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**UNDERSTANDING THE PERSPECTIVE OF  
RADHAKAMAL MUKERJEE ON MODERN  
LEGAL SYSTEM: A RARE DIMENSION OF  
LUCKNOW SCHOOL OF SOCIOLOGY**

**I**

The globalization of law poses a number of theoretical and philosophical challenges. At the most general level, globalization changes the level of analysis from relations among citizens and between citizens and the state to the level of the interrelations among states on a horizontal plane, in terms of conflict or cooperation, as well as on a vertical plane as relations among state also affect citizens, especially when they cross nation bound borders, such as in the case of immigration and tourism. Because of the peculiar form globalization takes, studies on global dimensions of law must not only contemplate the movement of law in the direction of globalization, but also investigate how these global processes and structures in turn impact local and national development of laws (Deflem, 2008). The new global order powered by the prevailing globalization trends has induced supervening changes in the function of states and markets, brought about a new realism regarding the role of the rule of law in societies and challenged the existing legal distinctiveness and classical perceptions of established legal institutions in a world that is increasingly becoming a global village. This state of affairs has impacted on the fundamental socio-legal notion of public policy. In this theoretical frame the ideas of Radhakamal Mukerjee become very important. The contemporary theoretical and philosophical challenges that the present day world order poses in the form of globalization has been addressed by this great man in the decade of 1950s. According to him the growth of international feeling and sense of brotherhood of mankind in the 20<sup>th</sup> century has supported the conceptions of a world-wide international code and charter of human rights and ideal of supra-national political organization. The majesty of the sovereignty of the state is found incompatible even with general security, not to speak of its incompatibility with morals and culture. According to Mukerjee the modern social philosophy has its impact on the sister discipline legal philosophy. The

modern legal system according to him is free from the state tutelage; the law is very much integrated with the values and the norms of the culture.

Radhakamal Mukerjee (1889–1968), a leading thinker and social scientist of modern India, was Professor of Economics and Sociology and Vice-Chancellor of the University of Lucknow. Mukerjee played an important and constructive role in the Indian independence movement. He was a highly original philosopher of economics and a discerning interpreter of culture and civilization. In 1921, Mukerjee was appointed as one of the first two professors at the newly established University of Lucknow (the other was Birbal Sahni, who was to become a world renowned paleobotanist). He had an offer from the University of Bombay also but preferred Lucknow, presumably because it afforded him the opportunity of not only building a new department in conformity with his own ideas of a regionally located and sociologically informed discipline of economics, but also influencing the structure of the teaching of social science generally. Mukerjee succeeded in having his department called the Department of Economics and Sociology from the very day the university started to work. It survived as such until 1955 when a separate Department of Sociology was created (Madan 2011).

The present paper is an attempt to understand the basic sociological interaction of law and society under the broader frame of globalization as perceived by the great thinker of Lucknow School of Sociology.

## II

### **Values, Norms of Culture, State and Law**

Social science considers man from three angles: first, as the animal belonging to a single genotype, whose habitat comprises the entire earth: second, as the social and ethical being embodying a common human nature and pattern of behaviour that reflect the unity of mankind; and third as the builder and transmitter of world traditions and values that constitute the psycho-social heritage of mankind-as-a whole (Mukerjee 1965).

Modern social philosophy according to Mukerjee has its impact on the sister discipline, legal philosophy, shaping the ideal of a worldwide juridical moral order. Mukerjee writes:

The state is now discerned as only one among several dominant groups or associations and institutions in a multi-group polity. There are other major institutions besides the state, such as the family, the class, trade union, the church and the political party, each of which has its own appropriate mechanism of social control and its rights guiding and directing individuals. With the waning of the classic ideas of dignity of the state as the paramount institution, the concept of law as the single and complete expression of power to compel has lost its force. Law is only one, albeit the most efficient, organized and pervasive among the various forms of social control. The growth of international feeling and sense of brotherhood of mankind in the 20<sup>th</sup> century

has supported the conceptions of a world-wide international code and charter of human rights and ideals of supra national political organization. The majesty of the sovereignty of the state is found incompatible even with general security, not to speak of its incompatibility with morals and culture (ibid).

