

**Anthropology : Towards a Thoroughgoing approach to Law.**

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**1. Introduction.**

I am not good in constructing parables, but let me try one. Here are two friends sitting on two sides of the table. There is a small (artificial) tree on the table on which the light is falling from the above in such a way that the colour of the tree looks different on either side. One of the friends says, “The tree lies west to me and is of light green colour”. The other says “no the tree lies east to me and is of light black colour”. Evidently both of them are correct. But they have different standpoints with respect to the tree and define and describe the position and colour of the tree from their point of views. The point of view of both of them are determined by their standpoints and if they refuse to budge from their position to verify the statement of the other, they may keep on arguing over it incessantly without reaching a consensus or knowing truth from others point of view.

I attempt to argue in this paper that the understanding of law in the western perspective has often been one sided like our mythical tree which does not present a balanced picture of law in all its dimensions. If only the others viewpoint could be taken into consideration, a more healthy understanding of law may be obtained. For this purpose I shall present certain examples from the point of view of Indian legal system, the only system, which I am reasonably familiar with and then summarise my reflections on anthropological and pluralistic approach to law with dialogical and diatopical methods. But before that let me explain the way I understand anthropological approach and dialogical and diatopical methods with its emphasis on alterity and complexity.

**2. Anthropological Approach and Dialogical and Diatopical methods.**

Oxford Dictionary defines the word “Anthropology” as the study of mankind especially of its society and customs. When this approach i.e. anthropological approach is associated with law and legal, the emphasis of such an academic discipline centres around the studies of the institutions that govern and regulate the behaviour of human individual in social setting. According to Norbert Rouland, “Legal anthropology sets itself the task of studying the discourse, practices, values and beliefs which all societies consider essential to their operation and reproduction”<sup>1</sup> Legal Anthropology in a way concentrates on legal behaviour as experienced by human societies in all their diversities and attempt an explanation of how a cross cultural approach can inform us about the very idea of law. The term can better be understood if we juxtapose it with expression of similar kind like ethnography and ethnology. Legal ethnography is concerned with the collections and description of evidence of a legal character in three areas of discourse, behaviour, value system and beliefs within a given society. Legal Anthropology is concerned with the inter-relations between these three areas and their combined effect on the general operation of the society in question. Legal

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<sup>1</sup> Norbert Rouland, *Legal Anthropology*, 1994, Athlone press, London.

Anthropology, finally, attempts to achieve general classification of human society in the field of law by comparing the legal system of all the societies, which can be observed.<sup>2</sup>

Even at the cost of trite, it must be noted that legal anthropology has its origin in social anthropology and sometimes is confused with sociology of law as well. In common with social anthropology, legal anthropology sets itself the task of understanding the rules of behaviour, but emphasises the legal domain, all the while recognising that law can never be considered in isolation. Peculiar it may appear, but sociology of law is a discipline which have come to be associated with the study of Industrialised western societies and legal anthropology of that non-industrialised third world countries.

As is seen above, legal anthropology concerns itself to understand and construct the legal behaviour of the other, the non-western societies. This necessarily involves a dialogue. The problem with this dialogue is that it seeks to construct reality of the other from the standpoints of the observer. It relies on what we call the dialectical dialogue. Raimon Pannikkar defines this kind of dialogue, “the dialectical dialogue is a dialogue about objects which interestingly enough, the English language calls subject matters; The dialogical dialogue on the other hand is a dialogue among subjects aiming at being a dialogue about subjects; They want to dialogue not about something but about themselves. They dialogue themselves. A dialogical dialogue is not so much about opinions..... As about those who have such opinions and eventually not about you but about me to you.”<sup>3</sup>

To dialogue about opinions, doctrines, views, the dialectical dialogue is indispensable. In the dialogical dialogue the partner is not an object but a subject, merely putting forth some objective thoughts to be discussed, but a you, real you and not it. I must deal with you and not merely with your thought. And of course vice versa, you yourself are a source of understanding.<sup>4</sup>

