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Lecture-1



Law and social change

Introductions

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 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.

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!

Definitions of law: - The laws are variously defined by the scholars. According to Sumner "Laws are actually codified mores".

Kant defined it as "a formula which expresses the necessity of an action". Krabbe defines Law as "the expression of one of the many judgments of value which we human beings make by virtue of our disposition and nature".

Green Arnold defined "Law is more or less systematic body of generalize rules. Balanced between the fiction of performance and the of change, governing specifically defined relationship and situations and employing force or the threat of force in defined and limited ways".

According to Duguit, laws are "the rules of conduct normal men know they must observe in order to preserve and promote the benefits derived from life in society."

According to MacIver and Page "Law is the body of rules which are recognized. Interpreted and applied to particular situations by the Courts of the State."

B.N. Cardozo says "Law is a principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the Courts of its authority is challenged".

Max Weber feels that "Law is an order, the validity of which is guarantee by the probability that deviation will be met by physical or psychic sanction by a staff specially empowered to carry out this Sanction".

Hertzler comments, "Law in effect structures the power (Super-ordinate Subordinate) relationship in society; it maintains the status quo and protests the various strata against each other, both in Governmental and non- governmental organizations and relationship".

According to Roscoe Pound, "Law is an authoritative canon of value laid down by the force of politically organized society". 12 Anthony Giddens says "Laws are norms define and enforced by Governments."

Austin defined Law as "the Command given by a superior to an inferior". Some define "Law as the Command of Sovereign of the dictates of the State." 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." 17 The definition is very apt and properly encompasses all ingredients of the social change. The established pattern of

Inter-human relationship between Caste Hindus and Scheduled Castes was that of touch-me-not-ism as the same was thought to be polluting them i.e. the Caste Hindus. The social change in the above dogmatic stratification really called for modification in the changing and already changed social scenario following independence in 1947 and following coming in force the constitution of India. The standards of conduct of Caste Hindus were required to change in time with Constitutional Provisions. Thus modification in established patterns of inter-human relationship and standards of conduct was brought through legal means mainly the Constitution of India. The equal laws like I.P.C. (Indian Penal Code) / Cri.P.C. (Code of Criminal Procedure) / Evidence Act etc. and finally and especially through the Untouchability (Offences) Act, 1955 and the Protection of Civil Rights Act, 1955 (Amended with new name in 1976) and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

At the beginning of industrialization and urbanization in Europe, Bentham expected legal reforms to respond quickly to new social needs and to restructure society. He freely gave advice to the leaders of the French revolution, because he believed that countries at a similar stage of economic development needed similar remedies for their common problems. However, Savigny believed that only fully developed popular customs could form the basis of legal 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:

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.

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.

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. Milgram contends that the essence 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, the law

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 related to legal efficacy and are provided to guarantee the observance and execution of legal mandates to enforce behavior.