
INDIAN LENSES: LAW AS AN INSTRUMENT OF SOCIAL ENGINEERING

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ABSTRACT

Society is dynamic and everlasting, it changes with the changing needs of time and hence the laws change simultaneously through amendments, rules and acts. Human being is possessed with different rights, or to say, natural rights which they strive to achieve at any cost. Holland describes rights: “A capacity residing in a person to control the action of others.” Society and law have been connected for a long time; though the society was changing but the enactments remained the same. Pre- independence in India, the concept of Austinian philosophy prevailed of imperative law wherein the three organs of the government worked for the upliftment of the British and disregarded the needs of the Indian masses, this was felt by our framers as they resolved to make an egalitarian society striving towards attainment of complete justice of all kind. The situation of the poor, the children and women were of prime concern for them. As Duguit viewed ‘justice as a social reality its roots being in the society itself and not in the will of the sovereign.’ Social engineering delves deep into the balancing out scenario to reach the estimated maximum happiness with minimum friction; and what constitutes it is basic social needs as well as harmonious resolution between the conflicting interests; to complete this, jurists, legislators, advocates, and precedents strive towards it. When interests clash with each other then law must come up and resolve it amicably. The law interrupts but then the obstacles or the barriers preventing them are cleared by the judiciary which is at the top to protect its citizens from any kind of violation or if there is a need of any new legislation and undoubtedly courts have reversed their decisions as well seeing the changing needs of time and circumstances. This article analyses the constitutional provisions, some landmark judgements and various welfare legislations that throw light on social engineering in the Indian context.

Keywords: social engineering, society, law, rights, interests.

I. INTRODUCTION

“Where there is a wrong, there is a remedy”, the modern society dances to this tone and hence the formation of law in every country in the world. Law does not differentiate on the basis of any caste, colour, race, sex, religion, place, descent, residence, disability, age, etc. It is one and the same thing for all around the globe. The International treaties that apply to all the nations ratifying it are the cornerstone to every legal perspective in the nations.

Before the advent of law made by legislature and judicial precedent, according to philosophers there was the prevalence of theocratic law, that is, whatever the king said was right and people had to abide by it, there was no consideration of society’s changing needs and their outlook towards the changing needs of the time. Society is run by laws and these laws have to change with time, the sociological school of jurisprudence largely deals with the society and the law, how the maximum happiness has to be obtained with minimum friction and by minimum friction, the lesser the disturbance, the lesser the sorrows. This school relies on the fact that the rule of law and the society should run together, if one lags, the other is bound to show equal and opposite reaction to it. As has been seen in the history of India, the barbaric and the heinous rule of the Britishers, the Indians were left with torn regions, torn states, non- stabilized laws, or specifically outdated laws that should govern the society. A need did arise to shape laws for the independent India to function so that the maximum happiness of maximum people could be reached.

RESEARCH OBJECTIVE

The object of this research paper is to analyse the instrumental role of law in social engineering in the context of Indian laws, constitutional provisions, and precedents.

RESEARCH METHODOLOGY

The doctrinal analysis is used as a research method in this paper by analysing the books, judgements, magazines, philosophies, journals and theories.

II. ROSCOE POUND AND JURISPRUDENCE

Pound believed that the law is the medium through which a society functions and hence he referred it as the functional aspect which is more than a set of rules, that is, ‘law in action’.

This dictum encourages the jurists, the policymakers, legislators, decision making body to make and interpret laws according to the needs and interests of the society. Further, he focussed on the fact that the law should be studied in the context of history, sociology, economics, psychology as well as the traditions, customs and need of each society.¹ He is associated with the sociological school and it concentrated on social realities, norms and issues which is addressed by the legislator and it acts as an instrument.

Additionally, he defined law “the rules, principles, conceptions and standards of conduct and decision and also the precepts and doctrines of professional rules of art.” emphasising on this aspect, he further termed the functional aspect of law, that is, the reconciliation of the people in the communities of their interests and harmonisation of their inter- relations as ‘social engineering.’

III. THEORY OF SOCIAL ENGINEERING

“Law is social engineering which means a balance between the competing interest in the society.” -Dean Roscoe Pound. He views law as a process of social engineering in which the focus is on the acceleration of the process of social ordering by making all possible efforts to avoid conflicts of interest of individuals in the society.² Here, interest is defined as a claim, a want or a demand which an individual or a group of individuals of the community desire to be satisfied and the role of social engineering comes into play to complete it and make it a civilised society.

