'Journal of Research & Development'
A Multidisciplinary International Level Referred and Peer Reviewed Journal,
Impact Factor-7.265, ISSN: 2230-9578, March 2023, Volume-15 Issue-7

Law as an Instrument of Social Change

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Abstract

Along with religion and morality, law is one of the strongest regulatory measures of social control. The law, not only controls human interactions, but brings a change in the society. As regards the role of law in bringing about a social change, there are two views. According to one view, the essential function of law is to reinforce the existing models and to provide a uniform procedure for the evaluation of human conduct and punishment for deviance from the existing rules. In other words, the main function of law, according to this view, is social control. According to the other view, law could be more dynamic. It has not only the function of social control but it has also to bring about a social change by influencing behaviour, beliefs and values. Often in the dynamic societies the social norms will be ahead of the legal codes. In such societies, it is necessary to bring the legal code into conformity with the prevalent social values. There is also another aspect: a dominant minority may have social values far ahead of the legal code on the one side and the social practice of the masses on the other. Such minority may endeavour to change the legal code as a means to persuade the rest of the group to adopt new social values. In dynamic societies the role of law is limited. But in conservative societies the role of law can be more effective in bringing about a change in traditional beliefs and values that do not correspond with changing societal requirements.

As an instrument of social change, law involves two interrelated processes. By means of new enactments there will be institutionalisation of a new pattern of behaviour manifesting new social values. When this new pattern is incorporated in the legal code, any deviance from this new pattern could be punished according to law. In order that law could become an active social force, there should be correlated cultural processes, namely the internalisation of this new pattern of behaviour in the individuals. These two processes arc closely related. If the institutionalisation is successful, it facilitates the internalisation of the new values by bringing about a change in the attitudes and beliefs of the individuals through social upbringing in the individual families. If such internalisation does not take place then the mere legal codification and the institutionalisation will not have any social value; on the other hand, it may bring, law itself into contempt; people may lose respect for law.

Law has long occupied an important position in organised efforts to improve the status of women, children, dalits and other weaker sections of the society. Social reformers in the nineteenth century, as well women in the contemporary women's movement, have all sought social reform through law. There were the egregious evils in our society such as sati, thuggee, human sacrifice, female infanticide, slavery, untouchability and religious prostitution. And then there were other, though less conspicuous evils too. Namely polygamy, child marriage, dowry, heavy expenditure on marriage and the traditional ban on divorce, widow remarriage and sea voyage. Christian missionaries and social reformers of the nineteenth century were quick to pounce on the evils of Hinduism, to denounce them and point out how immaculate Christianity was in contrast. In the first half of the nineteenth century, social reformers such as Rammohun Roy campaigned for the elimination of sati. Rammohun Roy's arguments against sati were cast within the discourse of religion and scripture. He argued that sati was not prescribed by shastric texts and that its resurgence corresponded to the degeneration of Hindu ethos.4 Thus, by the sincere efforts of Rammohun Roy practice of sati was abolished in 1829.

Keywords *: Social Change, Development, Law, Society.*

Introduction

MAKING or finding law, call it which you will, presuppose a mental picture of what one is doing and of why he is doing it. Hence the nature of law has been the chief battleground of jurisprudence since the Greek philosophers began to argue as to the basis of the law's authority. But the end of law has been debated more in politics than in jurisprudence. In the stage of equity and natural law the prevailing theory of the nature of law seemed to answer the question as to its end. In the maturity of law the law was thought of as something self-sufficient, to be judged by an ideal form of itself, and as something which could not be made, or, if it could be made, was to be made sparingly. The idea of natural rights seemed to explain incidentally what law was for and to show that there ought to be as little of it as possible, since it was a restraint upon liberty and even the least of such restraint demanded affirmative justification. Thus apart from mere systematic and formal improvement the theory of law- making in the maturity of law was negative. It told us chiefly how we should not legislate and upon what subjects we should refrain from lawmaking. Having no positive theory of creative lawmaking, the last century was little conscious of requiring or holding a theory as to the end of law. But in fact it held such a theory and held it strongly.

