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## LAW AS A TOOL OF SOCIAL ENGINEERING

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### ABSTRACT

Law has long been regarded as a mechanism to regulate human conduct, but its role extends far beyond maintaining order—it actively shapes and transforms society. The concept of social engineering, as proposed by Roscoe Pound, underscores the idea that law is not just a static set of rules but a dynamic force that balances competing interests to achieve justice and social welfare.

The Indian Constitution, often referred to as a living document, is a prime example of law being used as an instrument to drive social transformation. Through provisions such as fundamental rights, affirmative action policies, and Directive Principles of State Policy (DPSP), the framers sought to correct historical injustices, eliminate discrimination, and promote inclusive development. These constitutional mandates, coupled with legislative interventions, have significantly altered India's social and economic landscape. At the same time, judicial activism has played a crucial role in furthering social engineering. The judiciary has often stepped in as a catalyst for change, delivering landmark judgments that redefine societal norms and reinforce constitutional values.

While law has proven to be a powerful force in engineering societal progress, its application must be carefully balanced to prevent overreach and ensure harmony between individual rights and the collective good.

**Keywords:** Social Engineering, Roscoe Pound, Indian Constitution, Judicial Activism, Social Justice.

## **I. Introduction**

Law, as a discipline, is often seen as a set of rules that govern human conduct in society. However, it is not merely a passive instrument that only responds to societal needs but is also a powerful tool used for social engineering, shaping, and transforming society in desired ways. The engineering of social life in a rational way requires knowledge of laws governing social life. This is where the concept of "law as a tool used for social engineering" comes into play. The engineering of social life in a rational way requires knowledge of laws governing social life.<sup>1</sup> This is where the concept of "law as a tool used for social engineering" comes into play.

The concept of social engineering is rooted in the belief that society can be improved and reformed through deliberate and conscious efforts by the government and other institutions. In India, the concept of social engineering is not only embedded in the Constitution but also reflected in numerous legislations enacted by the Parliament. This legal essay will explore the theory of social engineering and its presence in the Indian constitution. The essay further examines the role of judges as social engineers, and the impact of their decisions on the social fabric of society. Through the use of relevant case laws, this essay aims to provide a comprehensive understanding of how law has been used as a means of social engineering in India.

## **II. Theory of Social engineering**

The theory of social engineering is a concept that has been developed to address how society can be reformed and improved through the conscious and deliberate efforts of the government and other institutions. It is founded on the belief that society can be designed and modified to create a better society for its citizens. The theory of social engineering has its roots in the Enlightenment era, where thinkers such as Thomas Hobbes and John Locke argued that society could be reformed through the use of reason and science. In the 20th century, the theory was further developed by legal scholars such as Roscoe Pound and Felix Cohen. According to Pound, "Law is social engineering which means a balance between the competing interests in society," while Cohen proposed that law could be used to promote social justice. Pound's theory was later expanded to view law not only as an instrument for maintaining order and legal certainty but also as a tool for social renewal.

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<sup>1</sup> Adam Podgorecki, *Law and Social Engineering*, 21 HUMAN ORGANIZATION 177 (1962).

The application of law as a social engineering instrument has evolved to align with contemporary legal practices. Today, law is increasingly seen as a means to shape behaviour and promote societal welfare rather than merely punishing individuals for wrongdoing. The legal system is shifting towards a proactive approach, focusing on achieving positive social change. Lon Fuller also viewed law as a mechanism to achieve specific societal objectives, emphasizing that it serves as both a guiding framework and a reference point for development. In essence, law functions as a catalyst for both physical and moral progress in society.

A significant contributor to this understanding of law was Roscoe Pound, often regarded as the father of Modern American Sociological Jurisprudence. Unlike the traditional view that law is a self-justified order imposed by the sovereign, the sociological school, to which Pound belonged, saw law as a product of historical and cultural evolution. This perspective marked a shift from an analytical approach to a more pragmatic and functional interpretation of law, focusing on how law operates in practice rather than what it ought to be in theory. The sociological approach emphasized that law should be rooted in social realities, norms, and contemporary issues, ensuring that legal frameworks serve the common good and function as instruments of social regulation. Pound's most influential contribution, the 'Theory of Social Engineering,' was built on the idea that law must adapt to society's behaviour, cultural patterns, and evolving attitudes to maintain stability, justice, and equilibrium. The effectiveness of law, therefore, lies in its ability to regulate social relationships and address the specific needs of a society at any given time.

While social engineering has its advantages, it is essential to acknowledge the potential for misuse and ensure that it does not infringe upon individual liberties and human rights. In the Indian context, social engineering has played a crucial role in addressing historical discrimination and promoting social justice. However, it is necessary to strike a balance between its benefits and potential drawbacks to ensure that it is implemented responsibly and ethically.

### **III. Presence of social engineering in the Indian constitution**

The Indian Constitution reflects a clear presence of social engineering in its provisions. The Constitution's Preamble, which declares India to be a "sovereign socialist secular democratic republic," embodies the essence of social engineering by laying down the foundational values of justice, liberty, equality, and fraternity. The Preamble provided the legislature, judiciary,

and executive with the confidence to implement these principles in governance. Given India's diverse cultures and deeply entrenched caste and gender biases, the Constitution was designed as a living document to address societal disparities and bring about social reform. The framers of the Constitution carefully examined the social needs of the country and engineered legal provisions aimed at securing fundamental rights essential to individual well-being.