It is a theory based on social needs, that is, satisfying the basic needs of the society and hereby the engineering, that is, the way an engineer applies his pre- learnt knowledge on an instrument to achieve an objective in order to make a refined product. Similarly for an engineer, that is, here the legislators, jurists, etc. use the law to give a refined product in terms of the society by satisfying their needs. Hence, the society forms the epicentre of the formation of a law therefore fulfilling the objective of functional aspect. Law has to change with time and what changes with time is the society, thus the epicentre of the functional aspect of law and creating a refined, pure, purposive and goal- oriented society.

¹ Roscoe Pound, *Interpretation of Legal History* 156 (Cambridge University Press 1923).

² Dr. N.V. Paranjape, *Studies in Jurisprudence and Legal Theory* 106 (Central Law Agency 2019).

When laws are made keeping in the interests of everyone in the community, many things are kept in mind while making any policy or giving it a stamp of law which shall bind the society. This kept in mind thing refers to the needs and specifically basic needs of every individual and it should be fulfilled by the forming bodies of the law. Certainly, the conflict arises when every section of the society is taken into consideration so as there is no imbalance in the man kingdom. As has been said by Pound himself, "I venture to think, would represent the social order as an organized human endeavor to satisfy a maximum of human wants with a minimum of sacrifice of other wants. It would represent the legal order as that part of the whole process which is or may be achieved by the force of politically organized society. It would picture elimination of friction and waste, economizing of social effort, conservation of social assets, and adjustment of the struggle of individual human beings to satisfy their overlapping individual claims in life in civilized society, so that if each may not get all that he demands, he may at least obtain all that is reasonably practicable in a wise social engineering."³ One must get what is reasonable which can be affected by harmonizing or balancing the conflicting or competing interests, desires, claims, and wants.⁴

IV. INDIAN LAWS AS AN INSTRUMENT

1. THE CONSTITUTION

It is a significant part of any country, it contains the division of the executive, judiciary and the legislative containing the various rights and duties, it governs the country through its rules for any section of the society, what forms the major part of the Constitution is the Preamble. The Indian Preamble has elaborated extensively that is, it is made by the people, for the people and of the people. It constitutes India as 'SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC'⁵. Apart from this, the social objectives and goals which need to be achieved is contained further "JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation."⁶

³ 36 Roscoe Pound, *The Theory of Judicial Decision*. III. A Theory of Judicial Decision for Today 940- 959, (Harvard Law Review 1923).

⁴ Roscoe Pound, *The Spirit of the Common Law* 196 (Transaction Publishers 1999).

⁵ The Constitution of India, 1950, Preamble.

⁶ *Id.*

The Constitution thus serves as the grundnorm from where all the laws derive themselves and have to pass the litmus test mentioned in it to achieve political democracy with social and economic as has been stated by Dr. Ambedkar ‘Political democracy cannot last unless there lies at the base of its social democracy. What does social democracy mean? It means a way of life which recognises liberty, equality, and fraternity....’

While the constitutional provisions relating to secularism aim to bring harmony and integration between religions, the prohibition of discrimination aim to eradicate discrimination based on religion, race, caste, sex, place of birth or any of them, subject to specified exceptions.⁷ The word socialist in the Preamble paves way for its connection with the Fundamental Rights contained in Articles 14 and 16, the apex court has deducted it with the equal pay for equal work and appointment that is compassionate.⁸ It further provides for article 19 which ensures right to freedom with restrictions such as the morality, integrity and public order, sovereignty, etc. with Articles 25 and 26 which serve as the secular part as mentioned in the Preamble again with certain limitations. These provisions are made with such attention that it clearly ensures the happiness with minimum friction and every time the court acting as the guardian as provided in Articles 32 and 226.