As ideas of what law is for are so largely implicit in ideas of what law is, a brief survey of ideas of the nature of law from this standpoint will be useful. No less than twelve conceptions of what law is may be distinguished. First, we may put the idea of a divinely ordained rule or set of rules for human action, as for example, the Mosaic Law, or Hammurapi's code, handed him ready made by the sun god, or Manu, dictated to the sages by Manu's son Bhrigu in Manu's presence and by his direction.

Second, there is an idea of law as a tradition of the old customs which have proved acceptable to the gods and hence point the way in which man may walk with safety. For primitive man, surrounded by what seem vengeful and capricious him- powers of nature, is in continual fear of giving offense to these powers and thus bringing down their wrath upon self and his fellows. The general security requires that men do only those things and do them only in the way which long custom has shown at least not displeasing to the gods. Law is the traditional or recorded body of precepts in which that custom is preserved and expressed. Whenever we find a body of primitive law possessed as a class tradition by a political oligarchy it is likely to be thought of in this way, just as a body of like tradition in the custody of a priesthood is certain to be thought of as divinely revealed.

A third and closely related idea conceives of law as the recorded wisdom of the wise men of old who had learned the safe course or the divinely approved course for human conduct. When a traditional custom of decision and custom of action has been reduced to writing in a primitive code it is likely to be thought of in this way, and Demosthenes in the fourth century B.C. could describe the law of Athens in these terms. Fourth, law may be conceived as a philosophically dis- covered system of principles which express the nature of things, to which, therefore, man ought to conform his con- duct. Such was the idea of the Roman jurisconsult, grafted, it is true, on the second and third ideas and on a political theory of law as the command of the Roman people, but reconciled with them by conceiving of tradition and re- corded wisdom and command of the people as mere declarations or reflections of the philosophically ascertained principles, to be measured and shaped and interpreted and eked out thereby. In the hands of philosophers the foregoing conception often takes another form so that, fifth, law is looked upon as a body of ascertainment’s and declarations of an eternal and immutable moral code.

Sixth, there is an idea of law as a body of agreements of men in politically organized society as to their relations with each other. This is a democratic version of the identification of law with rules of law and hence with the enactments and decrees of the city-state which is discussed in the Platonic Minos. Not unnaturally Demosthenes suggests it to an Athenian jury. Very likely in such a theory a philosophical idea would support the political idea and the inherent moral obligation of a promise would be invoked to show why men should keep the agreements made in their popular assemblies.

Seventh, law has been thought of as a reflection of the divine reason governing the universe; a reflection of that part which determines the "ought" addressed by that reason to human beings as moral entities, in distinction from the "must" which it addresses to the rest of creation. Such was the conception of Thomas Aquinas, which had great currency down to the seventeenth century and has had much influence ever since.

Eighth, law has been conceived as a body of commands of the sovereign authority in a politically organized society as to how men should conduct themselves therein, resting ultimately on whatever basis was held to be behind the authority of that sovereign. So thought the Roman jurists of the Republic and of the classical period with respect to positive law. And as the emperor had the sovereignty of the Roman people devolved upon him, the Institutes of Justinian could lay down that the will of the emperor had the force of a law. Such a mode of thought was congenial to the lawyers who were active in support of royal authority in the centralizing French monarchy of the sixteenth and seventeenth centuries and through them passed into public law. It seemed to fit the circumstances of parliamentary supremacy in England after 1688 and became the orthodox English juristic theory. Also it could be made to fit a political theory of popular sovereignty in which the people were thought of as succeeding to the sovereignty of parliament at the American Revolution or of the French king at the French Revolution.

A ninth idea of law takes it to be a system of precepts discovered by human experience whereby the individual human will may realize the most complete freedom possible consistently with the like freedom of will of others. This idea, held in one form or another by the historical school, divided the allegiance of jurists with the theory of law as command of the sovereign during almost the whole of the past century. It assumed that the human experience by which legal principles were discovered was determined in some inevitable way. It was not a matter of conscious human endeavour. The process was determined by the unfolding of an idea of right and justice or an idea of liberty which was realizing itself in human administration of justice, or by the operation of biological or psychological laws or of race characters, whose

necessary result was the system of law of the time and people In question.

