



## Law As A Means of Social Change: A Sociological Philosophy.

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### ABSTRACT

The relationship between law and social change in the context of development of legal institutions and society is always debated by the academicians and social thinkers. Some of them viewed the law as an independent variable distinct from the society while other says that law is always dependent on society in terms of cause and effect equation. This means that society needs laws for its regulation and law aids society with its continuous adaptations as per its changing needs and aspirations. Therefore law has always been considered as one of the important instruments of affecting social change. In this era of social reform, there has been widespread concern of law as a tool for bringing about homogeneity in the heterogeneous population having socio-cultural diversities. Though there are several devices to bring about a change and reformation in society, but reformation through law is perhaps one of the most effective and safest methods to achieve this end. Law can adapt itself to changed social circumstances without necessarily changing its form or structure and this is the most unique feature of law. In this paper, the relation between law and society is discussed and how far the law serves as a means of social change is studied.

### KEYWORDS

#### Introduction

Law is the only branch of knowledge that cannot remain static as it has to deal with society and society keeps on moving with economic, scientific and technological development; therefore in order to meet the changing requirement should keep on evolving itself. No doubt, law has to be stable but if it needs to keep a pace with changing pattern of society, it cannot remain static. In the words of famous jurist, Holmes, "Law is not a brooding omnipotence in the sky," but a flexible instrument of social order, dependent on the political and other values of the society which it purports to regulate. This gives us the idea that law is the most potent means of bringing social change.

#### Sir David Maxwell Fyfe has observed:

"The law is not to be compared to a venerable antique, to be taken down, dusted, admired and put back on the shelf; rather it is like an old, but still vigorous tree- firmly rooted in the history but still putting out new shoots taking new grafts and from time to time dropping dead wood. That process has been going, is going on now and will continue <sup>1</sup>

#### The next question is what do we mean by the term social change?

Social change evinces dimension of some of the characteristics of a group of people. If any action which affects a group of people sharing values or characteristics can also be said to be as social change. 'It has been defined as any non-repetitive alteration in the established modes of behavioral society. Social change is held to occur only when social structure – patterns of social relations, established social norms and social roles changes. Thus, a change in the established pattern of social relations between various groups in a society would constitute social change .While the effect of law on social change, it is equally important to study the reverse, i.e., the effect of social change on law. Generally, the change in existing pattern of social life is known as " Social Change". Society and social conditions never remain static. Generally, social change is to be understood as change in social structure. According o Gainsberg, social change is change in social structure e.g the size of a society, the composition or balance or its part or the type of its organization. According to Jones, "social change devotes variation in, or modification of , any aspect of social process, social patterns, social interaction or social organisa-

tion.". Social change needs to be distinguished from social transformation. Social change is understood as repetitive alteration in the established modes of behavior in society. Further to establish social change, there would be ideally a change in the established social norms, social roles and patterns of social relations

According to Anderson and Parker, social change involved alteration and structure or functioning of forms or processes themselves. Social change means there is a must change in social structure. Social structure can be understood as natural, social behavior, social relations, social organizations, community of people. Social change is change in the social order. According to Charles L. Harper, significant alteration of social structure and cultural patterns through time."

#### In the words of Dennis R. Fox:

"Well-meaning efforts by liberal psychologists to reform the law in keeping with values such as dignity, privacy, justice, and equality are often misguided because law exists to serve the status quo. Law inhibits the systemic, radical social change necessary for psychological and societal well-being. It does so through coercive power, substantive assumptions about human nature, the ideology of law's legitimacy, a preoccupation with procedure rather than substance, a focus on rational technicality rather than equity, and encouragement for limited, self-defeating legal solutions.

#### Sociological Jurisprudence and the law.

The idea of sociological jurisprudence lies in the fact of understanding law as a applied science which employs functional methods of investigation and an it was realized that socialization of law and legal institutions would perhaps best sub-serve the common good and interests of the society, resulting in the evolution of this school. This school considered law as a social phenomenon. They are chiefly concerned with the relationship of law to other contemporary social institutions. According to this school, the essential characteristic of law should be to represent common interaction of men in social groups, whether past or present, ancient or modern. The main concern of sociological jurists is to study the effect of law and society on each other. They treat law as an instrument of social progress. They also lay greater stress on functional aspect of law, rather than its abstract contents analysis for resolving individual

and social problems on the basis of experience derived from collateral social sciences. The purpose of law is to determine the purposes nature and functions of law. Sociological jurisprudence strives to study law in term of immediate needs and requirements of individual and other varying social grounds. The predominant theme of the sociological jurisprudence is to promote socio-economic good of society through law. This school realized that socialization of law and legal institutions would perhaps best sub-serve the common good and interests of the society. This school considered law as a social phenomenon. They are chiefly concerned with the relationship of law to other contemporary social institutions. They treat law as an instrument of social progress. They also lay greater stress on functional aspect of law, rather than its abstract contents. Sociological jurisprudence is more concerned about the effects the law has upon the society and only to Very less extent on the social determination of law, which led to a functional approach to law? They aimed at enabling the legal institution to make more complete and intelligent amount of the sound facts upon which law must proceed and to which it is to be applied. This clearly shows us that law intended for the society will have to be evolved and also ingrained within a legal system that would keep close touch regarding the development happening in the society and acts in accordance towards the change.