The political world of democracies comprises many semiautonomous agricultural, industrial, professional, labour associations and organizations whose “law” and the vocational code contribute to regulate economic and commercial relations through agreement, showing a great vitality and adjustability to new social and economic situations. Such laws according to Mukerjee is sometimes recognized as “private law”, sometimes obtaining the status of “public laws”, thereby limiting the role of “state law” in some measure. It is important to correlate the developments with respect to the relationship of law and the crisis of society and state in terms of Habermas theory.

The tendency of complete free markets to produce monopolies and periodic fluctuations, the state became much more involved in the control of economy. This change according to Habermas from liberal to organized capitalism along with general dynamics of capitalism have one important repercussion that the crisis, that it creates is a crisis for the state rather than economy (Allan 2006). Habermas attributes to law the central role of institutionalizing or normatively anchoring the independent functioning of the steering media of money and power. Habermas maintains a special relation between law and morality. Both moral and legal norms are oriented at ordering social interactions and solving conflicts that may arise in interaction. Whereas moral norms may have great legitimacy and appeal to principles of justice, they miss the coercive force and certainly that comes with legal norms (Deflem 2008).

According to Mukerjee (1960), Gurvitch has introduced a new category of law – “social law” or law of integration –which is not dependent upon the state, but is created by the groups and associations for the realization of distributive justice in a given social structure. Here one gets the feel of the origin and developments of civil society, which in the words of Habermas shall help in creating the public sphere. The examples of social laws which Gurvitch talks about are the supra-functional nation law, international law, the law of the churches and the law of economic society in a regime where economic law constitutes common and not a particularistic law. In modern England and U.S. the peculiar development and supremacy of the common law that is relatively free from the tutelage of the state are also significant.

Modern capitalist organization with its enormous concentration of social and economic power is such that in all democratic countries statute law intervenes to protect the individual where common law cannot do so. Industrial and commercial monopolies and trust, trade unions and professions have all called for delimitation by statutes and regulations of both the area and the manner of exercise of authority and power. Such associations and organizations

obviously play an essential part in modern industrial communities in guiding and regulating the role and statuses of men in their various jobs, vocations and professions, through determining the forms and conditions of labour, capital, contract and reward (Mukerjee 1960).

Modern social philosophy emphasizes that neither rights-liberties nor law can be explained in isolation from the total value system of culture on which the status-privilege-prestige hierarchy rests. Law as a fiat or command is institutionalized. It is not merely political; it has in fact no legitimacy or mandate without institutionalization. Weber's substantive rationality and Habermas's communicative action are very close to the explanation of rights, liberties and law of Mukerjee.

The institutionalization of law and its stability and continuity, which is nothing more and nothing less than the community's deliberate and enduring sanction of the means and ends of laws, depend upon the integration of law with certain broad based goals, values and norms that determine and arrange the formal ordering of organized groups and associations in the community and give the characteristics complexion to a culture. No doubt there are beyond the mere political dimension in every culture that governs the conditions and limits of law and its acceptance and enforcement. New values necessary to build and sustain new morals and laws first obtain the overwhelming acceptance of the intellectuals in a particular society or culture and then claim the acknowledgement of the people and of mankind at large (Mukerjee, 1965).

### III

#### **Evolution of the Legal System and Stages of Development of Legal Order**

The internal evolution of the legal systems of different countries is characterized by, first, by the predominance of generalized legal principles over local rules, customs and usages leading to an increasingly broader juridical order; secondly, the clarification and recognition of certain common basic rights of men as men, and a firm coherent structure of the legal system embodying these. Conscience and culture humanized and universalized, gradually introduce, sustain and further universalism in legal systems and institutions all over the world (Mukerjee, 1965).

There are formulated legal guarantees of fundamental civic, political, economic and social rights. The last to emerge are the rights of mankind into which the economic and social rights are amplified, integrated and assimilated. The rights of mankind stand against the primitive exclusiveness and aggressiveness of states. Universal moral principles and norms come increasingly to be embodied in positive system of law that realizes a rational conception of a law of mankind.