Again, tenth, men have thought of law as a system of principles, discovered philosophically and developed in detail by juristic writing and judicial decision, whereby the external life of man is measured by reason, or in another phase, whereby the will of the individual in action is harmonized with those of his fellow men. This mode of thought appeared in the nineteenth century after the natural-law theory in the form in which it had prevailed for two centuries had been abandoned and philosophy was called upon to provide a critique for systematic arrangement and development of details.

Eleventh, law has been thought of as a body or system of rules imposed on men in society by the dominant class for the time being in furtherance, conscious or unconscious. Of its own interest. This economic interpretation of law takes many forms. In an idealistic form it thinks of the inevitable unfolding of an economic idea. In a mechanical sociological form it thinks of class struggle or a struggle for existence in terms of economics, and of law as the result of the operation of forces or laws involved in or determining such struggles. In a positivist-analytical form it thinks of law as the command of the sovereign, but of that command as determined in its economic content by the will of the dominant social class, determined in turn by its own interest. All of these forms belong to transition from the stability of the maturity of law to a new period of growth. When the idea of the self sufficiency of law gives way and men seek to relate jurisprudence to the other social sciences, the relation to economics challenges attention at once. Moreover in a time of copious legislation the enacted rule is easily taken as the type of legal precept and an attempt to frame a theory of legislative law- making is taken to give an account of all law.

Finally, twelfth, there is an idea of law as made up of the dictates of economic or social laws with respect to the conduct of men in society, discovered by observation, expressed in precepts worked out through human experience of what would work and what not in the administration of justice. This type of theory likewise belongs to the end of the nineteenth century, when men had begun to look for physical or biological bases, discoverable by observation, in place of metaphysical bases, discoverable by philosophical reflection. Another form finds some ultimate social fact by observation and develops the logical implications of that fact much after the manner of the metaphysical jurist. This again results from the tendency in recent years to unify the social sciences and consequent attention to sociological theories.

Law –Need Based Concept

Sociological jurisprudence, as expounded by Pound, has been the interaction of social and legal change, and emphasis on the increasingly active role that the law plays as an agent of social change. The law through legislative or administrative responses to new social conditions and ideas, as well as through judicial re-interpretation of constitutions, statutes or precedents increasingly not only articulates but sets the course for major social changes. It is also the growing interdependence of the different aspects of social development which demand an even closer interaction of technological, economic and social environment.

Pound has borrowed the idea of law as instrument of social control from Ross. Up to the middle age, Pound says, Morality and religion are the main instruments of checking the aggressive instincts of man. In modem time these are inadequate and the chief instrument of social control is law. Since the aim of the law is to harmonize competing interests, no fixed legal principles are useful for this purpose, and decision should be reached on a pragmatic, empirical basis. Hence it may become necessary to administer Justice without law, while not denying that dispensing justice according to fixed rules has some advantage e.g. certainty and uniformity. Pound suggests that in order to harmonize conflicting interest in modem dynamic society the judge will often have to dispense 'Justice without law" that is without following any prescribed rule or precedent. This is because in view of the fast changes in industrial society new situations and problems are cropping up which have no precedent and for which the law has laid down no rule. Justice without law is solution to the problem of stability of law.

The truth lies in the fact that modem society is changing fast because of science and technological development. So the need is that law should be continually adapted and re-adapted to needs of individuals and society. That is why Roscoe Pound stresses the need of co-ordination, co-operation between legislator. administrators, judges, lawyers and jurists to works to the effective implementation of law for securing social balance and social justice to the public with a minimum of waste or friction and maximum of material satisfaction of wants, needs and interests. To quote Roscoe Pound: "I am content with a picture of satisfying as much of the whole body of human wants as we may with sacrifice. I am content to think of law, as a social institution to satisfy social wants the claims and demands involved in the existence of civilized society by giving effect to as much as we may with the least sacrifice, so far as such wants may be satisfied or such claims given

effect by an ordering of human conduce through politically organized society. For present purpose, I am content to see in legal history the record of a continually wider recognising and satisfying of human wants or claims or desires through social control; a more embracing and more effective securing of social interests; a continually more complete and effective elimination of waste and precluding of friction in human enjoyment of the goods of existence-in short-a continually more social efficacious social engineering.