The presence of social engineering in the Indian Constitution is evident in its commitment to social justice and equality. Recognizing historical discrimination against certain social groups, the Constitution incorporates affirmative action policies, such as reservations in education and employment, to promote inclusivity. Articles 14, 15, and 16 guarantee equality before the law, prohibit discrimination based on religion, race, caste, sex, or place of birth, and provide special provisions for the upliftment of historically disadvantaged communities. Article 15(3), and its later extensions under Articles 15(4) and 15(5), specifically allow for positive discrimination in favour of Scheduled Castes, Scheduled Tribes, and women, as upheld in *Indra Sawhney v. Union of India*<sup>2</sup>. These provisions have significantly increased the representation of marginalized groups in various sectors.

The Indian Constitution also ensures a balance between individual rights and the larger interests of society. Article 19(1)(a) guarantees the right to freedom of speech and expression, but this right is subject to reasonable restrictions under Article 19(2) to protect public order, decency, morality, sovereignty, and the integrity of the nation. This balancing act was carefully designed through social engineering to prevent the misuse of absolute freedom while safeguarding the collective interests of society. Similarly, Article 19(1)(g) provides individuals the freedom to practice any profession or trade, but this right is tempered by Article 21, which guarantees the right to life, including a clean environment. The Supreme Court has consistently ruled that environmental protection takes precedence over unrestricted business activity, reflecting the Constitution's approach to harmonizing competing interests.

Furthermore, the Directive Principles of State Policy (DPSP) in Part IV of the Constitution play a crucial role in promoting social welfare and economic development. These principles guide the government in formulating policies that ensure social order, economic justice, and the equitable distribution of resources. The framers of the Constitution sought to balance fundamental rights with these directive principles, a conflict that was ultimately settled in

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<sup>2</sup> *Indra Sawhney v. Union of India*, AIR 1993 SC 447.

*Minerva Mills v. Union of India*<sup>3</sup>, where the Supreme Court upheld the principle of harmonious construction, ensuring that neither fundamental rights nor DPSP would override the other.

In addition to guaranteeing rights, the Constitution imposes duties on citizens under Article 51A, emphasizing a collective responsibility to uphold national unity, protect public property, and promote harmony. This inclusion reflects the principle that rights and responsibilities must be balanced for effective governance and social stability.

The Indian Constitution stands as a testament to the country's commitment to social engineering. Its carefully crafted provisions balance individual freedoms with the greater societal good, ensuring justice, equality, and social harmony. By addressing historical injustices, promoting inclusivity, and maintaining a dynamic equilibrium between rights and restrictions, the Constitution has served as a powerful instrument of social reform, continuously evolving to meet the changing needs of society.

#### **IV. Judges as social engineers**

As quoted in *Kesavananda Bharti v. State of Kerala*,<sup>4</sup>

*"A modern state has to usher in and deal with large schemes having social and economic content. It has to undertake the challenging task of what has been called social engineering, the essential aim of which is the eradication of the poverty, uplift of the downtrodden, the raising of the standards of the vast mass of people and the narrowing of the gulf between the rich and the poor...often when the individual rights clash with the larger interests of the society, the state acquires the power to subordinate the individual rights to the larger interests of society as a step towards social justice."*

The importance of social engineering was accordingly a requirement to contend with the complexities of contemporary society and was sincerely accepted by this country's courts when providing justice.<sup>5</sup> Judges are often referred to as social engineers because of their ability to shape social policy and influence societal change through their judgments. In India, the judiciary has played a critical role in promoting social justice and upholding the constitutional ideals of equality and non-discrimination. Judges have interpreted the Constitution in a manner

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<sup>3</sup> *Minerva Mills v. Union of India*, (1980) 3 SCC 625.

<sup>4</sup> *Keswananda Bharti v. State of Kerala*, AIR 1973 SC 1461.

<sup>5</sup> Prabhat Kumar & Nidhi Jain, *Law as an Instrument of Social Engineering: The Indian Perspective*, 5.

that advances the cause of social engineering and have used their power to strike down laws and practices that perpetuate discrimination and inequality.

For instance, the Supreme Court of India, in its landmark judgment in the case of *Vishaka v. State of Rajasthan*<sup>6</sup>, recognized sexual harassment at the workplace as a violation of the fundamental right to gender equality and laid down guidelines for preventing and redressing such harassment. Similarly, the court, in its judgment in the case of *K.S. Puttaswamy v. Union of India*<sup>7</sup>, recognized the right to privacy as a fundamental right, thereby expanding the scope of individual freedom and autonomy.

Judges, therefore, play a critical role in promoting social engineering and upholding the values of the Constitution. Their judgments have the potential to transform society and bring about lasting change, and it is important that judges continue to use their powers in a manner that advances the cause of social justice and promotes the welfare of the people.

## V. Conclusion

In conclusion, the concept of law as a tool for social engineering is a complex and multifaceted one. The theory of social engineering holds that law can be used to shape and mould society towards a particular vision of the common good. This concept is not new and has been present in legal discourse for centuries.

The Indian Constitution reflects the presence of social engineering through provisions such as the reservation system and the directive principles of state policy. These provisions aim to promote equality and social justice and are examples of law being used as a tool for social engineering.

Judges, as the interpreters and enforcers of the law, also have the power to act as social engineers. Through their decisions, judges can shape and influence society towards a particular vision of the common good. However, this power must be exercised with caution and a commitment to impartiality, as the role of the judiciary is to uphold the rule of law and protect individual rights.

The use of law as a tool for social engineering can have both positive and negative consequences, depending on the specific goals and methods employed. As such, it is important

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<sup>6</sup> Vishakha & Ors. V. State of Rajasthan & Ors (1997) 6 SCC 241

<sup>7</sup> K.S. Puttaswamy and Anr. vs. Union of India (2017) 10 SCC 1

for legal practitioners and policymakers to carefully consider the implications of their actions and decisions, in order to ensure that the law is being used in a responsible and effective manner for the betterment of the society.

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