In legal history according to Mukerjee(1965), the development of legal order was marked by the following stages:

- (i) The movement towards freedom from physical privations, suffering and distress, and positively towards fitness and vigour of health, efficiency and continuity.
- (ii) The movement towards freedom from excessive, unwholesome or degrading toil, drudgery and economic exploitation, and positively towards welfare, social security and equal economic opportunity.
- (iii) The movement towards freedom from legal, juridical and social discrimination, and positively social intercourse, equality and fraternity in an open community.
- (iv) The movement towards freedom from political coercion and tyranny, violence and revolution and positively towards freedom of speech, opinion, association and movement, freedom of worship and moral decision.
- (v) The movement towards freedom from war and international insecurity and injustice, and deceit and aggressiveness of nations, and positively towards justice, equality and cooperation among the nations and an open, unlimited ethical-legal community of mankind.

The above scheme of the development of legal order is in consonance with the scheme of different generations of human rights. In this manner he tries to propose a scheme where the legal frame is not limited to a nation, community or an individual but it is international, global and collective.

#### IV

#### **Education and the Role of Values and Ideals in the Formation of Law**

Social philosophy brings to focus the truth that for law making and for integration and reconciliation of human rights and liberties, found in inherent opposition with one another, common meanings, understandings and valuations i.e., organized education in the whole scheme of social control are all important. Education is the best guarantor of human freedom and dignity in all social situations. According to Mukerjee, in the present world crisis it is only systematic education in universal, social and moral ideals that can usher in world –wide law and justice (*ibid*).

The law of mankind can not come from without, but is born in the minds and hearts of man. It has to combat the prevalent forces of nationalism, regionalism, and individualism, so as to structure, order and direct by law the possibilities of mankind as communicating and sharing community. The rule of law for the community of mankind cannot certainly be deduced from the current notions and rules of nation to nation behaviour. The classical individualistic procedures in legal and political philosophy and the conception of law and political science as a theory of power struggle, both within the nation and in external relations, have been unfortunately lop-sided developments connected with the peculiar political and social history of Western Europe with her chronic wars and class struggles during the last two

centuries. These have died hard in the 20<sup>th</sup> century and make the re-education for and formulation of the law of mankind difficult and tardy (ibid).

Modern social philosophy, with its framework based on the dynamic interchange between man-values-and institutions, has hardly contributed towards the retouching and revision of legal history. The latter disavows values as improvised postulations or as arbitrary and fortuitous impositions upon human nature and conduct, even though all the world creating, western social movements of 19<sup>th</sup> century- Liberalism, Socialism and Communism- have introduced valuation into the heart of modern law (Mukerjee, 1950). According to Mukerjee, even the school of sociological jurisprudence, in the hands of Roscoe Pound and Cardozo and others, is still largely tied to Jherings stress of interests and does not pay adequate regard to the role of values and ideals in law making.

The task of good law according to Mukerjee, is less to reconcile conflicting claims and interests between individuals or to safeguard social interests that different groups and social classes understand and interpret differently, and more to clarify and formulate values and ideals that are shaping and insisently claiming to become an integral part of constructive social policy.

In the complex social world of today true justice can hardly be reached on the basis of a careful calculation and compounding of competing and conflicting interests and rights.. It is the moral and social ideal, based as it is on the mutuality of the rights and obligations of individuals and groups in society that truly represents the validity of justice. The dangers of accepting a theory of reconciliation of competing social interests in law making are legal inertia and opportunism on the one hand, and the definition of justice in terms of the interests of the stronger classes or pressure groups on the other. According to Mukerjee (1965), in the Communist manifesto of Marx and Engels this is reflected in the words:

Your jurisprudence is but the will of your class made into law for all, a will whose essential character and direction are determined by the economic conditions of existence of your class.

## V

### **The Ontological Foundation of Natural Law and Moral Law of Mankind**

According to Mukerjee (1965):

in legal philosophy when we consider the human person as the focus of individualistic interest we think of him as atomic and fractional rather than the whole and universal person, who seeks and establishes ever more expansive communion and solidarity, and of his limited and particular rather than unlimited and universal social bonds.

A legal theory of interests leads to a profound tension and contradiction between civil and social and economic rights, and dissociates all rights and freedom from duties and obligations. It also underscores the natural and spontaneous movement of human intellect, feeling and will towards open non-utilitarian values and towards a universal ethical community.

