

LAW AS A SUBSYSTEM OF SOCIETY

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Abstract

It is common knowledge that the legal system is a sub-system of a larger social system and there are innumerable ways, some direct and some indirect, in which the society effects the legal system and legal system influences the society. Today, particularly in the developing societies governed by the rule of law, the interaction between legal and social processes is so pronounced that the behavioral and policy dimensions of legal norms and processes cannot be ignored. The challenge of socially relevant legal education today is to find ways and means to enable the future lawyers to enlarge the base of his expertise with those developed by behavioral scientists so that they can fully and completely perform the social mission of law as designated by the Constitutions of states and International declarations. The first step towards this is to get acquainted with the knowledge about society and social issues which is now available from the study of social sciences. The analytical skill of the lawyer about the society, social prospects, social issues and problems would help him to be a critical consumer of such knowledge in his task of social engineering and social control.

Keywords: Legal system, society, subsystem, legal and social processes

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INTRODUCTION

It is common knowledge that the legal system is a sub-system of a larger social system and there are innumerable ways, some direct and some indirect, in which the society effects the legal system and legal system influences the society. Today, particularly in the developing societies governed by the rule of law, the interaction between legal and social processes is so pronounced that the behavioral and policy dimensions of legal norms and processes cannot be ignored.

RELATIONSHIP BETWEEN SOCIAL AND LEGAL SYSTEM

As is rightly pointed out, law is indeed a behavioral science par excellence and lawyer, more than anything else, is a 'social engineer' trained in ordering and facilitating change in a manner that creates the minimum friction and maximum happiness for the maximum number of people. The objective is the same whether he operates at the local level, state level, national or international levels. The challenge of socially relevant legal education today is to find ways and means to enable the future lawyers to enlarge the base of his expertise with those developed by behavioral scientists so that they can fully and completely perform the social mission of law as designated by the Constitutions of States and International declarations.

The first step towards the above goal is to get acquainted with the knowledge about society and social issues which is now available from the study of social sciences especially from sociology. As this knowledge are the result of certain frame of reference somewhat different from that of conventional legal scholarship, it is necessary for the law students to appreciate the concepts, theories and methodologies these social sciences have evolved to develop the respective knowledge. Looked at from these perspectives and approaches, the analytical skill of the lawyer would help him to be a critical consumer of such knowledge in his task of social engineering and social control.

HUMAN SOCIETY AND LAW

Nearly all human societies, tribal, peasant or industrial, have laws or legal rules whose scope is coextensive with human life. In other words, human activity, be it economic, social or political, is controlled by laws or procedures of various types. Basically, however, the function of law is to protect, preserve and defend the members of society against internal disorder or external threat. In order to have effective laws they have to have the moral sanction of society and be enforced on the people by power of the State. Those who deviate

from the law are usually given punishment of various kinds such as fines, imprisonment, exile or even death. However, the State which is an embodiment of the law may itself become arbitrary or tyrannical. When a gap occurs between law and justice, human spirits are often rebelled in the society. Men of great moral stature such as Socrates, Jesus, Gandhi ji have been regarded as rebels against the State. At the same time the persistent question among jurists has been, “*should law be concerned with what is, or what ought to be?*”

In preliterate societies, laws have been orally transmitted and often are inseparable from customs. Extensive data from Africa, Asia and Australia have shown that tribes were well regulated by taboos, customs and even formal laws. The normative control was maintained by the strict observance of taboos which were laws as well as being the basic fabric of society. Legal control in preliterate societies was exercised primarily by kinship units called lineages, clans, moieties etc. In complex, ancient civilizations such as Babylonia, Egypt, Israel, India and Rome the laws are usually based on customs, religious principles and decrees of monarchs or head of States. The laws were recorded in detail on clay tablets, parchment or palm texts for the benefit of posterity. As the societies have grown from simple to complex, there has been an extensive growth of legal rules.