Some of the pioneers of sociological though are, Auguste Comte, Herbet Spencer, Duguit, Ihering, Eugen Ehrlich, and Roscoe Pound (the One who Gave Functional approach to law.)

#### **Auguste Comte**

According to him, society, like any other organism can progress when it is guided by Scientific principles. These principles should be formulated by observation and experience of facts and all other metaphysical considerations should be excluded from its purview. He further pointed out that man cannot live in isolation as he is essentially a social being and all his impulses originate from his social life which is to be regulated and controlled by law and the government. Therefore, it is the 'society' and not the 'individual' which should be the focal point of law. - was the first to use the term sociology and evolved scientific POSITIVISM. He pleaded for application of scientific method to science of sociology and according to him society is like an organism and it can progress if it's guided by scientific principle.

**Herbet Spencer** - gave organic theory of society and directed attention to necessity of considering law in relation of social phenomena.

#### **Ihering**

According to him social interests of the society must gain priority over individual interest and the purpose of law should be to protect the interest of the society. He considered law as a means to an end. It is the duty of the State to promote social interest by avoiding a clash between the individual and social interest. He even justifies coercion by the State for the purpose of protection of the social interest. For him, "law is a coercion organized in a set form by the State". Inhering suggests that development of law likes its origin is neither spontaneous nor peaceful. It is the result of constant struggle or conflict with a view to attain peace and order. He said, "Law is the grantee of the conditions of life society, assured by the state's power of constraint." Law is a means to an end. The end of Law is to serve social purpose.

**Eugen Ehrlich**- he gave the term "living law" and stated that law of a community is to be found in social facts and in formal source of law. The essential body of legal rules is always based upon the social "facts of law". On order to serve its purpose law has to study the social condition of the society because it has to function in society only. According to him, law depends on popular acceptance and that each group creates its own *living law* which alone has creative force. All that the judge does is to make precise and definite the raw material thus fur-

nished by the community<sup>30</sup>. He believed that law need not be necessarily created by the State or applied by the courts or has a coercive legal compulsion behind it, but it is created by life of groups living within the society. Law governs matters that 'at least in the opinion of the group in which it has its origin' are 'of great importance, of basic significance'. - he gave the term "living law" and stated that law of a community is to be found in social facts and in formal source of law. The essential body of legal rules is always based upon the social "facts of law". On order to serve its purpose law has to study the social condition of the society because it has to function in society only.

#### **Duguit**

According to him, every individual has his existence owing to his membership of the Society. Each individual cannot procure the necessities of life by himself. Therefore, each in his turn has to depend on other for his needs. The ultimate end of all human activities is to ensure the interdependence of men or *social solidarity*. State exists for performing the functions which promote social solidarity and not for the exercise of sovereignty. He believed that law is an embodiment of duties which an individual is supposed to perform as a part of the social organization for furtherance of social solidarity. The theory of social solidarity is given by Duguit which suggest interdependence of men in the society. According to him, " Law is rule which men possess not by virtue of any higher principle whatever good, interest or happiness but by virtue and perforce of facts, because they live in society can live society."

#### **Roscoe Pound**

According to his theory of '*social engineering*', the end of law is to satisfy a maximum of wants with a minimum of friction or confrontation. He stated that the function of law is to reconcile the confronting interests of individuals in the community and harmonise their inter-relations. Law secures social cohesion and orderly social change by balancing conflicting interests - individual (the private interests of individual citizens), social (arising from the common conditions of social life) and public (specifically the interests of the State)<sup>35</sup>. In order to evaluate the conflicting interests in due order of priority, he suggested that every society has certain basic assumptions (which he terms as *Jural Postulates*) upon which its ordering rests, though for most of the time they may be implicit rather than expressly formulated. Understanding Sociological Jurisprudential thought Sociological jurisprudence was first introduced by Roscoe Pound in a law-review article. He challenged the formal jurisprudence by introducing the concept of using social sciences to develop legal rules. According to Roscoe Pound, for the just claims and desires to be satisfied the law as a form of social control need to be adequately employed and reliance upon the social science is necessary for the understanding of law in society. In the words of Dean Roscoe Pound, "look more for the working of law then for its abstract context." After a brief perusal of the theories of various sociological jurists, one point became clear that is law in order to respond to social change should keep on changing. It should drop the outdated rules and should lay down new rules as per requirements of social necessities.

#### **Law and Social Change in Indian context**

If we study, law as an instrument of social change in Indian context it is pertinent to mention that it was only after the Independence and with the adoption of Indian Constitution, law started to function in the interest of the society and became responsive to social needs of the nation.

The constitution of India under Part III and Part IV laid down socio-economic goals to be achieved by the state and also to consider the needs of society while making laws. It enjoined on law the function to make environmental adaptations of the existing legal system, feeling the needs of the people, evolving principle of law and legislative formulation and statutory institution which will harmonize with the urgencies of our times and translating into action the mission of constitution.

