
FROM CHAOS TO ORDER: THE ROLE OF LAW IN SOCIETY

Suman Kumari, Chanakya National Law University

ABSTRACT

Law can simply be defined as a set of rules or principles used to regulate a society or rather control it. It is said to be a reflection of the wish and will of society. It acts as a social framework that establishes norms and regulations that determines behaviors and communications among individuals and institutions. This paper deals with the role of law in society. Law is important as it lays down standards of conduct for citizens. The paper further deals with intricate interplay between law and society, discussing its important functions such as the maintenance of order, protection of rights and interests of individuals, promotion of justice and facilitation of progress in society. Law provides for the resolution of conflicts and disputes through procedures like legislation, adjudication and enforcement, thus reducing the potential for chaos and violence. Furthermore, the paper highlights the condition of the State in the absence of law. It discusses significant challenges such as instability, chaos, exploitation, inequality, etc. that individuals as well as society face in a state of lawlessness. At the end, the paper discusses the key components and significance of rule of law in the society, which implies that all individuals are subject to and accountable under the law. In conclusion, law plays a crucial role in shaping the foundation of society by establishing norms, protecting rights and liberties, and promoting welfare and development of the members of the society.

Keywords: Society, Legislation, Exploitation, Lawlessness, Development

INTRODUCTION

The concept of written rules dates back to ancient Mesopotamian culture, which thrived long before the Bible was written or the Greek or Roman empires developed. However, Code of Hammurabi is known to the origin of written laws and a formal legal system.

In ancient Mesopotamia, prior to the establishment of the Code of Hammurabi, people used either voluntary agreement or use of threat of force as a means to conduct and regulate socio-economic activities in the society. When societies evolved from close-knit-kinship groups to larger and more diverse communities, people realised a need for more formal rules to deal with the changed complex activities.

In the modern states, societies rely on law for three key governing purposes. First, law and legal institutions helps states to set and regulate standard of behaviour of individuals and organizations to convert economic and social policies into outcomes. Second, law frames the structure of government and establishes and distributes power among government bodies, as well as the state and citizens. Third, law regulates contestations by providing means to encourage responsibility, resolve conflicts peacefully and change the rules.

Law and society are interrelated and reciprocal in nature. Both relies on each other for its proper functioning. Law is a set of rules and regulations that decides the behaviour and interactions of the individuals and organizations in the society for a safe and stable coexistence and if there is any breach of rule then such individual will face legal implications according to legislative authority. However, no one is above the law, as signified in the notion of 'Rule of Law'. The Constitution of India is based on the principle of rule of law and considers it a fundamental part of the basic structure.¹ The rule of law fundamentally requires that every citizen, including the government officials, legislative authorities, lawmakers, politicians, etc. will be bound by the law and must act in accordance with the law. Empirical research has proved the importance of law and legal institutions in promoting growth, safeguarding property rights, enabling credit availability, and maintaining the rule of law in society. To bring positive changes and promote social order and justice in the society, there should be collaborative efforts between law and society to enhance legal literacy, awareness, social reform movements and sensitization

¹ The Constitution of India 1950.

programmes for judicial institutions.²

ROLE OF LAW IN SOCIETY

Law is a strong tool that shapes the core of the society. In the modern society, law serves various important functions to maintain stability and peace.

- a) **Maintaining order-** Every society needs some rules and regulations to govern the affairs of people and maintain stability. Law is a set of rules which plays an important role in establishing and maintaining social order to effectively regulate the conduct of individuals in the society. Law provides a structured framework that establishes standards acceptable behaviours and prohibits certain activities to prevent chaos and disputes within the society.
- b) **Establishing standards-** An important role of law is to establish standards to regulate conduct and promote accountability of individuals to maintain a stable and safe environment. Law sets up standards for minimally accepted behaviour in the society. For instance, certain behaviours that injures people or damages properties are not tolerable within a society and such activities are considered criminal resulting into legal sanctions. Therefore, law sets the parameter for social interaction by defining rights and responsibilities for both individuals and organizations to ensure safety and security. This includes laws governing criminal activities, property disputes, business practices, etc.
- c) **Facilitating social change-** Law acts as a catalyst for social change by codifying new norms and values, resolving emerging issues, and dealing with evolving social, economic and technological advancements. Various law reforms, judicial decisions and legal advocacy has greatly helped in addressing issues like social injustices, historical wrongs and social causes such as gender equality, discrimination, environmental protection, etc. Law played an important role in facilitating social changes by abolishing various social evils that were prevalent in our country such as child marriage³, sati

² Shah Ghanshyam, "Social movements in India", Available at <https://archive.org/details/SocialMovementsInIndia-EnglishGhanshyamShah>, (Accessed on 1st March 2024)

³ The Prohibition of Child Marriage Act, 2006

system, old Panchayat system, untouchability⁴, etc.