This kind of a dialogue is thus not the construction of the other but a kind of mutual construction. Engaging in dialogical dialogue is reflecting upon our universalism, upon way to reach universality; it involves leaving behind strictly dialectical dialogue which develop in pure field of logic and reasons and which can be evaluated by its logical coherence. To take a step towards dialogical dialogue is to understand the other from his perspective and go as far as to reach the underlying myth of the discourse. “Dialogue is fundamentally opening myself to another so that he might speak and reveal my myth that I cannot know by myself, because it is transparent to me self evident..... dialogue seeks truth by trusting the other just as dialectics pursues truth by trusting the order of things, the value of reason and weighty arguments..... Dialogue does not seek to be merely a duologue, a duet of two logoi which could still be dialectical but a dia-logos, a piercing of the logos to attain a truth that transcend it. We call this dialogical dialogue”.<sup>5</sup>

Diatopical method would mean to engage in dialogical dialogue leaving behind the monotopical approach, i.e. to go beyond one’s own topos and to understand the topos of the other. Intercultural dialogue cannot limit itself to the journey through one’s own discourse. It must give a fair picture of all different cultural discourses. Thus the core question of the

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<sup>2</sup> Ibid.

<sup>3</sup> As quoted in Eberhard Christoph, *Our Common Humanities, the Grounding for a dialogical and Intercultural human rights ideal*. 1997.

<sup>4</sup> Eberhard, *supra* f.n. 3.

<sup>5</sup> Raimon Pannikkar, *supra* f.n. 3.

diatopical method is how to understand from the topos of one culture, the constructs of another. Diatopical approach invites us to make our journey through the different cultural discourses, through the different cultural sites from where they emerge.

### **3. Alterity and Complexity.**

As is seen from the above, Legal Anthropology looks at legal phenomenon, as experienced by human societies in all their diversities and attempts an explanation of how the cross cultural approach can inform us about the very idea of law. This kind of an approach of looking at law is termed as Pluralistic approach. The underlying idea behind this approach is the legal relativism. It emphasises on the relativity of state law and acknowledges the existence of other regulatory orders. In this approach state law does not appear as an all powerful absolute tool for social engineering, abstracted from socio-cultural conditions, in which it is supposed to apply. It rather involves a shift towards an “additive logic where law is understood as the complex interplay of a number of specific elements which can not be reduced one to the other and where none is superior to others, but who in their complementary relations, make up the legal.”<sup>6</sup> Thus alterity of law in anthropological approach essentially involves a complexity. Michel Alliot, sums up the idea by a metaphor. “Thinking God is thinking Law”. Here the God is understood as a metaphor for the ultimate causality principle which we see as organising the world we live in. thus in order to understand the Law, we must locate the world, the universe, in which it originates. These universes are not only the visible universes in which men live, made up by different materials, geographical, economical etc, but are primarily the invisible universe in which men make sense out of their daily experience. The visible can only be understood with reference to the invisible not only as a whole but also in its particular manifestations. In this sense different cultures can be understood in different human universes. Every group of human beings makes fundamentally different choices about their lives and the way of organising them in the form of a community. As such to understand the legal universe of the other is to become aware of the originality of the socio-legal process and logics of different cultures and acknowledging their different legal visions, horizons, universes and their underlying myths, which are primordial.

### **4. Dominant (Modern) Image of Law.**

The position of law, or at least the dominant understanding of it in western world is more or less the same as is of our mythical tree, i.e. one sided. The way law is taught in law schools and universities, practiced in courts, the dominant image of law in cognate terms remains is that of a Black letter Law, the approach of formalism or legal positivism wherein the legal rules and reports of cases are taken as the universe. The approach remains predominant in legal education and legal research and it tends to render law as distinct, unified and internally coherent. Legal centralism i.e. notion that lawyers, court and prisons are the only form of ordering, that law and ordering takes place in court houses and law offices and that the law owes its existence to the state system, the politically superior sovereign, continues to rule the roost. The Law in the broad sense of the whole legal system with its institutions, rules, procedures, remedies, is society’s attempt through state to control human behaviour and prevent anarchy, violence, oppression, and injustice by providing and enforcing orderly, rational, fair and workable alternative to the indiscriminate use of force by individuals or groups in advancing or protecting their interests and resolving their controversies. This logic

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<sup>6</sup> Eberhard Christoph, 'Human Rights and Intercultural Dialogue. An Anthropological Perspective', Indian Socio-Legal Journal, Vol. XXVIII, Nos. 182, 2002, p.99-120

puts legal institutions and the state at the core of all social discipline.<sup>7</sup> An active Hobbesian war of every man against every man, turning life into solitary, brutish, nasty and short, is hinted at darkly as the violent alternative.