### Incorporation of social change into legislation

In pursuance of the declared objective of the Constitution, legislative process started for bringing about socio-economic changes and enacted legislative started enacting series of laws in order to keep a pace with changing structure of society.

First among them were - **Land reforms** like abolition of Zimindari System, consolidation of holding, land ceiling, eradication of rural indebtedness, improvement of agriculture, horticulture, animal husbandry etc. Parliament also enacted its First Amendment 1951 to bring about agrarian reforms in this context.

### Labour Law

Second most important legislation deals with welfare of labour. Industrial Dispute Act 1947 was the first ever Act which cleared the way for bulk of legislation like Minimum Wages Act 1948, Employee State Insurance Act, 1948, Maternity Benefit Act 1961, Payment of Bonus Act 1965, Equal Remuneration Act 1976 etc. and now labour legislation in India has become an importance part of social and economic legislation.

### Family law legislation-

Social advancement of the nation largely depends upon the personal law therefore parliament thought of enacting laws in the field of family law and enactment like Hindu Marriage Act, 1955, Hindu Succession Act, 1956, Hindu Adoption and Maintenance Act, 1956, Hindu Minority and Guardianship Act, 1956 was passed. Further, in order to improve position of female, Hindu Succession Act was amended twice, First in 1976 and secondly in 2005.

### Legislation for the eradication of social evils and disabilities

As stated earlier law do not function in vacuum rather it took notice of the current pace of society and adopt itself in order to remove social evils and disabilities prevailing in society. Legislation like Dowry prohibition Act 1961 (1986), Family Court Act, 1984, Domestic Violence Act, 2005, The SC and ST (Prevention of Atrocities) Act 1989, The Right of Children to Free and Compulsory Education Act 2009, Prevention of Corruption Act, 1988, the Information Technology Act, 2000, The Protection of Women from Domestic Violence Act, 2005, The Right to Information Act, 2005 etc. are evident proof of legal concern towards socio-economic problem.

### Legislative concern for Environment Protection

In order to meet the extraordinary hitherto unknown problem and challenges thrown by man induced changes in the environment leading to natural disaster and environmental pollution, Legislative reacted sparely and came up with manifold legislation for prevention and protection of environment. Some of some are Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution) Act, 1981, The Wildlife (Protection) Act, 1972: The Forest (Conservation) Act, 1980, The Environment (Protection) Act, 1986 etc.

### Conclusion

By and large, we see that legislature have involved and shaped law in order to achieve the goal of social, economic and political justice to the society. In fact interaction between law and society is indispensable. Society cannot go without law and law cannot ignore society. The relation is more obvious and articulate one. Adjustment of law to social need is a continuing process and law is nothing but an instrument of social change and it has to remain always responsible to the social development. However to understand the relation between law and social change has been an exhaustive journey, with halts at significant junctures. These junctures have been the various school of law .Among them the sociological school is the pioneer. The Sociological School, believed in maintaining a balance between State, social welfare and individual interests. They always held society's interests superior to those of the individual and laid down the State's function as promoting social welfare. If we look in to Indian perspective the constitution of the country is best example of sociological jurispru-

dence. Part III of the Constitution, containing fundamental rights, and Part IV, containing the directive principles of state policy, consist of the provisions that promote individual freedom and social justice. Part IV of the constitution specifically provides for those principles of the state policy which ensured India to be a social welfare state. This concept of social welfare compels law to be at the pace with the current welfare of the society. If we look in to the growth of law in form of judicial decision we come across with countless judgments. It all started with *State of Madras vs Champkam Dorairajan*<sup>2</sup> which gave us the theory of protective discrimination and ensure social welfare of backward and weaker section of society. The judgment of *Maneka Gandhi vs Union of India*<sup>3</sup> is the best one to illustrate how far the judiciary has gone to secure fair ,just and reasonable laws to the society. With respect to women and child rights the decisions like *Vishakha Case*<sup>4</sup> and *Sarla Mudgal case*<sup>5</sup> and *sheela barse case*<sup>6</sup> went in a long way to provide social justice. The list of case dealing with social justice and continues adaptation of law to the needs of the society is countless. Since the title of the present paper is not to review the decision of the court with regard to social justice, only few decisions are mentioned to analyse the interplay between law and society. . They all show how the views of the Indian judiciary have been changing, in order to promote social welfare and justice. In the end, we can say that both law and society have tremendous impact on each other. Sometimes it is the law that affects the society, while on other occasions, it is vice-versa. But ultimately, it is the interdependence between law and society which bring social change. We cannot deny the fact that society need certainty and stability but that does not mean it will remain static. So is the law which has to be certain and stable but it can't stand still. Change is the law of nature and if that change warrants more laws to deal with the current problems and evils of the society law has to provide us the vital and efficient system. To conclude it is submitted that law has to be proactive and extra smart to bring about desired change in the society and to perform its function to the best of its abilities.

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