- d) Protection of rights and liberties- The Constitution and other legislations in India provides for various rights and liberties to individuals. There are many instances where these rights and liberties are unreasonably violated either by other individuals, groups or government bodies through abusive and exploitive practices, discriminatory policies and social injustice. Recognizing and addressing these violations and safeguarding the rights and liberties of people is an important role of law, thus, promoting social justice and well-being of all. It prohibits all forms discrimination and promotes equality before the law.
- e) Promoting justice- Law plays an important role in promoting justice by establishing a system for adjudicating and resolving disputes in a just, fair and reasonable manner. The role of law is to ensure that individuals have access to a fair and impartial legal system when any dispute arises or right is infringed. The legislative system should emphasize on effective, fair and due process is adopted while delivering justice. Law adheres to the principle of natural justice which is the primary basis for administration of justice in India. It aims to ensure fairness, reasonableness, equity and equality to all the individuals. No one should be denied justice and treated unfairly before the law.⁵
- f) Resolving disputes- In a society comprised of people from distinct backgrounds and places with different values and needs, conflicts are unavoidable. Law provides for various mechanisms, both traditional and modern, to resolve disputes and conflicts. One of the formal way to resolve disputes is Court System which involves resolving dispute through litigation. Law also provides for other means such as arbitration, mediation, conciliation, negotiation, Alternative Dispute Resolution (ADR) mechanisms, Lok Adalat, Consumer Dispute Resolution Forum, Online Dispute Resolution (ODR) etc. to resolve disputes effectively and promote justice in the society.
- g) Economic growth and development- Law also plays an important role in promoting economic growth and development. It provides for legal framework for trade and

⁴ Article 17 of the Constitution of India: Untouchability abolished and forbids its practice in any form.

⁵ Anthony Valcke, ResearchGate, The role of law, its origin and meaning, Available at: https://www.researchgate.net/publication/255726723_The_Role_of_Law_Its_Origins_and_Meanings. (Accessed on 2nd March 2024).

commerce that could facilitate investment, innovation and entrepreneurship, hence boosting economic activities. Establishment of various regulatory frameworks along with legislations governing property rights, contract and commercial laws, creates a predictable and stable environment for commercial transactions, thereby increasing market efficiency and facilitating economic exchanges.

In conclusion, role of law is diverse and multifaceted, reflecting the complex needs and ambitions of societies throughout history. It plays a fundamental role in shaping the contours of the society by establishing social order, protecting rights and liberties, promoting justice and fostering social changes. The role of law is to evolve, adapt and expand as the society evolves and new challenges emerges, to address needs and wants of individuals as well the community in a just, fair and reasonable manner.

LAW AND SOCIETY

Throughout history, laws have evolved from time to time addressing the evolving needs, values and challenges of the society. From ancient civilizations to modern nation states, law has played a fundamental role in providing effective mechanism and structure necessary for peaceful coexistence, stability, protection, justice, growth and development. Law is highly influenced by the needs and priorities of the society.

Law and society are interrelated to each other, both shaping and being shaped by the social, economic, cultural and political dynamics of the society in which they operate. The values, beliefs and norms of a society are often reflected in its laws. They represent what is deemed acceptable or unacceptable in a society and therefore, codify the social standards of behaviour and morality.

Law is neither created nor applied in vacuum. The concept of law can be understood by analysing the effects of its application on the society and its various components. Similarly, a society without law will most likely cause chaos, disruption and instability making it difficult to survive and coexist with others. Therefore, the relationship between law and society is dynamic and reciprocal, both shaped and influenced by each other.