At least in theory the sovereign power, the ultimate legal authority in a polity can legislate on any matter and can exercise control over any behaviour within the state. Indeed in a highly centralised political system, with advanced technology and communication apparatus, it is taken for granted that legal innovation can effect social change.<sup>8</sup> Roscoe Pound perceived the law as a tool for social engineering. Underlying this view is the assumption that social processes are susceptible to conscious human control and the instrument by means of which this control is to be achieved is law. In such a formulation law is a short term measure for a very complex aggregation of principles, norms ideas, rules, practices and agencies of legislation, administration, adjudication and enforcement, backed by political power and legitimacy. The complex law thus condensed into one term is abstracted from the social context in which it exists and is spoken of as if it were an entity capable of controlling that context. Pospisil(1971:275)<sup>9</sup> remarks that “the law of western society traditionally is analysed as an autonomous logically consistent legal system in which the various rules are derived from more abstract norms. These norms are arranged in a sort of pyramid derived from a basic norm or sovereign will, such an analysis presents a legal system as a logically consistent whole, devoid of internal contradictions whose individual norms gain validity from their logical relationship to the more abstract legal principles implied ultimately in the sovereign’s will and in a basic norm.

It may be noted in this context, that the period of enlightenment helped Europe to consolidate the gains and Industrial development to widen its colonial net. “With the creation of modern European identity in enlightenment”, as Peter Fitzpatrick puts it, “the world was reduced to European terms and those terms were equated with universality. With its expansive claim to exclusive rationality, with its arrogation of a universal and uniform knowledge of the world and with its affirmation of universal freedom and equality the enlightenment sets a fateful dimension.” Law became the symbol of civility and all those excluded from the domain of knowing, reason, equality and freedom were rendered as qualitatively different. Negation of what now came to be known as European virtues was a sufficient description of man in his natural anarchy renders these races fit for civilised subjection, including the determining order of positive law. This became the standard. Negroes are conceived of in negation “void of genius, neither inventive, nor imitative, they are irrational without foresight.... They seem unable to combine ideas or pursue a chain of reasoning. They have no mode of forming calculations or of recording events to posterity....No rules of civil polity exist among them, they are inhuman at one with animals or even below brutes.... The savage does not know its meaning nor can it endow its purposes with words that made them known. Negroes are lazy deceitful, thievish, addicted to all kinds of lust.... Devoted to all kinds of superstitions. (Long-1774)<sup>10</sup>

European on the other hand is the active representation of the ethereal and pervasive air within which all circumstances exist, like glimpses of God, Europeans are occasionally discerned in their work in contrast to savage incapacities as surely no other than the result of

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<sup>7</sup> Sally Falk Moore, *Law as a process: An Anthropological approach*, 1993, Routledge and Kegan Paul, London.

<sup>8</sup> Ibid.

<sup>9</sup> As quote in Norbert Rouland, (1994) *supra* f.n. 1.

<sup>10</sup> As quoted in Peter Fitzpatrick, *The mythology of Modern Law*, 1992, Routledge, London.

innate vigour and energy of the mind inquisitive, inventive and hurrying on with divine enthusiasm to new attainments. (Long-1774)<sup>11</sup>

The Law, hallmark of the civilised, constructed in the negative image of the other became the cutting edge of colonialism. Every race or state as such was narrated from the standard of law and regulations. Americans was regulated by custom, Europeans by law, Asians by opinions and Africans by caprice. (Hogden-1964)

Talking about India, Fitz James Stephen said, “our law is in fact the sum and substance of what we have to teach them. It is so to speak the gospel of the English and it is a compulsory gospel, which admits of no dissent and no disobedience. (Stokes:1959- 302)<sup>12</sup> Even liberals like John Stuart Mill would agree that “despotism is a legitimate mode of government in dealing with barbarians provided the end to be their improvement” (Mill- 1862) The language of command, the instrument of law and immense and indefinite influence which the utilitarians allowed to the power of law and government were to introduce the essential part of European civilisation.