The Application of law

THREE steps are involved in the adjudication of a controversy according to law: (1) Finding the law, ascertaining which of the many rules in the legal system is to be applied, or, if none is applicable, reaching a rule for the cause (which may or may not stand as a rule for subsequent cases) on the basis of given materials in some way which the legal system points out; (2) interpreting the rule so chosen or ascertained, that is, determining its meaning as it was framed and with respect to its intended scope; (3) applying to the cause in hand the rule so found and interpreted. In the past these have been confused under the name of interpretation. It was assumed that the function of the judge consisted simply in interpreting an authoritatively given rule of wholly extra- judicial origin by an exact process of deducing its logically implied content and in mechanically applying the rule so given and interpreted. This assumption has its origin in the stage of the strict law in the attempt to escape from the over detail on the one hand, and the vague sententiousness on the other hand, which are characteristic of primitive law. For the most part primitive law is made up of simple, precise, detailed rules for definite narrowly defined situations. It has no general principles. The first step toward a science of law is the making of distinctions between what comes within and what does not come within the legal meaning of a rule. But a body of primitive law also often contains a certain number of sententious legal proverbs, put in striking form so as to stick in the memory but vague in their content. The strict law by means of a conception of results obtained inevitably from fixed rules and undeviating remedial proceedings seeks relief from the uncertainty inherent in the finding of a larger content for over detailed special rules through differentiation of cases and the application of legal proverbial sayings through the "equity of the tribunal." It conceives of application of law as involving nothing but a mechanical fitting of the case with the strait jacket of rule or remedy. The inevitable adjustments and extending and limitations, which an attempt to administer justice in this way must involve, are covered up by a fiction of interpretation in order to maintain the general security.

Philosophical rationalizing of the attempt to avoid the over personal administration of justice incident to the partial reversion to justice without law in the stage of equity and patural law reinforced the assumption that judicial application of law was a mechanical process and was but a phase of interpretation. In the eighteenth century it was given scientific form in the theory of separation of powers. The legislative organ made laws. The executive administered them. The judiciary applied them to the decision of controversies. It was admitted in Anglo-American legal thinking that courts must interpret in order to apply. But the interpretation was taken not to be in any wise a lawmaking and the application was taken not to involve any administrative element and to be wholly mechanical. On the Continent interpretation so as to make a binding rule for future cases was deemed to belong only to the legislator. The maturity of law was not willing to admit that judge or jurist could make anything. It was not the least service of the analytical jurisprudence of the last century to show that the greater part of what goes by the name of interpretation in this way of thinking is really a lawmaking process, a supplying of new law where no rule or no o sufficient rule is at hand. "The fact is," says Gray most truly, "that the difficulties of so called interpretation arise when the legislature has had no meaning at all when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to deter mine what the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind had the point been present." The attempt to maintain the separation of powers by constitutional prohibitions has pointed to the same lesson from another side. Lawmaking, administration, and adjudication cannot be rigidly fenced off one from the other and turned over each to a separate agency as its exclusive field. There is rather a division of labor as to typical cases and a practical or historical apportionment of the rest.

Finding the law may consist merely in laying hold of prescribed text of a code or statute. In that event the tribunal must proceed to determine the meaning of the rule and to apply it. But many cases are not so simple. More than one text is at hand which might apply; more than one rule is potentially applicable, and the parties are contending which shall be made the basis of a decision. In that event the several rules must be interpreted in order that intelligent selection may be made. Often the genuine interpretation of the existing rules shows that none is adequate to cover the case and that what is in effect, if not in theory, a new one must be supplied. Attempts to foreclose this process by minute, detailed legislation have failed signally, as, for example, in the overgrown code of civil procedure

which long obtained in New York. Providing of a rule by which to decide the cause is a necessary element in the determination of a large proportion of the causes that come before our higher tribunals, and it is often because a rule must be provided that the parties are not content to abide the decision of the court of first instance.