A. Articles 14, 15 and 16

Article 14 deals with equality with intelligible differentia therefore giving rise to article 15 for providing special treatment to scheduled castes, scheduled tribes and the same has been done in article 16 with another special facility to women and children under article 15 which is necessary as, if, they not lifted through laws would still suppress them due to the society we were in where patriarchy, dictatorship, forced labour, discrimination and begar were at the prime spot. Thus, positive discrimination was upheld in *Indra Sawhney V. Union of India*.⁹

B. Articles 19(1)(a) and Article 19(2)

Article 19(1)(a) contains that every citizen of Indian has ‘right to freedom of speech and expression’ but as we all have heard absolute power corrupts absolutely¹⁰ so it was necessary for the law framers to keep the circumstances and situations in their minds and impose

⁷ The Constitution of India, 1950 art. 15.

⁸ *Balbir Kaur V. Steel Authority of India*, AIR 2000 SC 1596.

⁹ *Indra Sawhney V. Union of India*, AIR 1993 SC 447.

¹⁰ *Ramlila Maidan Incident V. Home Secretary, UOI*, 2012 2 MLJ 32(SC).

reasonable restrictions and the burden is on the authority to justify the restrictions imposed. Hence, Article 19(2) was formulated which contained that no harm should be done to national peace, sovereignty, and integrity of the nation such as the security of state and public order, friendly relation with foreign states, incitement to an offence, contempt of court, defamation, decency, and morality. Freedom is granted to express unpalatable views, cause annoyance, inconvenience or grossly offered so long as it does not amount to incitement leading to imminent casual connection with any of the eight subject matters set out in Article 19(2).¹¹

C. Article 51A

Every side has two coins, hence the formation of fundamental duties. Right can be pleaded from the State but every citizen has obligations as well that comes with the offering rights which is a basic nature of the universe.

D. Fundamental rights and the Directive Principles of State Policy (DPSP)

There are differences between the rights and DPSP such as the enforcement part, the scope, the implementation, and the justiciability. With such differences, the debate always rotated around this topic whether any of them can override anyone of them and this was answered by the protector and the guardian, that is, the Supreme Court. In *Re Kerela Education Bill*¹², the court held that the principle of harmonious construction should be established and not completely ignore the DPSP. Further, the apex court of India highlighted in one of the landmark judgements¹³, “complementary and supplementary to each other, both striving to secure socio-economic welfare by ensuring a social order in which justice and individual liberty are safeguarded.” Finally, the question was settled in *T.N. V. Abu Kavur Bai*¹⁴ where the court held that despite the directive principles are not enforceable but they can be harmonised and reconciled with the fundamental rights and the government has been given this authority to implement them from time to time according to the capacity, situation and circumstances that arise in the future. As Gravin Austin has described them ‘Conscience of the Constitution’ hence both must balance each other and thus the principle of social engineering.

¹¹ *Shreya Singhal V. Union of India*, AIR 2015 SC 1523.

¹² *Re Kerela Education Bill*, AIR 1957 SC 956.

¹³ *Keshvanand Bharti V. Union of India*, AIR 1978 SC 1461.

¹⁴ *T.N. V. Abu Kavur Bai*, AIR 1984 SC 626.

E. Fundamental duties and Directive Principles of State Policy

The Supreme Court held in *Union of India V. Navin Jindal*¹⁵, ‘for the purpose of interpretation of the constitutional scheme and for the purpose of maintaining a balance between the fundamental/ legal rights of a citizen vis-à-vis, the regulatory measures/ restrictions, both Parts IV and IV-A of the Constitution can be taken recourse to.’¹⁶

2. WELFARE LEGISLATIONS

Apart from the Constitution, the laws were made keeping in mind the grundnorm. The separate legislation paved way for a comprehensive and elaborate provisions on a particular topic or subject providing for extensive rights, duties, powers, and liabilities on the State. The separate enactments serve a greater role as they eradicate the old customs and norms, the ongoing tradition which is certainly not reasonable in the changed times. According to Pound, ‘legal orders are instruments of social change created to govern people’s actions to harmonize interests’: “It [the legal order] may well be thought of as a task or as a great series of tasks of social engineering; as an elimination of friction and precluding of waste, so far as possible, in the satisfaction of infinite human desires out of a relatively finite store of the material goods of existence.”¹⁷