The law according to Mukerjee, if defines, reconciles and crystallizes human interests within the narrow boundaries of the interest-group or class, nation or state, it ceases to be forward oriented, and cannot fashion the more comprehensive community of mankind towards which the modern social and economic order is actually tending. Here Mukerjee is very clear of the universal value and appeal of the law. He is perceiving law not as a normative system but as a system of universal value and acceptance.

According to Mukerjee, a legal order that exaggerates the rights and interests of the individual from utilitarian view-point without an adequate recognition of the universal values and value scale of man not only denies the modern economic and political trend of world unification, but also the central trend of human nature towards transcendence and universalism.

Juristic philosophy according to Mukerjee, is still tied to the classical ideological amalgam of individualism, utilitarianism, and positivism, and to the classical notion of law as authoritatively formulated compounding or reconciliation of interest and conflict of different individuals, classes and pressure groups cannot fulfil the urgent need of the universal legal-moral order, nor achieve for mankind what the legal order in the state has achieved for the state or nation.

The progress in human freedoms and rights according to Mukerjee, is simultaneous with the progress in values and morals and progress in institutional organization within the social life as well as in the development of personality and character of the individual.

The individual in the modern age does seek to order his personality and character not merely to the society, nation and culture to which he belongs, but also to the ethical and spiritual collectively of the mankind. In the enlarged world environment and culture, therein, lie he insists, his true freedom, dignity and vocation. This must be acknowledged by every state or nation through a legal recognition of the rights of mankind over and above the eighteenth and nineteenth century liberties and rights of the individual man (Mukerjee 1965).

Natural law springs from the common essential or ontological structure of being, and hence is the same for all mankind. The true conception of natural law according to Mukerjee is ontologically revealing the goodness, justice and wisdom of being in existential human relations, structures and situations. Its range is as limited as the range of the human community; it is coextensive in its scope with the primordial order of cosmos and the commonwealth of

mankind. Natural law for man, according to Mukerjee, is grounded in the principle of being and its unchangeable structure and the absolute necessities rooted in it, is the moral law of all mankind. The degree of man's moral and social experience through the vicissitudes of history defines the framework and functioning of natural law.

Natural law according to Mukerjee is discovered less by intellect and more by intuition, and is progressively determined and shaped by human wisdom and conscience, interpreting afresh man's goal and values as mankind proceeds. The dynamics of human values in the changing social environment and culture of man involves a constant change in the regulations of his unwritten and un-codified, primordial natural law. Mukerjee also talks about the role of the natural law in the modern age. According to him, natural law can protect the individual citizens of particular state against the latter's authoritarian acts of coercion, violence and regimentation through the possibility of effective legal action under the sovereignty of mankind, but stressed by the intrinsic binding force of its moral content.

In the international context according to Mukerjee, the natural law furnishes the law of mankind, superseding the law of the jungle in all international dealings. It will be the acknowledgement in the international sphere of growing social and economic custom and usage as well as rising moral yearning and aspiration of men and values that demand further, higher regulation.

Modern political society as global political society is developing a new moral conscience and a new social knowledge and experience in the sphere of international relations. An emergent rehabilitated natural law of mankind, true to the ideal order in the very being of all men, demands the protection of small feeble and undeveloped nations against aggression and exploitation by advanced and powerful nations. According to Mukerjee, the law of mankind is but an extension or prolongation of natural law, passing into areas of human relations and actions which are less governed by the simple intrinsic principle of being as such. The rationality of human mind demands definition, precision and protection, wherever human rights and duties are inchoate, contingent, incomplete and imperfect. This creative impulsion leads to the flowering of human customs and unwritten codes into positive human law, imposing itself upon conscience, social habits, values and institutions, and reshaping the social, economic and political organization.

The modern world according to Mukerjee shows a transition between natural law and positive and statute law in the international sphere- a transition which can be abridged by greater mankind-consciousness and mankind feeling, i.e., the guidance of mankind-conscience and the development of appropriate international economic, political and cultural institutions. Thus a world legal-moral order, reflecting the sovereignty of mankind and enforcing



the principles of natural law in the commonwealth of mankind will gradually establish as the reinforcement, extension and universalization of internal political rights and liberties.