It was in the application of this principles that the Europeans created the native and native law and custom against which its own identity continued to be created. The small, static, kin based group bound by barely explicit almost instinctual and indolent custom, was created both a fantastic inversion of European identity and by colonial regulation. (Fitzpatrick- (1984) Great civilisations were adjudged, stagnant and fundamentally limited by village community, which restrained the human mind within the smallest possible compass, making it the unresisting tool of superstition, enslaving it beneath traditional rules depriving it of all grandeur and historical energies. Thus Peter Fitzpatrick concludes, that “ in the infinite arrogance of modernity myth is made to correspond with static and closed in meaning and social ordering while modernity is equated with progress and a fecund openness.

## **5. Anthropological and Pluralistic image of Law.**

Legal Anthropology sets itself the task of studying and understanding the law and society in its operative matrix. Without going into the history of the development of legal anthropology as a discipline, from Montesquieu to Bachafen, to Maine and Malinowski, it would be suffice to present the way modern Legal Anthropology looks at law and legal process. As has been seen above the subject matter of legal anthropology has been conditioned by the way western observers have viewed societies different from their own. Coming to terms with this problem involves developing an understanding of the outside world based on an objective view of reality, which may or may not be internally coherent. It has taken quite a bit of time to legal anthropologists to develop a balanced viewpoint about these complex realities. This viewpoint emphasises on pluralistic nature of law. It does not equate Law with laws (Droit = Loi) but treats the state law as only one of the species of law.<sup>13</sup>

Legal pluralism is a situation wherein two or more legal systems co-exist in the same social field. According to Pospisil, “Every functioning subgroup in a society has its own legal system which is necessarily different in some respects from those of other subgroups, such as family hierarchy ranked and essentially similar in rules and procedure.” Legal pluralism, rather the conception of different legal species superimposed, interpenetrated and mixed in

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<sup>11</sup> Ibid.

<sup>12</sup> As quoted in Peter Fitzpatrick, *supra*, f.n. 10.

<sup>13</sup> Norbert Rouland, *op.cit*.f.n.1.

our minds as much as in our actions ..... Our legal life is constituted by an intersection of different legal orders i.e. by inter-legality. Inter-legality is the phenomenological counterpart of legal pluralism.<sup>14</sup>

Legal pluralism sees no reason why law should be associated with state system or be considered as co-terminus to it. Ordinary experience indicates that law and legal institutions with their whole panoply of courts and law enforcement agencies can only affect a degree of intentional control of society, greater at sometime less at others. That limited degree of control and predictability is daily inflated in the folk models of lawyers and politicians all over the world. The social reality is a peculiar mix with rules and other actions that is choice making, discretionary, manipulative, sometimes inconsistent sometimes conflictual. Much legislation today either does not achieve what it purports or sets out to do or when it does achieve specified goals, it also spins of many side effects that were not anticipated. Conventional failures or unexpected side effects tend to attribute particular instances to inadequate information or bad judgement or political deception. That is as it may be in particular cases. But it is possible that there are also deeper causes of transformation that operate pervasively even under the best conditions of information, expertise and relative political honesty.<sup>15</sup>

It may be noted that legal pluralism stems from sociological pluralism, and no society is completely homogenous. Even segmentary societies in a sense are divided. According to J Griffith, individual social fields are not uniformly governed by a single system of law. Several kinds of laws are normally found to be in operation. Legal pluralism as such consists in the multiplicity of forms of law present within any social field. It might appear rather curious as to how under these conditions a unitary legal myth took root in societies, with most divisions. Norbert Rouland believes that precisely because the state needs to extend its influence over deeply heterogeneous societies, the state needs to deny the existence of these divisions and perpetuate the myth of unity. This is an imperative which does not exist to the same extent in traditional societies which are also plural and where political authority is less differentiated than in modern societies and has less sweeping political ambitions.

Sally Falk Moore, talks about semi-autonomous social field instead of subgroups, (Pospisil). A semi-autonomous social field is defined and its limits identified not by its type of organisation but a character of a processual type residing in the fact that it gives birth to norms and by constraints or incentives ensures their application. The space within which a certain number of corporate groups are in relation one to another constitutes a semi-autonomous social field. A large number of fields of this type may be connected one to another in such a way that they form complex chains, in the same way as the network of social relations which link individual may be compared to chains which have no ends. The interdependent connection of a large number of semi-autonomous social fields constitute one of the fundamental characteristics of complex societies.

