

Law and Society

Tanu Kapoor

Abstract: 1. Understand the importance of Law as an instrument of social change. 2. We will come to know that Law as the product of traditions and Culture. 3. We will study about the introduction of common law system and Institutions in India and its impact on further development of law and legal institutions in India.

Keywords: Law, Society, Change, Thinking

1. Introduction

Law and Social Change in Society

1.1 Different definitions of law:

Historically, the concept of law changed consistently. For instance, in the ancient time of the early Christianity, the law was a set of rules established by God and revealed in the Old Testament. Therefore, the law was associated with divine rules and norms. Later law became closer to humans and the emphasis shift from the God to law-makers, who created rules and norms according to which the society lived. Today, the law is the system of rules which a particular country or community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties.

1.2 Social and dysfunctions of law:

The law performs the function of the regulation of social relations and setting common rules which are acceptable for the community or society at large. Therefore, people accept the law to maintain the social order and to live according to the rules set by the law. On the other hand, often the law fails to perform its functions properly and dysfunctions of law occur. When rules set by the law are not observed, the dysfunction occurs. For instance, if an individual is sentenced to death, he/she is supposed to be executed according to the law. However, the execution of the individual may be postponed because of the ongoing debate concerning the ban of the capital punishment. As a result, the law dysfunction occurs.

1.3 Law and social control, social change and inequality:

The law plays an important part as the tool of the social control because the violation of the law implies the punishment for offenders. At the same time, the law changes respectively to social changes to meet needs of the society. However, the law fails to prevent social inequality. Instead, the law just sets the rules and people should obey them, regardless of their social status.

1.4 Personal view:

Historically, the law was and still is a dynamic system of rules and norms which are supposed to meet interests and needs of the society. However, the real life is quite different from the ideal view on the law as a sort of social contract which prevents all conflicts within the society. In

stark contrast often the law is the tool of setting control of the ruling minority over the oppressed majority. Even today, the ruling elite attempts to hold a strict control and elaborate laws which meet the interests of the few who are in power, while interests of the majority and average citizens are often neglected. Hence, one of the main paradox and dysfunctions of the contemporary law in the US emerges. On the one hand, the law guarantees the equality of all people in face of the law and provision of equal rights and liberties for all people. On the other hand, the inequality persists and the equality of rights and liberties does not always mean the equality of opportunities. Instead, the socioeconomic inequality often defines the social standing, while the law serves to the interests of the economic elite that holds control over policy-making and legislative work. As a result, legislators serve to interests of the rich, while other citizens are of the little importance for them. This trend could be traced in the past, for instance, during the Great Depression, when anti-union and anti-strike laws were implemented. This trend can be traced now, taking into consideration the government support of large corporations in the time of the economic recession when thousands and millions of Americans have lost their jobs and have got no means for living.

2. Objectives of Research

1. Understand the importance of Law as an instrument of social change.
2. We will come to know that Law as the product of traditions and Culture.
3. We will study about the introduction of common law system and Institutions in India and its impact on further development of law and legal institutions in India.

3. The Role of Law in Social Change

We find ourselves living in a period of social stress in which increasing demands for major reform have been made on our political institutions, especially as they affect the governance of our urban areas. It is against this background that I want to concentrate on the role of the law in social change, and especially on the role that courts can play in this effort. As lawyers, we are more comfortable in our traditional adversary role than in any other, and so we have looked in large measure to the courts as the appropriate forum in which to make our plea for social reconstruction. I will argue, however, that the role that courts can play in major social reform is limited and that we should not expect too much from the judicial

process. Effective judicial intervention in social controversy requires a consensus on the goals and objectives of social change, at a time in history when it is our failure as a society to agree on the goals and objectives of social change that is one of the principal causes of social unrest.

For decades now law and society theorists have been preoccupied with attempts to explain the relationship between legal and social change in the context of development of legal institutions.

They viewed the law both as an independent and dependent and variable (cause and effect) in society and emphasized the interdependence of the law with other social systems. In its most concrete sense, social change means large numbers of people are engaging in group activities and relationship that are different from those in which they or their parents engaged in previously. Thus, social change means modifications in the way people work. Rear a family, educate their children, govern them, and seek ultimate meaning in life. In addition to law and social change there are many other mechanisms of change, such as technology, ideology, competition, conflict, political and economic factors, and structural strains.

