



RELATIONSHIP OF LAW AND SOCIETY: A REALITY OR MYTH ?

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Abstract: Society cannot exist without law and law holds the society. In a society where there is plethora of men incidents happen when one's liberty and sovereignty are curbed by the individual or even an operating state. Still the best course of action is to take the help of law. Law has the power to avenge the offenders in a punitive manner and bring justice to those who had been victim of the offence. However there are many attributes which mends the course of law often. The most important is social pressure or mass demand which forces the law to take a stance that is either softer or stricter than it should originally be. Added to that, the affluence of the offenders and defenders of a crime plays an important role. It decides how far justice will be able to do its duty of a non-partial judiciary and bring real justice to the society. However, law is none the less important for the society as it brings justice and changes the societal vices at large.

Key words: Law, Society.

Introduction

Law is like the femme fatale without whom society cannot exist. But at the same time like a whimsical mistress it puts the sanctity of society and individuals comprising it in a stressful situation. Conscientious law holds the society. It makes living in the society safe and secure and like a guardian it guards the law abiding citizens against the miscreants. The punitive capacity of law puts at bay many type of malfunctioning and wild behaviour from infringing upon a person's personal safety and security. Law is mainly the outcome of ethics codified into legal acts and sanctified by some court which foresees functioning of law through legal actions. The animal instinct of human being has a tendency to take upper hand. If it is not controlled by legal policing it becomes detrimental for an individual to exist in society keeping his liberty at place. But the same law has been misused time again not only by those who are authoritarian but also by the same group who seek the salvage of law to save them. Hence the relationship between law and society is not black and white it is rather grey in colour.

Understanding Law

The regulation that holds the society and is codified in a book of codes and ethics under certain abiding authority is called law in the modern society. However law existed before it was codified also. It is the general consensus that decides the law. Law exists even in primitive societies where there may not be the book of law written down but it is the general opinion and consensus of such society or a group which decides the law. It must be remembered that law was made to protect people from the atrocities of threat or harm posed by other individual or group. It guards the comparatively susceptible individual or society from the threats posed by a comparatively stronger one in terms of muscular strength. The famous saying goes "the rule of law is to protect from the rule of men". Hence it is human atrocities which the law protects a person or a group from.

The symbol of justice is a figure blind folded with a weighing scale on hand and both the scale weighs equal. The implication is justice should be blind in both eyes and not be partial to any source, object or provocation to act on behalf of the same. Justice should be able to establish the truth and retain social goodness. But the fallacy is justice is actually blind. It depends upon the legal

professionals to gather the evidences and present to the jury on the basis of which justice is made. Many times the offenders are acquitted because of the lack of evidences. Also even today law has not been able to break the barriers of social custom to establish its sovereignty in place. For example till some years back there was no law against the “triple talaq” system in India just for the sake of societal disapproval from a community. To mention in triple talaq uttering the word ‘talaq’ three times can give the Muslim men the right to discard his wife, acquits him of all the responsibilities of that marriage and gives him the right to seek a new wife. Instances are that even some Hindus with debauch character had changed their caste to Muslim to get the privilege of the community to protect them in their act of shirking the responsibilities of an existing family. In patriarchal Muslim countries triple talaq is still prevalent, establishing the fact that it is the group pressure that decides the law and not conscience neither pure ethics. Again law here is blind and helpless.

Vandalism occurs in the name of law when an atrocious and muscularly strong group usurps power and rule to subjugate the weaker section of the society establishing their own law. For example when the colonialists ruled and regulated their colonies till some years ago, they had their laws working in accord for their own good and any voice of dissent was punished heartlessly. The walls of Jalianwalabagh still have its stains. But history knows that the hero of such a ‘heinous crime in the name of law’ – Colonel Dyre was acquitted of the charges and given promotion by the then British Government ruling India. Such a massacre was also named as a legal step against the revolt, which was in reality the most harmless and controlled voice of dissent.

Has the world gone any better in the recent years?