J.Griffith<sup>16</sup> talks about of two kinds of legal pluralism. Pluralism tolerated by the state and pluralism, which escapes the control of the state. The later kind of pluralism, according to Griffith is authentic pluralism. It is the sworn enemy of the unitary ambitions of the state and the state seeks either to eliminate the pluralism by prescribing certain practices or to regulate it by recognising certain manifestations of pluralism by enacting statutes for minorities etc.

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<sup>14</sup> Sally Engle Marry, Legal Pluralism, Law and society review, 22; No 5.

<sup>15</sup> Sally Falk Moore, supra f.n. 7.

<sup>16</sup> As quoted in Norbert Rouland, supra f.n. 1.

This kind of pluralism is merely eyewash or a façade and serves the interests of unitary and centralising polity.

Once the plurality of legal system is established it becomes possible to look at the legal phenomenon without the presence of an archaic state system with all its institutional panoply. As Griffith puts it, Law does not in the nature of things enjoy any particular relationship with the state and does not need the state to function. The concept of universalism and thereby looking the other from the so-called universalistic viewpoint requires a thoroughgoing rethinking. And this rethinking on the part of legal scholars have proved it beyond doubt that traditional and modern societies are not as far apart as were originally thought out. Norbert Rouland, after studying the kinship, landholdings and contractual relations concludes that “In spite of evolutionist prejudices, there is no radical distinction between law in modern societies and traditional societies. Human kind has from its origins shown such a capacity for invention that it would be illusory to believe that modern societies are more evolved than traditional societies. In the field of law many traditional societies have not only found solutions, which are original when compared to our own, but, in addition already know what we claimed to have invented. Law judgement, punishment, the married couple contracts and so on.<sup>17</sup> The richness of their experience forces us to rethink our notion of unilinear direction in history.

For the purpose of understanding this pluralist character of law, Etienne Le Roy talks about multi-legalism, that permits to open up the western view of law, based on the perception of law as norms and as general impersonal rules, to a more pluralist approach to legal phenomenon. To illustrate the multi-legalist approach to law, Etienne Le Roy, develops the concept of Legal tripod, the three feet of law, or the foundations of law. These three feet of law consists of general, impersonal Rules (state law), Customs, and Habitus (system of lasting dispositions). These three feet of law are valorised by different societies in different manners. For example western system would put the three feet in the priority order of , Rules, Customs and Habitus, the Animist tradition of Africa would put them in the priority order of Custom, Habitus, and Rules and so on. Similarly, different societies valorise different conceptions of Individual and social order depending on their different cosmo-visions. To understand this dynamic complex whole in their own setting multi-legal approach can be of great help. It may help a western observer to move away from his own anthropo-centric vision and engage in a dynamic processual anthropology, wherein the questions on rule of law or human rights can take a different turn, when it is not man, but the cosmic or divine that play the central structuring principle of world view. This may also help in overall understanding of the working of legal phenomenon in the western world itself.

In this process the dialogical dialogue and diatopical methods as discussed above can really help an outside observer in better studying and understanding the other. Dialogical dialogue is a constant rediscovery of the other and a constant re-invention of our common future. It is not to be reduced to a means of finding knowledge which could then be institutionalised. It can contribute to a certain kind of institutionalisation but not a closed system, rather of an open dynamic system..... dialogue is in that perspective deeply embedded in the paradigm of community. Community is additive structuring principle which can sustain the never ending process of invention, re-invention, production and reproduction of our human society or rather community.(Eberhard-1997)

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<sup>17</sup> Peter Fitzpatrick, supra f.n. 10.

Legal anthropology does not pretend to develop some kind of a rigorous science of perfect understanding of human and social processes, nor does it claim to provide the final truth of legal processes. Indeed the discursive way of studies is its greatest strength and as PB Shelley put it, “to travel hopefully is better than to arrive”, legal anthropology believes in hopefully travelling towards a better understanding of human society in all its complexities. And finally to quote M. Alliot, “far from confusing rigour with science, exactitude with truth, legal anthropology is in fact a more thoroughgoing approach to law”.

