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What is law and social science?

Law: Law is the rules and regulations which are generally found in constitution, acts, judicial opinions, legislations etc which is used to regulate and govern and control the behavior of the society. It is the mechanism to maintain the social order and thus ensure a safe and peaceful society in which individuals' rights are respected¹.

Social Science: Social Science is a branch of science that deals with study of human society and is concerned with the interpersonal relationships of individuals as members of society.

The foundation of social work's unique purpose and perspective is:

- service
- social justice
- dignity and worth of the person
- importance of human relationships
- integrity
- competence²

Law regulates significant aspects of human life. In simple terms, law is a set of regulations which are formulated by the state and are binding upon its subjects. Jurisprudence is the science of law. It has been described as the “grammar of law”. In order to effectively interpret the law, it is essential to understand its origin, nature and meaning. Not only interpretation, but even the legislative process requires legislators to keep several factors in mind in order to ensure that the law that is made is effectively enforced and followed by all. Jurisprudence

¹ Available at: <http://www.legalservicesindia.com/law/article/966/18/Law-is-a-form-of-Social-Science> [Last accessed on August 15, 2020.]

² Supra Note 1.

studies the law to facilitate better legislation as well as interpretation. In doing so, it uses the wisdom provided by other social sciences³.

According to Paton, modern jurisprudence is mostly based on social sciences and philosophy since it examines the historical aspects of law to address the chaos created by conflicting legal systems. Describing jurisprudence as a “lawyer’s extraversion”, Julius Stone is of the opinion that the objective of jurisprudence is to view and examine law from the eyes of disciplines other than law. Roscoe Pound states that the subjects of jurisprudence, ethics, economics, politics and sociology might be quite distinct at the core, however, at a certain point they overlap with each other. He further adds on that it is impossible to understand their respective cores without studying this particular overlapping with other social sciences. According to him, all social sciences must especially co-work with jurisprudence.

Relation between Law and Social Science

There is a close connection between law and social sciences. Laws are the rules and regulations which provides mechanism to solve the intricate and complex problem of society. Law provides the deep insight into the law of the land, political factors influencing policies culminating into law and social science is related to human behavior in the society and address the problem of the members of society. Thus to study the interpersonal relationships of members of society the knowledge of law is essential since it ensure that individual’s rights of the members of the society are respected.

Law is a form of Social Science. Society and law are closely related to each other. Law tells the nature to live the social life and this also increases with the Economic, Scientific and Technological progress. Law also changes with Social Changes and plays an important role in the fulfilment of Social Needs, so for the fulfilment of social need, there is a provision by constitutional amendment and this is the responsibility of judiciary that law which violates the constitutional provisions, public interests and fundamental rights should be declared void. Legal reforms have been at the centre of the agenda for strategizing gender justice in India. Uniform Civil Code is merged in the Article- 44 by Indian Constitution as a results of social change. It signifies a uniform code of conduct without cast, religion, parentage, community and cultural recognition for all citizens of country and also Article-21 Protection of life and personal liberty as a results of social change. In this article new prison jurisprudence right to Speedy Trial, Right to Free Legal Service, Right to Human Dignity, Right Against Torture have been made some of the components of the fundamental rights.⁴ Law is a medium through which social objects can be achieved. So, change of law is must with social changes, otherwise law will be of no value.

Law is rooted in social institutions, in socio-economic network. These social factors influence the course of law or the direction of legal change. This is the outcome of personal and social interactions which are variable and often unpredictable. At the same time, law may itself change norms in various way. For example, in free India, legal abolition of untouchability is an attempt to change a long-standing social norm⁵. Yet it has not succeeded much due to inadequate social support. Thus there is a reciprocal relationship between law and society.

³ Available at: https://www.ias.edu/sss/law_and_social_sciences [Last accessed August 16, 2020].

⁴ Supra Note 1.

⁵ Supra Note 3.

The term social change is also used to indicate the changes that take place in human interactions and inter-relationships. Society is a web-relationship and social change obviously means a change in the system of social relationship where a social relationship is understood in terms of social processes and social interactions and social organizations. Thus, the term, social change is used to indicate desirable variations in social institution, social processes and social organization. It includes alterations in the structure and the functions of the society. Closer analysis of the role of law vis-a-vis social change leads us to distinguish between the direct and the indirect aspects of the role of law.

1. Law plays an important indirect role in regard to social change by shaping and having a direct impact on society. For example: A law setting up a compulsory educational system.
2. On the other hand, law interacts in many cases indirectly with basic social institutions in a manner constituting a direct relationship between law and social change. For example: A law designed to prohibit polygamy.

