

SOCIOLOGY AND LAW: IN DEFENSE OF EVOLUTION OF LAW IN ADVANCED SOCIETIES.

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ABSTRACT:

Societies were formed as a deviation from monarchies and kingdoms either due to conflict or invasion. Division of labour is the touchstone of societies that have inter-dependent requirements and maintenance of Order in such a State is exercised through codified laws, which ensure that every labour group is compensated adequately.

Contrary to Marxism, societies cannot exist without law. A group of people who did away with the Sovereign in favour of self-governance, will need a set of laws to abide by for mutual existence otherwise it will result in the law of the jungle, where only the strongest and the fittest survive.

Whether law ensures social control or social change depends on the aspirations of a society. Aspirations of a society need to tow values of morals, ethics and principles. Globalisation has seen an awareness of what is available to the masses, but has not lifted the curtain on what is taboo in the same societies. When all that is available is sought for without all the restrictions that are imposed alongside, a virtual reality society comes into existence.

It is plausible to imagine a society with no laws, but that society will continue to exist only when every one of its citizens holds themselves to a higher standard.

Keywords: Law, Society, Evolution, Justice, Jurisprudence, India.

Introduction.

Sociology is the study of society and law is the instrument which controls that society. A society can continue to exist, only when there is order in it and no chaos. Individuals in a society performs various actions according to their will or necessity and unless law regulates such actions, it may lead to conflicts-personal, inter-family, inter-religious, inter-class, inter-ideologies that eventually undermine the society. A society essentially functions due to division of labour and if there is a tremor in even any one of the rungs of this societal ladder, there exists an imminent risk of the collapse of the entire societal pyramid. Law and Justice are the only resources to maintain, restore and re-create order in a society.

An individual's 'self' without the extension of an ego is exercised in a society when his personal beliefs and ideals are not disrespected but concessions given to within the framework of the society. This aspect is found only in evolved societies where the 'superego' of the society is also of irrelevance. Here, conformity is effected through self-evolution rather than by coercion. In rarified societies, an individualistic evolution is adopted as a societal norm as the larger benefit is understood by the unevolved majority. In traditional societies though, this lack in conformity of an individual within the general public would attract sanctions ranging from social ostracism to extreme penal measures.

The function of law is to maintain the societal equilibrium or in other words, the stability of the State in current times. A State does not fail due to the actions of a few temperamental individuals but by the concerted, pre-meditated effort of a stronger show of hand of an unstoppable force. When a State fails, it does not evolve into a better State but into a punitive society that has done away with previous progress that saw Man evolve from a primitive savage to an altruistic individual. This punitive society will repeat history in its quest for status, material needs and survival. In a fast-tracked futuristic society, this re-organisation

of society would result in basic give and take transactions among its individuals for personal fulfillment as a day-to-day way of life as the fall of the original society had erased (as was the intended goal) the intrinsic frame-work of division of labour that had been built to support its complex needs and hierarchy.

Sociological Jurisprudence.

When one examines the definition of law put forth by various jurists over differing spans of periods, it becomes clear that they define law according to the era they are dealing with. However, to the discerning eye, this is not a rigid interpretation of law as it should be but a clear evolution of law varying along with time and space over centuries.

Sociological definition is apt for the current period we live in where aspirations of people take centre stage in the functioning of a 'society'. Before that was the implementation of Positive Law by States where the command of the Sovereign was supreme. While even before that, Natural Law was the law of the land, where morality and ideals were the guiding force in society.

Austrian sociologist Ludwig Gumplowicz puts forward a sociological-positivistic interpretation of law. According to him, the State has evolved to becoming one that is controlled not by a Ruler or Sovereign but one that is controlled by its majority population. He propounds that the chief moving force in history is the struggle of different races for supremacy and power¹. In this struggle, the stronger population group overcomes other weaker population groups and sets up an organisation to stabilise itself and to perpetuate its control of the State. This organisation becomes the 'new State' and 'Law' is one of the most important instruments for the attainment of governmental objectives.

