought the law into the picture. If not, then the further contents of this reading may provide you with an answer. The basics of law such as the Idea of law and the concept of law, are further discussed in this reading. However, both terms may sound similar and confusing, but they are not. This reading aims to discuss both the subject, primarily from the point of view of modern-times jurist Rudolf Stammler.

WHAT IS THE IDEA OF LAW?

The first question that comes to mind after reading "The Idea of Law" is What is the meaning of the idea? The idea can be defined as a formulated thought, opinion, suggestion, or belief. The Idea of law here can be defined as an opinion or thought of what law is and the supposed or conceived notion of what is law. The idea of law may or may not be backed by logic. There is no perfect definition of what is the idea of law provided anywhere but there were many jurists who tried to explain the gist or the essence of what is the idea of law indirectly or in their ways. For example, According to Salmond "the law may be defined as the body of principles recognized and applied by the state in the administration of Justice. According to Austin "law is aggregate of rules set by men politically superior or sovereign to men as politically subject." Austin says, "A law is a command which obliges a person or persons to a course of conduct.

The idea of law may lack little scientific advantage, it may be influential or destructing. By using Law Idea, a writer may try to indicate, the judicial idea of law, which every legal system must formulate in more or less specific terms.

WHAT IS THE CONCEPT OF LAW?

Similarly, as in the case of an idea, there is a need to understand what is the meaning of the concept in “The Concept Of Law”. The concept here in this case can be defined as an abstract or generic idea backed by particular instances. The concept can also be said something which is backed by law. Similarly, the concept of law can be said a step ahead of the idea of law. Professor H.L.A. Hart has written a book called “The Concept Of Law” in which he tried to explain the meaning of law conceptually. H.L.A. Hart belongs to the analytical school of jurisprudence and believed in the idea of law which is based on his conceptually explained meaning of the law that is majorly focused on positivism, that law is man-made and there is no connection between law and morality.

We can also define the concept of law in terms of what a writer of his jurisprudence understands and take it as the concept based on which a writer of jurisprudence identifies his law or by the will with which a writer expresses his regards towards law by giving it an analytical or tautological definition. Law concepts can more easily be expressed as something logical in form and something which would define the course of action.

THE IDEA AND THE CONCEPT OF LAW

The phrases may seem to pose a confusing sight but both of them are different from each other the concept of law may be defined as something which is a step ahead of the idea of law. The idea of law can be called the beginning and the concept of law, on the other hand, is the advancement of the idea of law based on which several theoretical analyses come into the picture. The law concept can be stated as something constant in any jurisprudence and on the other hand, the law idea can be variable. A writer’s law theory presupposes his law concept and expression as a medium of their understanding.

ABOUT RUDOLF STAMMLER

Rudolf Stammler (19 February 1856 – 25 April 1938) was an influential German philosopher of law. He made a distinction between the ideal and a formal view of the law. According to

him, the law should be led in the direction of the current ideal rather than reacting to economic pressures and changing it. One of his major works includes *Die Lehre von dem richtigen Rechte* (1902), which was translated by Isaac Husik as *The Theory of Justice* (1925). He posed ideas of justice that did not conform to all the other jurists of the 19th century, in which he emphasized the search for a theoretically valid ideal of justice with which law ought to conform.

Accordingly, Stammler concludes that all law involves four formal conditions:

- It is a will,
- which stands outside and regulates subordinate wills in a cooperating community of subordinate wills,
- which is intrinsically or autonomously binding, and
- which is inviolable and in general self-perpetuating or self-terminating.

Apart from these, there are four modes of reflection of the law. 1) There must be something that serves as means to the end. 2) combination of several wills for common purposes. 3) subordination of will is bound to achieve a common purpose. 4) presence of the possibility of disharmony between the controlling will and the wills which it is controlling.