## **6. Understanding Indian Paradigm**

India is a huge country, with still more huge problems. Indeed it is microcosm of the world. A thousand million population, spread over 3.28 million sq. kms of landmass with every imaginable kind of a weather pattern from minus 40 degree Celsius in greater Himalayan region to 50 degree Celsius temperature in the deserts of Rajasthan and temperate weather of coastal regions. 18 official languages written in 15 different scripts, around 2000 dialects, 16 well-demarcated agro-climatic zones and almost all religions of the world well and adequately represented. The variety of India is mind boggling and all this has a bearing on India's liberal and secular, republican politico-legal system. India has a hoary past and a very vibrant continuous culture of more than 5000 years recorded history.

It must however be noted in this context that India in all its complexities is not a paragon of virtues alone. It has negative aspects too, to its credit. And they are plenty in number, caste system, widow burning, child marriages, dowry system and low status of women, to just mention a few. All these social evils have not only retarded the growth of the country, but have also given rise to many reform movements from within the system. Shuddhi movement of Swami Dayanand Saraswati, Prarthana Samaj, Brihma Samaj reform movements of Raja Rammohan Roy, who saw a close link between social and political progress and perceived improvement in social conditions as essential for improvement in political conditions. The problem with some of these movements was that they too shared the illusion of controlling the social process by way of state mechanism i.e. by legislation. They too wanted to use the instrument of law as a means of social engineering. British colonial administration had only economic interests in the country and did not want to meddle in the internal (social) affairs of the system. However under the pressure of some liberals some of social reform legislations, like, Sati prohibition, widow remarriage etc were initiated in the early 19<sup>th</sup> century.

Bal Gangadhar Tilak, popularly known as Lokmanya, on the other hand was conscious of the fact that social reforms if thrust from outside would be of no avail. And as such though he shared the enthuse of social reforms for abolition of many social evils, but wanted those reforms to come from within. He therefore made a mission of his life to rouse the people from slumber and awaken them to the past glory of India. Unfortunately, however, by the time India came to have independence and move on the path of republicanism, Tilak, and his political successor and disciple, Mahatma Gandhi, (who played decisive role in freedom movement) have both passed away from the scene. And the tradition of seeking social reform by way of legislation continued. Dowry Prohibition Act 1961 and Child Marriage Prohibition Act 1960, Civil Rights Act 1956 (making untouchability an offence), and Sati Abolition Act 1987, were some of the more important legislation to join statute books in the post independence period in India. But what is the outcome ? Untouchability is far from abolished, dowry has turned into a status symbol, child marriages are performed with impunity in the full knowledge of the administration and Roop Kanwar, (sati incident- 1987 in the state of Rajasthan) story is not a matter of too distant past.



Let us take another example from the records of Govt of India. In 1999 Bajpayee Government appointed HD Shourie commission to look into the redundant laws in the statute books, so that they could be removed/deleted from the record. In the first report of the commission, which was published in 2000, Mr Shourie recommended 1300 laws for deletion from the statute books, as they were never used or referred to by the courts in India during last 50 years. Nothing amazing. Enacted Laws, because they are the product of some historical reasons, have the tendency of becoming redundant when the reasons for their enactment exists no more. What was amazing, was the data published in the record with certain observations of Mr Shourie, appended to it. According to this data, there were more than 8000 laws standing in the statute books running into volumes and volumes. Out of these 8000 laws the full or partial implementation ratio was estimated to be just over 6 percent. This amounts to saying that a very negligible amount of laws are touched if at all for implementation. Majority of laws are never looked into or are respected in their violation. This should open up the eyes of those who are responsible for legislative policy decisions in India as to the controllability of social arena by conscious legislative policy formulation.

What I want to argue by way of the above brief account of gap in the laws and their implementation is that the capability of law to control behaviour is highly circumscribed. Law as an instrument of social reform (as it has been treated during mast 200 years or so) has a limited utility if al all. I believe that it is the social system, which is the Engine of legal growth and not vice versa, ( AP Singh :2001).<sup>18</sup> And therefore, to put it in the words of Sally Falk Moore, “The central concern of any rule maker should be the identification of those social processes which operate outside the rules or which cause people to use rules, or abandon them, bend them, re-interpret them, side step them or replace them. To recognise that such processes are inescapable aspects of use of rule system and to try to understand as much as possible about the conditions of their operation would probably be far more effective than taking the view that such activities might be fully controlled simply by tighter drafting and loophole less legislation.”<sup>19</sup>

It is in this context that the anthropological approach and its dialogical and diatopical methods can be very helpful for the legislative policy formulators lawyers, and academicians in India.