The Right to Education Act, 2009 provides for compulsory and free education up to 14 years of age which has been envisaged in the DPSP as well as the Fundamental Rights. The Human Rights Commission, Women’s Commission, Family Courts, Industrial Tribunals, Administrative Tribunals, Ombudsman, Panchayati Raj, Lok Adalat, etc.¹⁸ they have been formed with the main objective of bringing about social justice. The Muslim Women (Protection of Rights on Marriage) Act, 2019 is an act which was formed after court declared triple talaq as unconstitutional in 2017 in the case of *Shayara Bano*.¹⁹ Triple talaq was an act that was irrevocable and can be done instantly by a Muslim man only as it applied only to the Muslims and particularly the men, this was in contravention of the gender justice and the Muslim women who were left with no choice. The Hindu laws that now exist were not codified earlier such as the Hindu Marriage Act, 1956, the Hindu Guardianship Act, 1956, the Hindu

¹⁵ *Union of India V. Navin Jindal* (2004) 2 SCC 410.

¹⁶ Dr. Ashok K. Jain, *Constitutional Law of India (Part II)* 254 (Ascent Publications 2019).

¹⁷ Roscoe Pound, *Interpretation of Legal History* (Cambridge University Press 1923).

¹⁸ Dr. N.V. Paranjape, *Studies in Jurisprudence and Legal Theory* 115 (Central Law Agency 2019).

¹⁹ *Shayara Bano V. Union of India*, 2017 9 SCC 1.

Adoption and Maintenance Act, 1956, the Hindu Inheritance and Succession Act, 1955, etc. as they were passed, they prohibited the polygamy amongst the Hindus, the practice of Sati got prohibited, the daughters got equal entitlement to the coparcenary property, widows also got right to property, women can now adopt a child. The Wages Code, 2019 have given more strength to the workers or the employees employed in the trade or industry by combining the earlier industrial laws. Several other legislations include The Civil Rights Act, 1955, the Equal Remuneration Act, 1976, the Juvenile Justice (Care and Protection of Children) Act, 2015, the National Food Security Act, 2013, etc. the list is not exhaustive as many legislations have been formed post-independence to provide for betterment of the citizens giving them the hope of a better society with changing circumstances.

3. JUDICIARY – THE ULTIMATE SOCIAL ENGINEERS

Travelling into the time would give us the evidence of the efforts made by the judges sitting in the courts to ensure that the laws enacted are not just black and whole but also find its way into the lives of the citizens. Social stigmas, social norms and social backwardness has been persisting and they have time and again addressed the need of bringing everyone to the same platform without any ifs and buts in fact checking on the government's activities as well. Hence, it has been referred as the guardian of the rights of the citizens who shall interpret the Constitution to its true meaning, maintaining the integrity as well as serving justice. Hence the feature of judicial review under Articles 32²⁰ and 226²¹ of the Indian Constitution. The courts have now progressed well to deliver the justice, social, economic, and political no one to left were behind who were exploited²² and discriminated²³. Many jurists such as Krishna Iyer, Dr. P.B. Gajendragadkar, P.N. Bhagwati, D.A. Desai have led to the development of society where law can be used as an instrument of social change. As has been said by Justice P.N. Bhagwati, "Today a vast social revolution is taking place in the judicial process, the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and device new strategies for providing access to justice to large masses of the people who are denied their basic human rights and to whom freedom and liberty has no meaning."²⁴ The foundation of Public Interest Litigation in place of the traditional locus standi paved way

²⁰ The Constitution of India, 1950, art. 32.

²¹ The Constitution of India, 1950, art. 226.

²² Samatha V. State of Andhra Pradesh, AIR 1997 SC 3297.

²³ Air India V. Nargesh Mirza, AIR 1981 SC 1829.

²⁴ S.P. Gupta V. Union of India AIR 1982 SC 49 (189).

for filing of thousands of PIL in relation to fundamental rights and their violation at a large scale but the thing that has to be kept in mind that it should be violating the interests of public and not deal with any private or personal benefits. In *Keshvanand Bharti*²⁵ case, the supreme court held that although the Parliament has the power to amend the constitution but should not alter the basic structure of the Indian Constitution. This made the Parliament to make a secular, democratic and republic society in India with the context of a 'living law' and upholding the concept of rule of law.

In *D.T.C. Mazdoor Congress*²⁶ case, the apex court of India has laid down that the law is an instrument of social engineering and it can only remove the imbalances in the society thereby serving the needs of the 'Socialist Democratic Bharat under rule of law.