Earlier the society was highly influenced by traditions, customs and morals and decided what is right and wrong on the basis of their narrow mentality. To eliminate the obstacle of tradition

and morality is a real hurdle, but once society is replaced by the state, morality is also replaced by laws. Law has been proved to be the most powerful tool for changing customary practices. To demonstrate the impact of social changes, it is important to examine specific developments in India. Where nothing is permanent, change is permanent.⁶ Various enactment of law and legal developments overtime had caused immense social changes with the aim to eradicate some of the most horrendous social evils that were prevalent in India and had become a form of tradition which was accepted and normalized in the society. The process of enactment and implementation of laws to eliminate such practices from the society was a heavy task as the society is based on these norms and traditions. The abolition of sati, untouchability, child marriage, slavery system, child labour, etc. are important examples of social changes in India due to enactment of formal laws and legislative developments.

However it is not only the laws that has to be modified as per the evolution of society but change in law must also lead to change in social rules and norms. Mere existence formal laws does not guarantee a positive outcome since society prioritises its customs and norms more than legal implications. For instance, the practice of dowry system is still prevalent in India. It is considered as an important custom at the time of marriage and is practiced in different ways. This practice of dowry system had led to commission of grave offences against women such as domestic violence, cruelty, dowry death, etc. To address this prevalent issue, the Dowry Prohibition Act, 1961 was enacted which criminalises giving or receiving of dowry directly or indirectly. Despite the legislation, there has been no effective social change observed and the practice of dowry continues to persist in many parts of the country. Thus, it can be presumed that the dowry prohibition laws merely exist and by no means has not yet led to its intended effects. Hence there is a need of systematic changes and improvements in social roles.

Social problems are interrelated rather than isolated, and the law serves as a mirror for understanding how people are related to each other. Law is an important tool of social change and should align with social, economic, and cultural norms of people's lives. Social systems must keep evolving to meet the changing needs and values of the people. A striking balance between instrumentality of law and tradition of the society can promote justice and empowerment of society.

⁶ U. Baxi, 'The future of human rights', Delhi, Oxford University Press, 2nd Edition (2006).

STATE IN ABSENCE OF LAW

In a society where laws, regulations, and legislative frameworks are completely absent or ineffective, there will be chaos and disorder in the functioning of the society due to lack of control, rules and regulations and guidance governing behaviour, thus, leading to disputes and conflicts. People will act according to their own interests, values and needs without being subject to any external regulations and consequences imposed of a structured legal system. Without laws, there will be no protection to the rights and freedoms of individuals as there would be no force to safeguard or constraints to prevent violation. Law provides protection to an individual against oppression, discrimination and tyranny by legal mechanisms and procedures for redress. In the absence of such safeguards, vulnerable groups would be at the mercy of those with power and influence, resulting in widespread exploitation and abuse.

While some may view this situation as a utopian ideal but the reality of a lawless society presents fundamental challenges and inherent inconsistencies. When visualising a society without law, it is important to recognize that law is the foundation of social structure. It establishes a framework for regulating human conduct, settling disputes, and ensuring justice. Without laws, there would be no distinction between good and bad or right and wrong, no mechanism to protect the rights of individuals, and no means to hold people accountable for their actions. In essence, absence of law promotes anarchy, instability, uncertainty and insecurity.

One of the primary fundamental goal of law is to maintain social order and stability. Law establishes boundaries and limitations on behaviour and conduct of people, thus creating a sense of predictability and security in the society. In the absence of these limitations, there would be no mechanism to prevent people from engaging in destructive and anti-social conduct. Conflict resolution would have no merit in the society and the most influential and powerful people will force their will on other people.

Furthermore, absence of law challenges the concept of justice. A society without laws and legal mechanisms for adjudicating disputes and imposing punishments would result in individual seeking retribution through personal revenge and vendetta. The lack of fair and impartial legal system weakens the faith of individuals in societal institutions, thus perpetuating cycles of violence, crime and revenge. People would involve in criminal activities and would

unnecessarily spread violence and harm among society causing fear of life and property as there would be no fear of consequences or punishments. Society will become unsafe and unstable for everyone.⁷

In addition, the law promotes social solidarity and communal well-being. Legislation and regulation help societies solve common issues including public health, environmental preservation and economic inequality. Without legal frameworks to address these issues, societal development would stall, with the most vulnerable section of the society bearing the burden of the implications.

To summarize, while the idea of society without laws may invoke idealistic concept of freedom and autonomy, the reality is far from beautiful. Absence of law undermines the fundamentals of social order, equality, fairness, justice, and individual rights.⁸ It promotes uncertainty, instability, insecurity and injustice, making people vulnerable to exploitation and violence. As a result, the establishment of a strong legal system is required for organized society to function well and provide a framework for regulating conduct, resolving conflicts, and protecting rights and dignity of all individuals.

