

The efficacy of Law as an Instrument of Social Change



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ABSTRACT

Law is a historically significant and still often powerful force for social change. Indeed, law has been centre to many of the most well-known and important achievements in social change work. This Paper will enable to develop an understanding of how law can function as a tool of social reform and in evaluating the uses and limits of law in this context. Law is deeply implicated in our economic, political, and social worlds; pursuit of social change invariably involves a commitment with law. Social change also involves reforming the institutions that structure and govern our society - including corporations, labour unions, administrative agencies, schools, child welfare institutions, and religious organizations - as well as working through these institutions to influence other sectors of society. A forged partnership between public and private institutions also constitutes a promising avenue for reform. Social change requires not only mobilization, but also creating institutions capable of sustaining movement work. Building and leading lasting organizations of this kind depends on critical contributions from lawyers. Law is often perceived as an instrument that can effect social change. While this might be so, it must be complemented by the necessary financial and human resources to make the law effective.

Keywords: Public Interests, Social Interactions, Legitimate Authority, Mechanisms of Enforcement, Legal Reforms.

Introduction:

Law is a form of Social Science. Society and law are closely related to each other. Law enlightens 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 fulfillment of Social Needs, so for the fulfillment 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 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 result 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. 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 ways. For example, in free India, legal abolition of untouchability is attempted to change a long standing social norms. Yet it has not succeeded much due to inadequate social support. Thus there is a reciprocal relationship between law and society. The term 'social change' is also used to indicate the changes that take place in human interactions and inter-relations. Society is a 'web-relationship' and social change obviously means a change in the system of social re-

lationship where a social relationship is understood 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-à-vis social change leads us to distinguish between the direct and the indirect aspects of role of law³.

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"Justice is the basic of any society that want peace and progress. Law is the instrument for delivering of justice. And yet the tragic truth is that law is often not on taking terms with justice and is even hostile to it. This shall not be a new awareness, a creative consciousness, a purposive art which will expose this unjust and unjustified antagonism and promote a cross-fertilization of law and justice is the demand the people make out on the jurist-statement."

--Justice V.R. Krishna Iyer

It is correct that law is an instrument of social change, law changes its shape according to the requirement or society changes the law through enactment of statutes. In India, every session of Parliament and State Legislature introduces the Bills to amend the Acts or enacts. On the other hand, where, any question of facts comes before the court, judiciary especially higher judiciary is interpreting the law according to the requirement of society⁴.

The observation of Lord Woolf, Chief Justice of England is that "Like old clocks, our judicial institutions need to be oiled, wound up and set true time." Similarly, the Hon'ble Supreme Court⁵ has observed, that "the law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross cultural conflict where living law must find answer to the

new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must achieved by imposing appropriate sentence. Therefore, law as a corner-stone of the edifice of "order" should meet the challenges confronting the society.

The efficacy of Law as an Instrument of Social Change⁶, law entails two interrelated processes: the institutionalization and the internalization of patterns of behavior.

I. Institutionalization of a pattern of behavior refers to the establishment of a norm with provisions for its enforcement (such as desegregation of public schools.)

II. Internalization of a pattern of behavior means the incorporation of the value or values implicit in a law (e.g. integrated public schools are 'good'.)

The extent to which law can provide an effective impetus for social change varies according to the conditions present in a particular situation. Even suggests that a law is likely to be successful to induce change if it meets the following seven conditions:

1. Law must emanate from an authoritative and prestigious source.

2. Law must introduce its rationale in terms that are understandable and compatible with existing values.

3. Advocates of the change should make reference to other communities or countries with which the population identifies and where the law is already in effect.

4. Enforcement of the law must be aimed at making the change in a relatively short time.

5. Those enforcing the law must themselves be very much committed to the change intended by the law.

6. The instrumentation of the law should include positive as well as negative sanctions.

7. The enforcement of the law should be

reasonable, not only in the sanctions used but also in the protection of the rights of those who stand to lose by violation.

Advantages of law in creating social change: In many instances, the state of the art of social change endeavors is not methodologically sophisticated enough to distinguish clearly among casual, necessary, sufficient, and contributory conditions to produce desired effects in society. The advantages of law as an instrument of social change are attributed to the fact that law in society is seen as legitimate, more or less rational, authoritative, institutionalized, generally not disruptive, and backed by mechanisms of enforcement.

Legitimate Authority:

A principal advantage of law as an instrument of social change is the general feeling in society that legal commands or prohibitions ought to be observed even by those critical of the law in question. To a great extent, this feeling of obligation depends on respect for legitimate authority and the perception of power. Webber says that there are three types of legitimate authority: 1. Traditional authority bases its claims to legitimacy on an established belief in the sanctity of traditions and the legitimacy of the status of those exercising authority. The obligation of obedience is not a matter of acceptance of the legality of an impersonal order, but rather a matter of personal loyalty [Rule-of-elders].

2. Charismatic authority bases its claim to legitimacy on devotion to the specific and usual sanctity, heroism, or exemplary character of an individual and the normative patterns that are revealed or ordained. The charismatic leader is obeyed by virtue of personal trust in his or her revelation or exemplary qualities [Moses, Christ, Mohammed, Gandhi].

3. Rational-legal authority bases its claims to legitimacy on a belief in the legality of normative rules and in the right of those elevated to authority to issue commands under such rules. In such authority, obedience is owed to a legally established impersonal order. "Rational" people

"voluntarily" make a "contract" that generates the impersonal legal order.

The binding force of law:

An unusual fact situation posing issues for resolution is an opportunity for innovation. Law, as administered by courts, transforms into justice. The law does not operate function in a vacuum. As social norms and values change, laws too have to be a new awareness, and recast. Law is really a dynamic instrument fashioned by society for the purpose of achieving harmonious adjustment of human relations by elimination of social tension and conflicts⁷.

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.

Mailgram 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; 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 mandated to

enforce behavior.

Conclusion:

There is considerable effectiveness, but with respect to the latter, the law has hardly any social force, because the changes in legal norms which are for ahead if the serial norms involve an educational task. Mere threat of punishment will not be effective. Such a situation produces calls "forced compliance", there will be a discrepancy

between public behavior and private belief. So long as behavior involves forced compliance. There is no internalization of the new values and so there will be disobedience of the law. There must be effort by voluntary organization which has a faith in the new law as, for example, the prohibition law as untouchability removed law, to convert forced compliance or even non-compliance into voluntary compliance⁸.

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