SOME SOCIOLOGICAL APPROACHES TO LAW

Some of the eminent social thinkers namely Durkheim, Karl Max and Weber have made significant observations on law. Durkheim’s sociology of law was tied up with the wider context of transition from simple to complex society. While the law in simple society was based on the principle of stringent punishment, in the complex society it was based on compensatory principal. Karl Marx regarded the legal system of his times as the outcome of certain dominant and vested interests. Law enabled the dominant groups to preserve their privilege and impose their will on rest of the society. Hence, in the communist society, where the private interests are replaced by collective goals, both state and law would be unnecessary. Max Weber’s theory of law derives from his notion of Rational-Legal Authority. In the study of historical jurisprudence, he described the gradual ascendancy of the rational- legal principals. The modern formal organizations State, Judiciary etc. are guided in principal by rational-legal norms. In sum, sociological theories of law emphasize the significance of social factors in the study of law.

RELATIONSHIPS OF SOCIAL FACTORS WITH LAW

The study of legal institutions and their operation in society is not only important but also advantageous for the society. In this regard one may look at the role of judiciary in the modern legal system, the working of trial courts, the role of lawyers, judges, police, prosecutors and bureaucrats. One may study and empirically verify the capacity and limits of law in regulating behaviour and effectuating policies whether it is in the area of family relations, labour relations or land holding. The relationships of social factors with law may enable one to understand law as a product of social change, law as a source of medium of social change and the dynamics of law in development.

RECIPROCAL RELATIONSHIP BETWEEN SOCIAL AND LEGAL CHANGES

Law is rooted in social institutions, in socio- economic network. These social factors influence the course of law or the direction of legal changes. Besides, the sociological view also highlights the differences between formal (normative) and substantive (operative) aspects of law. What is written into statute books is not always followed in practice. This is the outcome of personal and social interactions which are variable and often unpredictable. At the same time, law may itself change social norms in various ways. For example in free India, legal abolition of untouchability is an attempt to change a long-standing social norm. Yet it has not succeeded much due to inadequate social support. At the same time the law on the practice of untouchability has lent recognition to those who protest against it. For instance, while in isolated cases individuals have suffered, the organized protest by the deprived groups has reduced the extent of oppression. The activities of Dalit Panthers in Maharashtra bring about this point clearly. Thus, although law cannot bring about change without social support, it can create certain preconditions for social change. Thus there is a reciprocal relationship between social changes and legal changes.

SOCIAL ORDER AND LAW: THE INTERPLAY BETWEEN VALUES OR NORMS AND THE LAW

Laws are essential to maintain social order in society. Orderly social life is a goal desired by human society. Stable social life enables the pursuit of the individuals' vocation peacefully. If there is anarchy, it not only leads to disruption of social life but also makes human behaviour unpredictable. Hence, socialization of children is the first step to inculcate the norms of social control. The later adult socialization reinforces conformity to the laws of society.

However, the really outstanding problem in Indian society is the crisis in legalism. There is a widespread adoption of dual standards in law. The rich and powerful sections, politicians, top

government functionaries, private businessman are the ones who flout law because of their privileged position. Tax evasions, manipulation of licenses, acceptance of illegal gratification are few examples of the deviance of law by privileged people. Most of these deviant acts are done covertly and even if exposed by judicial enquiry, little follow- up action is taken against corrupt politicians and bureaucrats. It is ironical that often these people pose as the guardians of morality in public life. It is this crisis in legal values that the nation must overcome in attempting to implement the Constitutional provisions in spirit as well as the letter of the law and for doing this in depth sociological study and analysis of above mentioned social problems should be done by the people concerned with law so as to find foolproof legal solutions to these problems.

SOCIAL CONTROL AND LAW

Laws are the means of social control and they are operational both at the micro as well as the macro level. Traditionally in India, Laws were enforced through the Village Panchayats, Nyaya Panchayats, Caste Councils, Lok Adalats and Tribal Councils in the Tribal Judicial System. In the post- independence period after the Republic of India adopted the Constitution in the year 1950, juricature was recognized. The Supreme Court of India became the apex appellate body supported by the State level courts such as High courts, District courts etc. Besides, statutory tribunals were established for revenue, labour and other matters. The Law Commission of India was established to suggest and recommend appropriate legal measures. It has been entrusted with comprehensive terms of reference. These include not only the traditional sphere of law such as Company Law, Civil and Criminal Procedure, Contract Act, Stamp Act etc. but also the laws oriented to social change such as those related to the implementation of Directive Principles, especially economic items such as cooperative credit, agricultural wages, tenancy etc. Besides, the LIC has been expected to reform the existing social legislations or usher in new laws especially with regard to weaker sections, bonded and contract labour, juvenile delinquents, mentally ill and physically disabled.