RUDOLF STAMMLER IDEOLOGY

The great scholar Roscoe Pound credits Rudolf Stammler as the jurist who turned the legal philosophy from its abstract nature such as relating it to morals and ethics to justifying its meaning in the concrete sense like relating the problem of justice in the administration of law in concrete cases. Pound regards

Stammler as the social philosophical jurist of the transition age, according to Stammler criteria of justice were some social ideals. Pound acknowledged Stammler for shifting legal philosophy from a purely theoretical focus on legal norms to a more practical consideration of justice in law enforcement. Like Plato, Stammler also believed that to understand the social and political scenario it is necessary to have a firm grasp of logic, insight, and methodical skill as all these skills are necessary for the understanding of other subjects of professional education.

Stammler strongly speaks about the advent of positive law that merely by just looking from where something has come or evolved will not give an idea about what it ought to be. Like in the case of laws, the knowledge of such kind such as where the law came from or where it evolved is not necessary to understand the position of that law in the present given times. The history of the law does not justify it. He argued that a historical or analytical approach to jurisprudence is insufficient because it lacks a critical component of the topic - a standard against which the law can be examined and criticized.

As Stammler was the jurist who supported the critical reasoning, he holds the opinion that when the Roman laws were made the jurists were more concerned about goodness and equity and they lacked a scientific approach towards the same, but it had become the purpose of Stammler life to provide with the same. The thinking approach of Rudolf Stammler was also influenced by the fact that during his formative years, Germany was undergoing rapid industrialization and all the state guide social changes which were brought were so much away from the historical approach.

Furthermore, Stammler in his work where he criticized the Marxian economic philosophy, which says laws adjust themselves according to the economic changes in society or law adjusts itself automatically according to the changes in the modes of producing goods but in the eyes of Stammler, this concept is faulty and says technology changes but the law does not change it creates a legal anachronism which in turn makes the entire system out of adjustment. Stammler also supports this notion by stating that if society adjusted itself with every change then there would have been no conflict in the society. According to Stammler, the biggest confusion that lies here is the conception of necessity. Social necessity affects the will and it is the necessity of means for the sake of an end and it applies to the human agent who must do something for the question at hand. As per Stammler, this confusion has prevented the socialists to understand social conflict and social change and the relation of law and economics in society. Men do work together to satisfy their needs; one person's actions serve the goals of another, and the other person's actions serve the goals of the first. However, this requires clear rules that bind the wills of the various parties involved in cooperation to the goals that can be achieved through it. A society is created by the presence of such laws. All the economic conflicts and pressure takes place from within the already-created society of common standards of conduct. According to Stammler, economic disputes and economic pressure emerge within the social framework produced by these obligatory norms of behavior. The law cannot be created by

economic transactions; rather, the law is required for the establishment of institutions and enforceable norms of behavior. There would be no economy if there was no law. As a result, any change in economic activity, such as a new technological technique, cannot immediately influence the law. Instead, it can only impact volition (i.e., the will) and force a new regulation of volition that is required to attain a certain goal. Stammler believes that society is not divided into law and economics but they are the two sides of the same coin. His primary goal in writing is to develop his theory of social idealism through a critique of the Marxists' social materialism.

According to Stammler, the idea of law can be related to “Social Idealism”, which was his efforts to relate reality with the ideas in the mind. To further understand Stammler’s line of thought, it is very necessary to grasp what he professes to do and the method by which he professes it. The method in his case is the analysis of the concept.

In Stammler’s opinion, jurisprudence could never accomplish anything by the feeling of being just or right and he did not consider judicial decisions as trustworthy. The main question here is the problem that belongs to jurisprudence, the critical examination of the concept of law, and the vital question here is the question of validity. Stammler believes he considers legal reflection from a logician’s point of view rather than a psychologist’s point of view. Stammler through his work has tried to provide logical analysis, and critical examination of the judicial process rather than the biological facts about the judges and how they think. The main aim of Stammler can be stated as he tried to explain that the principle of justice can be stated in such a way as to guide juristic thought. Justice is purely methodological or regulative it has no content and lays down no rule but it is a pure idea to be used in guiding legal thought. Stammler never considered that there is any presence of any perfect or ideal law above the positive law, just law is a part of positive law. Stammler was attempting to resurrect the classical concept that law should be viewed as a tool for achieving justice, rather than just a series of rules to be obeyed. He felt his task was to build a scientific technique to steer the law toward this ultimate aim.