RULE OF LAW

The principle of 'Rule of Law' is the very foundation of our modern democratic country. The framers of the Constitution of India were highly influenced by the British laws and English jurisprudence which was entirely based on rule of law. The Constitution does not define this term anywhere, however, the term has been often used by the independent Indian Judiciary in various decisions and interpreted it as a part of the basic structure of the Constitution. Rule of law in no way signifies any 'rule' or 'law' rather it is a doctrine of 'state political morality' that creates a balance between rights of the individuals and powers of the state, based on justice, equality, freedom and accountability resulting in a free civil society.⁹

The rule of law can be considered as the 'rules that governs the law'. It is the legal theory that states that "a nation should be governed by law rather than arbitrary decisions made by individual government officials. It largely refers to the impact and authority of the law on

⁷ Ishwara Bhat P., *Law and Social Transformation*, 165 Eastern Book Company, Lucknow, 1st Edition 2009.

⁸ R. Samaddar, *The politics of autonomy*, New Delhi, Sage Publication 2005

⁹ Stein A. Robert, BRILL, 'What exactly is the Rule of law' (*The rule of law in the 21st century*), 57 *Hous. L. REV.* 185 (2019), Available at https://scholarship.law.umn.edu/faculty_articles/698.

society, particularly as a restraint on the behaviour, including that of government officials.” In the 16th century Britain, the phrase was used by the Scottish Theologian Samuel Rutherford to argue against the divine right of the kings. The theory was also familiar to ancient philosophers such as Aristotle, who stated “law should govern”.

The rule of law is a political ideal that implies that all citizens and institutions within a country or state are subject to the law, including lawmakers, law officials, judges and leaders. It stands as a contradiction to autocracy, dictatorship or oligarchy which are considered above the law. The system protects against government arbitrariness, avoids anarchy and allows individuals to plan for the legal consequences of their conduct. It simply states that ‘no one is above the law’.

FEATURES OF RULE OF LAW

- a) Rule of law ensures that the authorities do not exercise their powers as per their whims, and fancies.
- b) The principle states that punishment or suffering can only be imposed on those who have committed breach of law.
- c) Every individual is equal before the law which means that law cannot be based on a certain class of people.
- d) The rule of law is fundamental to most democracies and has been integrated into many legal systems worldwide.
- e) The concept of rule of law states that a person may only be punished after being charged with a crime and proven guilty by an independent body, such as a court.

In India, the Constitution is supreme over its three wings i.e. the Legislature, Executive and Judiciary. The Preamble to the Constitution outlines the principle of rule of law in Part III of the Constitution which is endowed with justice, equality and freedom. Article 14 of the Constitution guarantees “equality before the law and equal protection under the law”. Article 13, 14, 15, 19, 21, 22, 25, 28 and 31A safeguards the fundamental rights of all citizens of

India.¹⁰ If the rights of an individual are violated, they have the right to approach the Supreme Court or High Court under Article 32 and 226 of the Constitution respectively.¹¹

The laws enacted by the Central or State governments must be in compliance with the Constitution; nevertheless, any legislation shall be considered void or unlawful if it contradicts the requirements of the Constitution, which is the highest law.¹² Under Article 32, the Supreme Court has the power to issue writ such as Habeas Corpus, Mandamus, Prohibition, Certiorari, Quo Warranto, in case of violation of fundamental rights. The Supreme Court also has the power of judicial review to uphold the rule of law and prevent ultra-vires laws.

BASIC PRINCIPLES RELATING TO RULE OF LAW

- a) Law is superior to everyone and everything. No one is above the law.
- b) Everything should be done in compliance with the law, rather than according to personal preferences.
- c) No person should be punished or made to suffer unless there is a clear violation of law.
- d) The absence of arbitrary and discretionary authority is the heart and spirit of rule of law.
- e) The rule of law entails equality before law and equal protection under the law.
- f) Speedy trial is an important component of rule of law.
- g) Law establishes reasonable limits on exercise of discretionary powers which must be complied.
- h) Just and fair procedures should be followed in actions taken by the authorities.
- i) Fair, independent and impartial judiciary is necessary as it is the preserver and protector of law.

¹⁰ Part III, Article 12-35 deals with fundamental rights.

¹¹ Right to move the Supreme Court or High Court for enforcement of fundamental rights.