In *Bandhua Mukti Morcha*²⁷ case, the court was of the view that now the application of 'activist jurists' should start instead of the Laissez- Faire principle.

In *Minvera Mills V. Union of India*²⁸, the court iterated that there should be harmonious construction between the fundamental rights and the directive principles of the state policy. In another case, the public interest was kept above when there was an imbalance between the private and public use in which it was held that a person has a right to free, clean and fresh environment.²⁹

In *Common Cause V. Union of India*³⁰, the court has iterated that 'law must take cognizance of the changing society and march in consonance with the developing concepts. The need of the present must be served with the imperative process of law. The immediate needs are required to be addressed through the process of interpretation by the Court unless the same totally outside the constitutional framework to such dynamism.³¹ In *Navtej Singh Johar and others V. Union of India*³², the 150 year old law which criminalized carnal intercourse against the order of nature contained in section 377 of the Indian Penal Code, 1860 was scrapped and

²⁵ Supra 13 at 6.

²⁶ *Delhi Transport Corporation V. D. T.C. Mazdoor Congress*, AIR (1991) 4 SC 117.

²⁷ *Bandhua Mukti Morcha V. Union of India*, AIR (1991) 4 SC 117.

²⁸ *Minvera Mills V. Union of India*, AIR 1980 SC 1789.

²⁹ *Vellore Citizen's Welfare Forum V. Union of India*, AIR 1999 SC 2715.

³⁰ *Common Cause V. Union of India*, (2018) 5 SCC 1.

³¹ Dr. N.V. Paranjape, *Studies in Jurisprudence and Legal Theory* 120 (Central Law Agency 2019).

³² *Navtej Singh Johar and others V. Union of India*, AIR 2018 SC 4321.

repealed by the court and the LGBTQ community was given equality, given the third gender and derive their own sexual identity.

In *B. Venkatramma V. State of Madras*³³, the order by the government which was communal in nature to give jobs in specific proportions to Hindus, Muslims, Christians, and other religions, the court held this to be violation of the Fundamental right guaranteed under Article 16(1) of the Constitution.

In *Consumer Education and Research Centre V. Union of India*³⁴, Justice K. Ramaswamy spoke about the concept of social justice, “the Preamble and Art. 38 of the Constitution of India- the supreme law envisages social justice as its arch to ensure life to be meaningful and livable with human dignity. The concept of social justice which the Constitution of India engrafted, consists of diverse principles of essential for orderly growth and development of personality of every citizen. ‘Social justice’ is thus an integral part of justice in generic sense. Justice is genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, Dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life of dignity of person. Social justice... is an essential part of complex of social change to relieve poor, etc. from handicaps, and to make their life livable for greater good of society at large...”

Thus, by and large when earlier there was the rule of ‘one law for the ruler and other for the ruled’ provoked the lawmakers for making an egalitarian society in which the laws would be supreme lex and no one above the law, that is applied the rule of law with judiciary to keep act as check and balance the things out harmoniously as has been provided by Pounds social engineering and today we have gone far by moving on these footsteps in which the judges try to follow a law which is formed by a procedure framed by the legislator and that to be reasonable as well as just and fair.³⁵

V. CONCLUSION

The Sociological school of jurisprudence keeps the society at its centre, they speak of the society and how the changes in the society keep on going calling for new outlooks as well as

³³ *B. Venkatramma V. State of Madras*, AIR 1964 SC 572.

³⁴ *Consumer Education and Research Centre V. Union of India*, AIR 1995 SC 922 (938).

³⁵ *Maneka Gandhi V. Union of India*, AIR 1978 SC 597.

new perspectives which is brought about by the lawyers in front of the courts and they act as the interpreters and there comes the work of the legislators to enact a law or an act if needed and the executives have to execute thereby this circle keeps on going which in turn explains the concept of Pound's Social engineering. Apart from interpretation of laws, the courts have moved on to secure justice of maximum number as its goal. Pound has also highlighted that law is an instrument and what law does it? It satisfies the social needs by minimal dissatisfaction of their interests particularly the conflict interest and find a middle path so that no one is at risk but everyone is at peace. It is a Herculean task yet this has been achieved all through these years and we have been able to bring changes as this has given confidence and a sense of security and pride in each and every person living in the society.