The theory of just law is one other main component of Stammler’s. Just law is the conclusion, not the premises. According to Stammler, pure jurisprudence is the logical analysis of the concept of law, which exists to showcase the indispensable concept without referencing historical law. Stammler analyses conceptions by focusing on the thought apparatus rather than the things conceived. His findings offer just the application of ideas, rather than making judgments on specific goals or policies of social movements or political parties. For example,

rather than casting judgment on the specific policies or aims of socialist parties, his assessment focuses on the notion of society and its application in comprehending social development and conflict. Stammler's legal philosophy is founded on the dichotomy between Sein and Sollen, which translates to Fact and Value. The first attitude, concerned with perception, accepts things as they are and is solely interested in understanding what they are and what they do. On the other hand, the second viewpoint is concerned with desire or will and sees the world as a stage for human activity.

According to Stammler every desire or inclination comes into the picture within the framework of means and ends. He assumes that the distinction between mere inclination and justified will is of the same essence as opinion and truth. The main power of Stammler is derived from the fact that no man in his right senses fails to distinguish between the important and merely capricious ends. The scope of ends and means are no more outside the scope of logical interpretation. Here, which means the medium or way to attain the ends. When individuals work together to meet their needs, they must adhere to some form of guideline or standard that governs their behavior towards one another. A community is formed by these controlling principles, which might take the shape of morality, tradition, legislation, or even etiquette. What separates a society from a mere collection of people is the existence of binding norms that reduce the wills of the many collaborating partners to the purposes to be reached through collaboration. The concept of law and the idea of law are the necessary element and are two main forms of faculty of power of using one own's will. Together, these components make up the "essence" of law, and without any one of them, the rule of law would cease to exist.

TRACING THE ROOTS OF STAMMLER'S IDEOLOGY IN INDIA

In the case of *ADM Jabalpur v. Shivkant Shukla*², the case revolved around whether the Right To Life and Liberty under Article 21 of the Indian Constitution 1948 of an individual could be bargained during a time of emergency. The final judgments:1 in which Chief Justice A.N. Ray, Justice M. Hameedullah Beg, Justice P.N. Bhagwati, and Justice Y.V. Chandrachud were collective of the opinion that in the time of emergency and similar situations, the state interest should not be compromised where Justice H.R. Khanna alone stood of the opinion that no one should be denied of the right of Life and Liberty.

² AIR 1976 SC 1207

Here in this case the ideology of Stammler goes very well with Justice H.R. Khanna's opinion. According to Stammler also an individual's volition should not be compromised in any situation that may arise an individual of the society may not only be treated in a rightful full manner but also others' volition shall not affect him negatively. The judgment of the famous case of K.S. Puttaswamy v. UOI³ also stands on similar lines as Stammler's ideas and the concept of law stands. In this case, it was also held that "No civilized state can contemplate an encroachment upon life and personal liberty".

CONCLUSION

Concluding Stammler's work it is safe to say that the value of his work lies in the contention that the conception of substantial justice as the end is an indispensable part of jurisprudence. Stammler's view of jurisprudence is more appealing than any other view like the utilitarian view which says that the end of law is general happiness, determining what is just is frequently simpler than determining what will make people happy which means that establishing justice is a more dependable objective for the law than maximizing enjoyment. Stammler said that the main component of substantial justice must be inherent in the administration and practice of law, not something which is imposed by jurists. Stammler also supported the notion that laws are changeable and subject to a particular condition arising at a particular point in time. He also stated that law is the constitutive principle of a society of cooperating wills. The member of society is not only worthy of respect but he must be protected from the arbitrary imposition of other's will and besides this, he will also be entitled to share his goods which are obtained through his labor and are maintained. According to Stammler, the idea of law can be stated as something which is backed by logic, did not come from history, and is required to govern society. In addition to the ideas, he takes the concept of law as a methodological concept, he believes in logical steps to be followed rather than just gulping in whatever is given or perceived and the logical steps are followed to drive the mechanism of means and end for the overall betterment of the society.

³ 2017 10 SCC 1