SOCIAL DEVELOPMENT AND LAW

Neither law nor social science is value free. They do not operate independently. They do share the common concern for development which is the result of constant interaction of individuals in society. Law attempts to regulate that interaction through institutions, norms and processes evolved on certain assumptions of human nature and behaviour. Whether it is contract law or criminal law, tax law or labour law, the aim is to influence individual decision

making in such a way as to advance social policies and values. Whether it actually does so, if not, why not, and how best policies can be adapted to advance individual and social development are questions which concern the lawyer more than anyone else. In other words, development provides a perspective and a reference to the legal scholar in his use of social science material and method.

SOCIAL PROCESSES AND LEGAL DEVELOPMENT

The study of various social institutions such as family, marriage, divorce etc. helps lawyers in many ways. The study of institution of family in historical and comparative perspective emphasizing the customary and regional variations in Indian society helps the law person concerned in dealing with organizing family relations and in understanding established notions and inherited principals of marriage, divorce and inheritance.

Central to the Indian social organization is the concept of caste and reluctant stratification of society. Caste permeates all aspects of life and there has been a great deal of legislation to put down the evil manifestations of caste and class. No student of law can understand social change in India without understanding the caste- class ramifications and their impact in legislative opinion and interpretations.

Intelligent understanding of legal developments demands careful study of political power centers and power relationships in society. This, of course, is a major concern of public law as well. Legal institutions which actualize and support the Constitutional power structure may camouflage the reality if legal knowledge is divorced from social science.

Law, the Civil Service and the professions in relation to social organization and change are discussed with a view to understand the process of modernization of Indian society. In the teaching of labour law, administrative law, and Constitutional law the knowledge available from sociological studies of the occupations, the professions and formal organizations can be both revealing and instructive. Equally important is the role being played by religion and language in Indian society. In the context of Indian commitment for “unity in diversity” and secularism, it will be interesting to look at sociological insights in the use of law for social ordering and social progress. Attempts in evolving uniform civil code or adopting a national language throughout the country provide instances which compel the lawyer to look at law-society interaction in its myriad forms, shades and relationships.

A few segments of Indian society like women, children and tribal population commands great priority in recent times. The legal system is replete with instances of special treatment, some

favorable and some not so favorable, accorded to these sections who constitute the vast majority of Indian population. Yet in reality, their conditions are claimed to be bad as ever. The gap between law in the books and law in action is quite pronounced in this regard. Why, how and where did law fail to fulfill its promises? The answer lie embedded in social science knowledge which has to prelate the corridors of power, especially the legislature, the courts, the Law Commissions and the administrative offices.

RELATIONSHIP BETWEEN SOCIOLOGY, CRIMINOLOGY AND LAW

The challenge of crime has already influenced legal thought and action to such an extent that there is no other department of law in which law and sociology have interacted so intimately as in control of deviance. The study of crime is especially a concern of sociology. The criminal behaviour is interdicted by society and government. It is forbidden behaviour and incurs wrath of society and is punishable under law. The criminal behaviour, however, is included in social behaviour. What we call a social or anti- social behaviour is nonetheless social in character. A criminal is not born but is a by- product of social factors. Hence, the study of anti-social behaviour is studied in sociology.

As the scope and area of sociology widened, the various branches of it have grown into new disciplines on their own. Today, criminology is an independent discipline though it was at one time a part of sociology. However, the science of criminology continues to make use of sociological methods and techniques in the investigation of its subject-matter. It tries to find out with the help of sociological techniques causes and remedies of criminal behaviour. Thus two are closely related. Perhaps it will continue to be the major partnership between lawyers and social scientists for quite some time in future as well. Understanding behaviour and directing change intelligently and imaginatively can prevent the problem of deviance going out of hands. This is where the legal inputs in planned development have to assume greater attention and responsibility.

In the end it can be said that the application of social sciences especially sociology to legal phenomenon helps to develop an appreciation of the possibilities, difficulties and limitations of law in social ordering and social change. It is surely a task of all concerned with the social realities and aspirations of our times.