Law plays an agent of modernization and social change. It is also an indicator of the nature of societal complexity and its attendant problems of integration. Further, the reinforcement of our belief in the age old panchayat system, the abolition of the untouchability practices, child marriage, sati dowry, etc are typical illustrations of social change being brought about in the country through law.⁶

Law is an effective medium or agency, instrumental in bringing about social change in the country or in any region in particular. Therefore, we rejuvenate our belief that law has been pivotal in introducing changes in the societal structure and relationships and continues to be so. As of today, the decisions of the Court are not just being tested on the touch stone of social justice, but indeed they are being cited of as precursors to social rights. The Court has pro-actively and vigorously taken up to cause of social justice and has gone to the extent of articulating newer social rights such as the right to food, right to health, right to education. Thus, the march of law is clearly in favour of Supreme Court having performed a pro-active role in social change of the languishing masses. It certainly has acted as a catalyst in the process of social transformation of people wherein the dilution of caste inequalities, protective measures for the weak and vulnerable sections, providing for the dignified existence of those living under unwholesome conditions, etc, are the illustrious examples in this regard. Social change involves an alteration of society; its economic structure, values and beliefs, and its economic, political and social dimensions also undergo modification. However, social change does not affect all aspects of society in the same manner.

While much of social change is brought about by material changes such as technology, new patterns of production, etc, other conditions are also necessary. For example, like we have discussed it before, legal prohibition of untouchability in free India has not succeeded because of inadequate social support. Nonetheless, when law cannot bring about change without social support, it still can create certain

⁶ Available at: <https://www.annualreviews.org/journal/lawsocsci> [Last accessed August , 2020].

preconditions for social change. Moreover, after independence, the Constitution of India provided far-reaching guidelines for change⁷. Its directive principle suggested a blue-print for a new nation. The derecognizing of caste-system, equality before the law, and equal opportunities for all in economic, political and social spheres were some of the high points of the Indian Constitution. Some areas where law has given the influence for social change are:

1. Area of agrarian reform policy and legislation;
2. Area of implementation of untouchability abolition law;
3. The normative aspects of employment and educational reservation for the scheduled castes and scheduled tribes under the Constitution;
4. The allied field of abolition of bonded labour;
5. The problem of substantive impact of changes in the family law marriage, equal rights of women to inheritance and dowry

For purposes of constitutional competence, these actions are characterized as those coming under the writ jurisdiction of the Supreme Court of India under Article 32 of our Constitution and the various High Courts, under Article 226. The traditional extent of writ jurisdiction was of course a colonial inheritance from the British-era and the remedies that could be invoked were those of habeas corpus, quo warranto, mandamus, prohibition and certiorari. However, the Indian Courts have pushed the boundaries of constitutional remedies by evolving the concept of a continuing mandamus which involves the passing of regular directions and the monitoring of their implementation by executive agencies. In addition to designing remedies for ensuring that their orders are complied with, the Courts have also resorted to private law remedies such as injunctions and stay orders in Public Interest Litigation (PIL) matters. The Supreme Court of India has been able to shape appropriate remedies for a variety of situations on account of the wide discretionary powers for granting constitutional remedies that have been conferred on it as per the language of Article 32 of the Constitution. Furthermore, under Article 141 of the Constitution of India, the Supreme Courts rulings are considered to be the law of the land and become binding precedents for all courts and tribunals in the country's legal system. Hence, the Supreme Courts decisions in Public Interest Litigation (PIL) matters have progressively shaped a unique jurisprudence that gives due weight age to the interests of the underprivileged and backward sections in society. A significant consequence of this is that creative remedies designed for particular fact-situations come to be widely reported to by Courts all over the country. In this way, the rulings given in PIL cases create an active judicial dialogue within the whole legal system.

Keshavananda Bharati vs State of Kerala.

By a narrow majority of 7-6 it was ruled that Parliaments power of amendment was not absolute and it could not amend the Basic structure of the Constitution, which in the opinion of the judges consisted of elements such as democracy, rule of law,

⁷ Supra Note 6.

secularism, separation of powers and judicial review.⁹ The said decision did not curry favour with the Indira Gandhi-led government of the day and three of the judges who ruled for the majority were superseded in the matter of appointment to the position of Chief Justice of India in 1973. Nevertheless, the decision had given a clear signal in defence of judicial independence.

Conclusion

Law is a system of rules and guidelines which are enforced through social institutions to govern behaviour, wherever possible. It shapes politics, economics and society in numerous ways and serves as a social mediator of relations between people. Contract law regulates everything from buying a bus ticket to trading on derivatives markets. Property law defines rights and obligations related to the transfer and title of personal and real property. Trust law applies to assets held for investment and financial security, while tort law allows claims for compensation if a person's rights or property are harmed. If the harm is criminalized in legislation, criminal law offers means by which the state can prosecute the perpetrator. Constitutional law provides a framework for the creation of law, the protection of human rights and the election of political representatives. Administrative law is used to review the decisions of government agencies, while international law governs affairs between sovereign states in activities ranging from trade to environmental regulation or military action. The legal response to a given social or technological problem is therefore in itself a major social action which may aggravate a given problem or alleviate and help to solve it.

References

1. V. D. Mahajan, 'Jurisprudence and Legal Theory', Fifth Edition, Eastern Book Company.
2. Legalservicesindia.com