4. The Binding Force of Law

Law is binding because most people in society consider it to be. Some consider the content of the law to command obedience, which, in turn, is seen as a compelling obligation. The law achieves its claim to obedience, and at least part of its morally obligatory force, from a recognition that it receives from those, or from most of those, to whom it is supposed to apply.

Even when laws are against accepted morality, they are often obeyed. The extermination of more than six million Jews in Nazi Germany, clearly the most extreme instance of abhorrent immoral acts, was carried out by thousands of people in the name of obedience to the law. Milligram contends that the essence of obedience of obedience is that individuals come to see themselves as instruments for carrying out someone else's wishes, and they therefore no longer view themselves as responsible for their actions. Under certain conditions many people will violate their own moral norms and inflict pain on other human beings, and that succinctly underlines the notion that most people willingly submit to authority and, by extension.

Sanctions:

Sanctions for disobedience to the law are surely among the primary reasons that laws have binding force. "The law has teeth; that can bite if need be, although they need not necessarily be bared." Sanctions are relate to legal efficacy and are provided to guarantee the observance and execution of legal mandated to enforce behavior.

5. Law as the Product of Traditions and Culture

Some believe that in the olden days men lived in a perfect state of Happiness and such a time was golden time for man. Indian people admire "Satyug" like anything and always found lamenting that society has deteriorated in "Kaliyug" a time not so desirable and full of all sorts of Deceit, conceit, cheating and fraud. According to Indian mythology man has passed through four ages:

- (1) Sat Yug
- (2) TretaYug
- (3) DwaparYug and
- (4) Kali Yug.

The Sat Yug was the best age in which man was honest, truthful and perfectly happy. Thereafter degeneration and deterioration began to take place. The modern age of Kali Yug is the worst period where in man is said to be deceitful, treacherous, false, dishonest, selfish and consequently unhappy. This concept is found in Hindu mythology, according to which Sat Yug will again start after the period of Kali Yug is over. But looking to various wars fought between different Kings and Emperors in those times, we come across many examples wherein deceit, treachery, falsehood, dishonesty, selfishness and all vices even from today's point of view were order of the day and even there were no regulatory mechanism to check the same. There was no room for rights of women, Rights of Dalits and noble principles of Liberty, Equality and Fraternity which are noblest cornerstones of to-day's polity. It all depends on how we view the primitive, the past and the present time.

6. Law as an Instrument of Social Change

Law is the reflection of the will and wish of the society. It is said that if you want to study any society, you have to study the laws enacted by that society and you come to know whether the society is developed or wild world. The law, though it is the product of the society is responsible for the social transformations. In fact, there are two modes of this aspect. First is, "Law changing the society", which means that the law of the land compels the society to be changed according to it. And secondly is. "Society changes the law", as per its needs. It means law is made by the society according to its requirement by its democratic institution i.e. Legislative or by adopting custom and usage. When law changes the society it is the sign of beginning of the development of the society. When society changes law it is the sign of maturity of the society. We can cite the enthusiasm of the people in the matter of '*Nirbhaya*' where the commonest of the common was talking on how the law must be, what must be the punishment etc. here this compelled the government to consider the sentiments of the society and set up a commission to give suggestions and untimely the criminal law amendment bill came into existence. The change required in the society can be initiated by a single person also and this has been proved in India right from Raja Ram Mohan Roy; to Mahatma Phule, Mahatma Baseswar, and

Mahatma Gandhi up to Anna Hazare! Thus the demand takes root and shakes up the government to either reform the existing laws or make new or even delete the existing unworthy laws. For this we will have to cite examples for the history of India. When mahatma Phule's wife Savitribai Phule actually started teaching in a school aimed only for girls it was considered taboo, something not good and would be affecting the society but this movement gradually became the source of law where the girls could actually study and develop. Gradually the then society thought reluctantly adopted this fact and started to send girls to school this is positive sign of beginning of the development of the society. Ultimately the girls got into colleges also. This was not only limited to the Hindu society, finally the Aligarh Muslim college also had some seats for female students studying. But no doubt the lamp was lighted by the phule couple. This is the 'Society changes the law', But per its need, rather demands. Whereas the law play important role in changing the society too!