## **7. Reflections on Anthropological approach.**

I think, the stage is set for answering the question as to how the anthropological approach, with its dialogical dialogue and diatopical methods enrich ones reflections on law and how the alterity and complexity are linked. Though these question has cropped up every now and then in the discussion above, however I attempt to summarise those reflections here. First of all the Anthropological approach to law with its focus on pluralism moves the focus away from the ideology of legal centralism “the predisposition to think of all legal ordering as rooted in state law. It suggests attention to other forms of ordering and their interactions with state law.”<sup>20</sup> It highlights competing, contesting and sometimes contradictory orders outside state law, and their mutually constitutive relations to state law.

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<sup>18</sup> Politico-Legal Reforms for 21st Century India : Vision and Reality, Indian Socio-Legal Journal, Dec 2001

<sup>19</sup> Law as a process: An anthropological approach 1993 supra f.n. 7.

<sup>20</sup> Sally Engle Merry, Legal Pluralism, in Peter Sack’s Law And Anthropology, the international library on essays in law and legal theory.

Secondly, this perspective entails a shift away from an essentialist definition of law to an historical understanding since any situation of legal pluralism develops over time through the dialectics between legal system each of which both constitutes and reconstitutes the other in some way. Defining the essence of law, or custom is less valuable than situating these concepts in particular sets of relations. Between particular legal orders in particular historical contexts.<sup>21</sup> Thirdly looking at law from anthropological and plural perspective leads to an examination of cultural or ideological nature of law and systems of normative ordering. Rather than focussing on particular rules applied in situations of dispute, this perspective examines the ways social groups conceive ordering of social relationships and of ways of determining truth and justice. Law is simply not a set of rules exercising coercive power, but a system of thought. Sally Falk Moore put it beautifully, “A rule focussed compliance/deviance approach reduces the colourful hurly burly of social life and dynamic logic to so arid a pair of pre-selected and pre-interpreted obedience categories that understanding of what is going on, on the ground may be blocked.”<sup>22</sup>

Fourthly a focus on legality from anthropological and plural perspective facilitates the move away from an exclusive focus on situations of dispute to an analysis of ordering in non-dispute situations. According to Holleman, the dispute situations are exceptional events and therefore misleading guides to the nature of ordering. Study of facilitative law and historical studies of legal change enlighten the dark corners of law which have never been emphasised on but which represents the rainbow situations of social ordering.<sup>23</sup> Study of facilitative law and historical studies of legal change enlighten the dark corners of law which have never been emphasised on, but which represents the rainbow situations of social ordering.

Fifthly, the recognition of alterity and pluralism, may form a basis for any intercultural approach to law and human rights. But, as Rober Vachon puts it, this pluralistic or intercultural approach cannot be reduced to an intercultural legal theory. This study of legal pluralism goes beyond mere multi-perspectivism. It aims at understanding the construction of legal reality in a different legal universe of different people which give meaning to their lives. Indeed it aims at the very mythos of the people, which underlies the conception of their specific legal universe. It is essentially an attitude of openness towards others, and a method which emphasises that partners in the dialogue are not reduced into mere objects.

Last but not the least an anthropological approach and pluralistic analysis of legal orders leads to the analysis among normative orders and provides a framework for understanding the dynamics of the imposition of law and of resistance to law for examining the interactive relationship between dominant and subordinate groups or classes. This feature of anthropological approach is of special significance to Indian situation,(as discussed above) as it offers a way of thinking about the possibilities of domination through law and the limits of domination pointing to the ways in which individuals can and do resist. In this sense attention to law in its ideological or instrumental value (such as customary laws in India) examines limits of the ideological power of the state law. There is much in this discipline of law and legal research that can serve as the basis for exciting new directions in law and society research.

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<sup>21</sup> Ibid.

<sup>22</sup> Sally Falk Moore, *supra*, f.n. 7.

<sup>23</sup> Sally Engle Merry, *supra*, f.n. 20.

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