Law as Social Engineering:

The idea of law as an instrument of social engineering may be considered to have been germinated in the pioneering contribution of Jermany Bentham who pleaded for the happiness of greatest in number and that bloomed with charming smell in extensive writings of Dean Roscoe Pound. For him, jurisprudence is a science of social engineering concerned with the ordering of human relations. The legal process could be interpreted as a type of social control, legal history could be seen as record of the recognition and satisfaction of human wants through social control, so that social interest might be secured. The conception of law as a harmonizer of conflicting interests was first given it a new elaborate dimension. In modem society there are various interests, suggested by Jhering. But Pound, while borrowing this concept has in his Philosophy each advancing its own claims. If the claims of these group are not harmonized, 10 there may be strife, and thereby production may suffer. The claim of law. Pound says, is to harmonize these interest and so as to satisfy the maximum of wants and eliminate friction and waste. Pound declared that main function of law is to act as an effective instrument of social engineering. Law has its strongest place in a society where there are different kinds of interests that must be balanced against each other and that must in some way respect each other. He philosophizes that law is one of the very important mechanisms by which a relative balance is of stability to maintain in a dynamic and rather precariously balanced society. Roscoe Pound opines that in order to achieve this device of social engineering there should be "study of actual social effects of legal institution and doctrines, study of means of making legal rules effective, sociological study in preparation for law making, the study of both psychological and Philosophical, of the judicial method, a sociological study of legal history and the importance of reasonable and just solutions of individual cases." Pound is pragmatic, functional and experimental advocating social ordering and control through law 'to promote and maintain ideal relations among mankind. For Pound, law is more concerned with actual operation of law rather than its abstract content. Such approach considers law an authoritative guide to decision making. It stresses on social purposes which law serves rather than sanction. As an engineer minimises the friction and waste when dealing with machines similarly jurists ought to enable to resolve conflicts in society in the interests of harmony, reform and progress. Pound describes this method as the concept of social engineering."

Conclusion:

Most of the objectives set before the nations are yet to be achieved. The country is still at a cross-road. The economic revolution is limping and moving at a pedestrian's pace despite major changes in the economic policy. The basic problems of the country remain unsolved. The fact that the constitutional review committee has been set up to review the working of India's Constitution shows the schism that exists between the Constitution in theory and the Constitution in practice. Genuine doubts about success, relevancy and suitability of the Constitution were expressed at various forums. Constitutional review and revision of laws from time to time can be a powerful catalyst for change. Constitutional guarantees also contribute to policy formulation and enactment of laws that are equitable to women and other weaker sections. To be an effective instrument of social change, it is necessary to update all laws as per the societal requirements. This calls for a review of discriminatory laws, their progressive interpretation by judges who have been sensitized to various social the true spirit of religion, humanity and conscience. Although we agree with the idea that all social evils should be eradicated but we do not believe in the theory that legislation is the appropriate or effective method of eliminating all social evils. We are strongly of the view that that reform which is imposed upon people through a law cannot be effective; only education, knowledge and human values can bring about the desired change.

References

1. B. Kuppuswamy, Social Change in India, Konark Publishers Pvt. Ltd., Delhi, 1993, p. 135
2. Ratna Kapur and Brenda Cossman, Subversive Sites: Feminist Engagements With Law in India, Sage Publications, new Delhi, 1996, p.46.
3. Archana Parashar, Women and Family Law Reform in India, Sage Publications, New Delhi, 1992, p. 148.
4. Niraja Gopal Jayal, Democracy and the State, Oxford University Press, New Delhi, 2001, p. 106.
5. Toward Equality: Report of the Committee on the Status of Women in India (New Delhi, government of India, Ministry of Education and Social Welfare, 1974), p. xii.
6. Indian Bar Review, vol. XXIX (3 & 4)2002 p. 235.
7. An Introduction to The Philosophy of Law Roscoe Pound,Universal Law Publishing Co. Pvt. Ltd., Delhi. p. 25, 26, 27, 28, 29 & 30.
8. Social Engineering Under Indian Constitution, The Bright Law House, Rohtak. P. 35, 36 & 37.