6.1 Definitions of Law

Sociological view believes that "Law as the rules of right conduct." Laws are the general conditions of human activity prescribed by the State for its members.

Roscoe Pound stated, "Laws must be stable and yet cannot be stand still"

As defined by Lundberg and others "Social Change refers to any modification in established patterns of inter-human relationship and standards of conduct." The definition is very apt and properly encompasses all ingredients of the social change.

As customs grow out of the habits and beliefs of specific people, rather than expressing those of an abstract humanity, legal changes are codifications of customs, and they can only be national and never universal. There are two contrasting views on this relationship:

1. Law is determined by the sense of justice and the moral sentiments of the population and legislation can only achieve results by staying relatively close to the prevailing social norms.

2. Law and especially legislation, Is a vehicle through which a programmed Social evolution can be brought about. In general, a highly urbanized and industrialized society like the US law does play a large part in social change, and vice versa, at least much more than is the case in traditional societies or in traditional sociological thinking. [e.g. In the domain of interfamily relations, urbanization, with its small apartments and crowded conditions, has lessened the desirability of three-generation families in a single household. This social change helped to establish social security laws that in turn helped generate changes in the labor force and in social institutions for the aged.

7. Criticism and Evaluation of Law in the Light of Colonization

Social changes can be brought about by various methods. The social change can be brought by preaching of religions, by launching social reform movements like one done by Raja Ram Mohan Roy, Swami Dayanand Saraswati, Justice Ranade, Shahu Maharaj, Jotiba Phule, Gandhiji, And Dr. B.R. Ambedkar and other such prominent social thinkers. But such efforts have no legal obligations or force of law remedial measures in cases where individuals do not agree to a prescribed social behavior and conduct. Such optional, sweet will obedience was found not bearing desired fruits in right direction and therefore need arose to formulate laws purely to bring about social change prescribing and providing necessary penal mechanism in case of not confirming to change and violating provisions of such law which aimed at social change from extant social process as procedures and practices.

8. The Introduction of Common Law System and Institutions in India and Its Impact on Further Development of Law and Legal Institutions in India

The law is often used as an instrument of social reform. The Untouchability (Offences) Act, the Hindu Code Bill. The sarda Act, the Prohibition Act are examples in this context. Vidya Bushan and D.R. Sachdeva observed that "Thus Law does not always lay behind the times. One great merit of law is that it adapts itself to the changing needs of Society and maintains stability when the rapid alterations disturb the Relations in society. Law helps the society assimilate the changes by adjusting group advantages and injuries resulting from them. Finally the law may become an advanced instrument of social change on a national as well as international level by affecting the social frame work in which relations take place. However, law is greatly in advance of or greatly behind the trends of change in the society. It remains unenforceable, if it is in harmony with the processes of change. It accelerates and institutionalizes changes."

The various "pressure groups" exercise considerable influence on lawmaking organs. Practically all legislations are passed to satisfy the demands of certain groups presented to the legislature directly or indirectly, which demands will be recognized in Law depends to a large degree upon the power of the groups which make the demands. Political parties themselves are a combination of pressure groups. The legal groups today are the product of the pressures of the most powerful groups in the society. By powerful groups is meant effective power in terms of the number of votes at the disposal of the group, the amount of money it can command, the effectiveness of the organization, the skill of its lobbyists, and the support it is able to secure from public opinion.

9. Conclusion

Change is the law of nature, what is today shall be different from what it would be tomorrow. The social

structure is subject to incessant change. Society is an ever-changing phenomenon which is constantly growing as well as gradually decaying to renew and accommodate itself to changing conditions and is suffering vast modification in the course of time.

Law and society both exists in relations to each other. They both are interlinked and serve according to their needs. They have a co-existential relation that binds them for the betterment and maintenance of the regulatory orders in the society. Law brings out the social change to enhance and uplift the society; in turn society as per its needs and necessity come with new laws.