The Anglo-American school of jurisprudence is of the opinion that law cannot be the tool of the state, but rather the state should be the tool of natural law which is above and beyond the state. This would demand a dual reorientation in legal conceptions in relations to new political and social values according to Mukerjee (1965):

First, that the concept of society is something greater than, and includes the state; and second, that the concept of the sovereignty of mankind is prior to, and greater than the absolute individual sovereignty of the states.

A rehabilitated modern natural law that roots itself in the common human nature, needs and values, which is a psychological reality, and the common principle of being, dwelling in every man and identified with the immanent common good of mankind-and-cosmos, which is the ontological reality, embodies in this epoch the authentic and complete goal, purpose and wisdom of mankind. Comprehending not merely political life and relationships but the totality of human values, morals and culture –that which is universally human – this world constitutes the firm psychological and ontological foundation of the coming world legal moral order, observes Mukerjee.

According to Mukerjee, this would by no means require as a prerequisite that a particular state should merge in a supernatural political organization, losing its distinctive personality and complexion. In order that a new phase of a universal legal-moral order may emerge, only the notions of reserved or non-justifiable claims of a particular state must not nullify the imperatives of world security, justice and fair deal. There is, to be sure, acute tension today between the concept of “sovereignty” of the existing politically organized societies and common ethos of the emerging world community. The mitigation and correction of such tension between the full sovereign rights of individual states and world peace, goodwill and sharing rests on a new scale of moral values among nations or states, acknowledged, extended and universalized as new political rights and loyalties of mankind.

The issues of world legal order according to Mukerjee are less political and legal and more moral and spiritual. It is the negotiation and joint decision of states, agreeing to govern themselves within legally restricted spheres which alone can enunciate clearly and unequivocally the natural law of mankind, perennially reformulated in structured negotiations and reconciliation through consensus of acceptance of the decision of the majority of states. This would mark according to Mukerjee the final victory of the natural law of mankind over the sovereignty of individual states and nations and the firm establishment of legal-moral world-order.

Legal theory becomes philosophical as it accepts the logic of dialectic according to Mukerjee. Through a scrutiny and analysis of the contradictory assumptions and values of rights and order, and their conditions and full implications in political life and institutions, dialectical legal thinking explains the goal and perfection of law and interprets what the ultimate standard in legal relations is. This is the legal norm of security. Mankind is perennially caught between the contradictory values of rights and order but is unanimous in its striving for security, which indeed is the intrinsic and universal end of law within each state and in the international order. According to Mukerjee, both rights and order demand full legal expression and protection within a wider organization of political thought and action. Human rights according to him need in the modern age to surpass and enlarge beyond the traditional political and civic rights of individuals and groups of democracy and beyond the repertory of new economic and social rights of communism into the most valuable and the most neglected of human freedoms –moral and spiritual status and freedom of the universalized, detribalized and demilitarized man as the citizen of the world, the inhabitant of the expanding universe of love, goodness and sharing. Order has to overstep the boundaries of particular states and fuse with a world legal-moral order that can subject certain aspects of every state's action and policy to enquiry and regulation. A new legal philosophy according to Mukerjee, should provide the background of the emerging political aspirations and moral ideals of this century which will enable such a legal order to maintain itself, and abolish forcible self-redress between nations as the law of the state has abolished wars between kin groups, tribes and classes and self-redress between individuals.

In every sector of life, national and international according to Mukerjee, it is a fresh awareness and acknowledgement of the spiritual dignity and freedom of man, every common man or homo-communis, and the impulsion of love, compassion and sharing which will mark mankind's progress towards the protection, reciprocal co-ordination and extension of rights that define the good and free life of whole and complete men, living in peace, harmony and equality with whole and complete fellowmen anywhere and everywhere on the globe. Above all, the principles of universal hospitality and solidarity constitute the proper foundations for world-wide rights of man.

Both human justice and solidarity are derived from man's essential nature, but equally are these challenge and violated through the epochs by men and peoples. This according to Mukerjee is the basis of the sustenance, enlargement and universalization of human rights that constitutes the claims of all men as men. It is through a governing and guiding natural law of mankind according to Mukerjee, that human peace, justice and solidarity- the public claims of mankind – can become real. Only mankind's fresh valuation, enlarged understanding and heightened moral sense of universal justice, equality and solidarity can result in the overwhelming support and practical implementation

of the ideal declaration of human rights recently agreed to by the United Nations.