One of the aims according to Gumplowicz, is to uphold the dominion of the stronger group over the weaker groups through the use of State power. In such a sociological condition,

the use of law is in the maintenance and perpetuation of political, social and economic inequality. In this respect, law is a true reflection of State power, which aims only at the regulation of the coexistence of unequal racial and social groups through the sovereignty of the stronger group over the weaker². This is 'Democracy' in its truest sense.

Concepts of 'natural law' and 'inalienable rights' that are hallmarks of advanced societies i.e. in evolved 'Republics' are mere unsustainable ideas according to majority-led democracies that do not have a Constitution to abide by and where law is made to suit that majority. A Constitution essentially is a repository of minority rights. Such notions in a society, according to Gumpowicz are as meaningless as concepts of free will of Man or reason. Law is "universally the very contrary of freedom and equality and indeed naturally must be".³

Another Austrian thinker Eugen Ehrlich sets the stage for the current model of 'working law' in the context of present-day society. According to him, "At the present as well as at any time, the centre of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself."⁴ In his view, a court activity is a tiny part while compared with the other legal relations a person has to deal with in his everyday life. Only a small aspect of a person's life comes before officials adjudicating disputes while a majority of legal aspects that have a stranglehold over a person like marriage contracts, leases, contracts of purchase, wills, succession, or partnerships, all rely on the whim of the society.

Impersonal Nature of a Socialist Society.

While in a Capitalist Society, it is a given that personal interactions have no place in an official environment, in a Marxist Communist Society, inter-personal transactions with mutual benefit to alleviate imbalance in another collective interests like job performance and commerce are the only source of social control where no law or State is envisioned for its society. A Socialist Society such as India, is however, advanced than a Communist Society

where inter-personal relations have no place in a public, work environments. The collective needs of such a society rests on personal interactions at a private level within confines of a family (which differs in nature within a nuclear family or if it is a joint-family), private residences (also differs within the dominion of its establishment), religious establishments (separate personal rules dictate their modes of operation) and recreational and tourism opportunities that are created for individual, aspirational well-being.

In India, while its institutions have solid foundations, for a strong, progressive future - its office spaces, work environments and business organisations need to become impersonal so that people can focus on being the most productive they can be professionally, every single day. This is because law is concerned with the well-oiled movement of these social institutions, which if compromised, will lead to socio-economic losses, essentially a speed-bump in the collective vision for a progressive future. In Socialist societies, law might not necessarily follow the written code. Judgements might occasionally be based on a broader interpretation of fundamental rights of individuals as underscored by the Supreme Court verdict on *Maneka Gandhi v. Union of India*⁵. Similarly, although untouchability was abolished legally^{6,7}, it still has not garnered country-wide social support. Law is used sparingly by the general populace, however, an awareness that laws were enacted for their progress not stagnation or as a weapon for repression by those who engage in contractual relations with them, needs to reiterated with the Preamble of the Constitution that saw India emerge as a Republic.

Evolution of Law with Evolution of Societies.

The unchanging aspect of law is protection of individuals from internal discord and external influences. Various other provisions of law may differ on whether the governing body is a Sovereign, State or Society. The fundamental question asked by jurists, time and again is whether 'law should be concerned with what is or what ought to be?'. The clear answer to that is to analyse the system over which law has to be applied, regardless of the temperament of the jurist and the prevailing word of law, and deliver law as deserved. This would overcome the inherent nature of those who game the system by appealing to the higher powers encumbered by the moral code of action of the system itself.

Law never evolved in primitive or ancient advanced societies. In primitive societies, law had been orally transmitted and often inseparable from customs. In advanced societies, recorded texts were used as sources of law. Customs formed the major source of law in ancient India. A discrepancy arises when the written source of law is based on oral declarations, the validity of the source then becomes questionable relating to its veracity.