¹² U. Baxi, "Justice of human rights in Indian Constitutionalism: Preliminary notes" in Thomas Pantham and V.R. Mehta (Edition), *Modern Indian Political Thought*, Sage Publication, 2006

j) Necessary safeguards from executive abuse of power.

The Supreme Court has significantly emphasized on the principle of rule of law in its various judgments. In the case of *ADM Jabalpur v. Shivkant Shukla*¹³, also known as the Habeas Corpus case, the fact in question was that whether the rule of law is a part of Article 21 of the Constitution. The Supreme Court held that the Constitution is itself a rule of law and there can be nothing above the Constitutional rule of law.

In the famous case of *Kesavananda Bharti v. State of Kerala*¹⁴, it was held “that rule of law is a feature of basic structure of the Constitution that cannot be amended even by the entire power of the Parliament. It was stated that any part of the Constitution can be amended without modification in the basic structure.”

Article 14, right to equality, is a very important right since it upholds the rule of law and guarantees protection against arbitrary state action. In *Bachan Singh v. State of Punjab*¹⁵, Justice P. Bhagwati gave a new orientation to Article 14 by stating that the principle of rule of law excludes arbitrariness and if there is exercise of arbitrary power in any action then it will lead to denial of rule of law.

In the case of *Som Raj v. State of Haryana*¹⁶, it was held that absence of arbitrary power is the ultimate goal of the principle of rule of law upon which the whole constitution is based.

The Supreme Court in the case of *D.K. Basu v. State of West Bengal*¹⁷, held that custodial torture is a grave violation of rule of law. Custodial violence is a calculated assault on human dignity and one of the most serious offence in a civilized society. The Court determined that any such activities would be prohibited under Article 21 of the Constitution.

The Supreme Court expanded the scope of rule of law in the case of *Veena Seth v. State of Bihar*¹⁸ to include the impoverished, disadvantaged, and uneducated who constitute majority of India’s population. The Court found that the rule of law does not just benefit those who can

¹³ AIR 1976 SC 1207

¹⁴ AIR 1973 SC 1461

¹⁵ AIR 1980 SC 898

¹⁶ 1990 AIR 1176

¹⁷ AIR 1997 SC 610

¹⁸ AIR 1983 SC 339

afford to fight for their rights, but for the perpetuation of the status quo which allows them to exploit a huge population.

From the above discussion it is clear that the term 'Rule of law' has been used frequently in the Indian Courts, it lacks a clear definition. The rule of law emphasizes on the absence of arbitrary power, proper control and regulation of power, and a government free of arbitrariness.

Increased government intervention in the activities of people may result into arbitrary state action, as bureaucrats prioritize political power over people and the Constitution. The rule of law serves as a counter-balance to their circumstances by prohibiting arbitrariness, lawlessness and unreasonable behaviour by the government. The Constitution prioritizes the rule of law as a fundamental principle.

The term 'rule of law' does not only refer to statutory law which may be harsh, inequitable, discriminatory, or unfair. Rule of law refers to a fair and non-discriminatory set of laws. The principle incorporates constitutional values such as constitutionalism, lack of arbitrary authority in government, liberty of the people, and a free judiciary, rather than arbitrary power or rule of men. The supremacy of law is the ultimate goal, and the rule of law is the most effective way to attain it.

CONCLUSION

Conclusively, the complex interplay between law and society highlights the essential functions of legal frameworks in shaping, governing and reflecting the values and principles of a particular society. Laws have provided both, a mechanism for regulation of social order and an effective tool for social changes in the society. The legitimacy and efficiency of a legal system is dependent on how well it aligns with the goals, objectives and values of the people it serves. Laws should be more flexible and adaptable to promote justice, equality, and stability, as societies continue to change and face new challenges.

Furthermore, the relationship between law and society goes beyond formal legal institutions to include formal norms, customs and practices that influence individual conduct and collective consciousness. Recognizing this dynamic interaction allows for more sophisticated approaches to legal reforms, social justice activism, and community empowerment.

There is a need for a better understanding of the intricate relationships between law and society that can help to advance efforts to promote fairness, accountability, and human flourishing in dynamic social circumstances. By encouraging dialogue, collaborations, and critical evaluations, we can work towards legal systems that not only upholds the rule of law but also contribute to the larger goals of justice, equity, and dignity for all the members of the society.

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