Behind the world-wide human rights stand human reason and faith in their practical application to social relations and structure. Reason and faith have their ultimate use in the legal-political context, not merely in providing the foundation of the common basic rights of man as man in “natural law”, but also in enlarging human communication for the establishment of world community co-existence with the range of “natural law”(Mukerjee, 1965). The rights of man according to Mukerjee cross the boundaries not only of space but also of time.

## VI

There are at least four theories that are prominent in the globalization of law literature. First are two competing theories that focus on globalization primarily as an economic reality. In this camp belongs the famous sociological perspective of world system theory that is associated with the work of Immanuel Wallerstein. The theory primarily focused on the worldwide diffusion of the capitalist market from the core of the world society to its periphery, this perspective attributes relatively little attention to law because, in line with general Marxist orientation, it assumes that global law is not sufficiently institutionalized to play a significant role in the mechanisms that drive the world system. Contrasting with this perspective is an approach of law and economic development that, in the wake of the fall of communism in Eastern Europe, emphasizes the role played by private actors in building a new global order by reliance on law as an instrument of change, specifically in the form of deregulation. The logic behind this theory is that laws of economic liberation and stimulation produce economic growth across nations. The law and economic development perspective relies on a Weberian approach to bring out the central role played by law in shaping global economic processes (Deflem 2008).

A second set of theories on globalization and law, which is likewise divided between a conflict-theoretical and a consensually oriented perspective, focuses on globalization primarily in cultural terms. First, post colonial theories conceive of the globalization of law in terms of a hegemonic spread of the rule of law that reproduces a juxtaposition between the civilized and uncivilized world. The universality and transferability of modern systems (West) of law are argued to rest on claims of a global modernization discourse that continues to give premium to western notions of law despite the creation of new demarcations lines such as between (the rich and civilized) North and (the poor and as yet uncivilized) South. Second, a contrasting cultural perspective is offered by world polity theorists who argue that the evolution of modern legal systems across the world is characterised by a strong convergence that indicates the formation of a world polity. The schemas of the world polity include conceptions of sovereignty and universalistic principles that are

transmitted into different legal systems through the activities of international governmental and non-governmental organizations oriented at enforcing compliance with global normative standards (*ibid*).

Mukerjee takes the cultural perspective of the world polity theorists and his hope rests on the Universal Charter of Human Rights which has emerged as a universal structure of human relations and values, irrespective of social institutions, cultural patterns and historical circumstances.

A new legal-moral order of mankind cannot be resisted for long by the prejudice of race or colour, political prestige, distrust of strange historical systems or unfamiliarity with novel traditions and values. The enlarging economic, political and cultural independence and cooperation among the nations and their increasingly potent moral feeling and conscience are mankind's rejoinders to the dissemination of atomic technology in the world. These represent both the broad trend of human evolution and adjustment to the crisis or sheer survival of the race (Mukerjee 1965).

The achievement of balance and harmony between the sovereignty of single states and the sovereignty of demilitarized, cooperative mankind through political arrangement and a common binding ethos, the acknowledgement and exercise of world-wide human rights grounded in the very being of all existing men and the establishment of a universal legal-moral order, supported by a world police force and a court of justice for maintaining peace, justice and equality, are inseparable link with one another. These are the most urgent tasks according to Mukerjee of twentieth century politics and law and these becomes very relevant in the present day context of the twenty-first century globalized world.

To conclude:

The commonwealth of mankind can only be established by nothing short of a moral revolution. While science, technology and industry have unified mankind and made world-government indispensable in the atomic age, human wisdom and compassion can alone create new human understanding and conscience so as to elicit mankind-sentiment and mankind-co-operation. The new age of mankind will require new moral insight, control and renunciation-a profound all pervasive change in the structures of human morality and social sentiment. The establishment of a global society is only possible when men , belonging to different races and continents, can freely accept certain common privations and sacrifices out of love for the common dedication and the common weal, freedom and righteousness (*ibid*).

The common law for the mankind will be helpful in achieving the commonwealth of mankind.

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