Amongst Negrito populations, law was orally dispersed and control over the clan or society was held by the chieftain who was often exempt from the rules that were imposed upon the clan. In Caucasoid populations of ancient feudalistic Greece and Rome, control over a complex, heterogeneous society was achieved through elaborate, codified laws that resulted in strict sanctions if broken. Here, slaves did not even enjoy basic rights. In Ancient India, a moral code of conduct or Dharma was the guiding force through which various rulers of different provinces delivered justice while dealing with different assimilated populations through varying space and time. In all these societies, law was fixed and never evolved. When a new society was created, pre-existing laws, both internal and external were modified to suit the needs of the prevailing majority, such a society is never progressive in nature. A concurrent evolution of law with its society is possible only in a society that does not abandon its foundational principles in favour of modernisation, whether economic, cultural or political.

Law and Social Change

Without delving into the various theories of social change put forth by different sociologists, emphasis is placed on the fact that social change is cyclical unless the innate, primitive tendencies of the majority, unevolved is curbed. Progress due to social change will otherwise be wiped out, and a country starts from scratch in its quest for identity.

Dr. S. R. Myneni has elegantly described the social changes of aspirational India⁸.

Constitutional Democracy over Traditional Caste Hierarchy, Secularism over Pluralism and Socialism over Holism. Thus, law is not only a tool for social control but also an instrument for social change in a Socialist Society. Both judiciary and legislature as well as the executive in certain cases are machineries of social change.

Law elicits change – positive from negative for a negative individual/society and progress for a positive individual/society. Progress can never be offered as a change for a negative individual/society.

Aspirations too can be separated into two kinds, one that yearns for freedom and equality in a repressed society and the other which is already the repressing society, which aspires for more - and would achieve those aspirations rapidly through corruption and immorality as it is the oppressing class which exploits the other repressed society.

In a sociological society like India, the options to remain a static society or a progressive society as opposed to a disruptive society that discards its ideals for short-term monetary, gratifying or retaliatory gains is for the electorate to decide. The duty of the intelligentsia of the country is to enlighten the masses of the intricacies involved as the country is no longer a simple, agrarian one that it was after the gain of Independence but a complex system that has imbibed its traditional Sovereignty as well as the customs of its diverse populations and one that has a unified code of laws under its Constitution.

Planned progress has seen legislation enacted for upliftment of women, agrarian and industrial workers. Legislation has also addressed social issues of untouchability and social/economic development of tribal populations. Child marriage is voidable, there is a shift from the institution of traditional arranged marriage, a movement towards a nuclear family from a patriarchal or matriarchal joint-family. All these changes create an impact in every individual's psyche. Mass social change such as urbanisation, Westernisation or even industrialisation is for the common man on the ground to decide, if he wants to adapt to it or remain untouched-free to carry on with his way of life.

The advantage of democracy is the freedom it symbolises, albeit subject to the whims of the leaders that are given power to control the State, but when even those leaders are held accountable to a higher standard and also treated with equity, a nation realises the dreams of every one of its citizens.

Conclusion.

The role of a judicial authority in an 'evolving' society is to not just carry out the letter of law, but to understand the inter-play of historical, cultural and personal laws of that society and deliver justice that will unimpede its quest towards a more progressive society.

Social control is not only enforced by legal instruments but law itself might be replaced by other forms of social control in gradient societies by individual morality, public opinion, injurious propaganda, cosmic consequence, supernatural belief and taboos.

If a society chooses to function only based on shared interests and not on any values of a moral nature, there would be no requirement for any codified law. However, dictatorships precisely exploit this societal juxtaposition to exploit the primitive desires of such a society to deliver immunity to its citizens from outside forces while exercising the might of the people this dictatorship controls against developed nations that demand accountability.

Finally, in the delivery of judgements based on equity, a realisation needs to happen that ‘no man is an island’. Meaning, he does not isolate himself to just one role in a society. He is not just a defendant who has committed a crime in the role he is representing himself in the indictment, but is also involved as a role-taker in everyday transactions within the society he functions. If there is an infraction in any of the other roles he plays in society, his credibility in judicial standing is compromised.

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