Example can be given of Taliban regime in Afganistan where the patriarchal Muslim fanatics have plundered not only the national heritage like the Bamyán Buddha but also the sanctity of innocent, peace loving lives of emancipated people. Weaker section of the society like women and children were

treated with atrocities that chill the bones. Yet these atrocious acts were sanctified by the ‘Talibans as the rule of law – the instruct of Ullah as they called it and they even held court to punish those who were against their doctrines in their own ways. So even for a short while in the chapter of history, the vindictive self gratifying codes usurp themselves as law of the land or law of the religion or group. People become helpless to defend themselves from the vagaries of such law and more often law becomes a victim of the mobocracy. It fails in its efforts to save the innocent lives of people from the flare of mass vandalism and fails to establish itself. So the effectiveness and sanctity of law depends very much on the society where it is being practised and exercised upon. If that society is literate and liberated law can function without prejudices or else it turns into mobocracy and vandalism.

Societal approval vs disapproval of law

Social approval plays a large role in forming the law of the land. If society does not approve, ultimately the law will perish from being into vogue. It ultimately depends on the society how the law of the land or nation will take shape because as it has already been told it is the general consensus which drives the law. When a law is imposed which is against the benefit of the social mass, there will be disruption and breaking of law and order of the land and even mass upheaval until the law is bend to adjust the needs of the mass and be acceptable to the mass. The examples can be sought from the civil disobedience movement in India, the black revolt of America.

The most difficult situation for a government or any law abiding authority to bring back and restore order is difficult when the law and order breaks. It is difficult to impose coercive powers to restore law and peace even if the mass of people is comparatively smaller in respect to the huge population. Yet coercive forces are necessary to restore law and order when all other avenues fail. However these may have greater ill effect on the society in terms of life loss, wealth loss and loss social and political peace and harmony. Example may

be given of the operation golden temple of Punjab and curbing the Naxalite movement of West Bengal. Stable societies have subtle mechanisms where the law of the state is abided by the citizens and dissent is more channelized through subtle mechanisms of strike or media declaration or through mass uplift, exercising the power of vote etcetra. There the law abiding citizens have the conscience to keep the law running while they protest from being within the framework of the law and endeavour to change it. Even the most advanced societies which have written down laws have the need to constantly upgrade the law according to the need of the changing environment, popular demand and the call of conscience of the masses.

It is pertinent to include here that what is relevant for today may not be so for tomorrow as what was important for yesterday have lost its consequences today. Not only does government and judiciary decide on the law for in some places like in Europe the church still has some say on the amendment of law. They are authoritarian from there past background of becoming the vanguard of law when there was monarchy and the clergy was responsible caretaker of the law. For example the recent veto of the church in accepting abortion and gay marriage has the relevance. It is important to note that the church has changed its stand on the above issues going by the general will of the populace. In fact it is expected that with advance of ages more democratic stand by the legal authorities will be taken facilitating the life of the masses and the public in general.

(Skogan) (Jacobs)

Advantage taken of law to ward off consequences

It must be remembered that law is for anyone. Even a criminal can take refuge in the arms of law to save him from the punishment of his deeds. If he has his defence counsel strong and the evidences provided against him are not strong, even the strictest of jury cannot provide an exemplary punishment to such cases. In the courts of the United kingdom and the United states of America, quite a number of criminals were acquitted were able to avoid the death sentence because of the citing of genetic disposition and mental illness as cause of their criminal bent of mind. From the perspective of the accused it may be a safe haven but for those who went to the court to avenge the

crime for them the law becomes a fallacy. Social sentiments and pressure often move forward and backward to mend the decisions of law and law becomes a myth. Examples may be given of the recent rape and murder case of Nirbhaya, the mob protest was a robust one and law acted quite fast in proclaiming the death sentence of the accused. But in the same country, a few years back when Dhananjay Bhattacharya was accused of murder and rape of Hental Parekh, the mourners made candle light march to stop the death sentence put against him. Though the judgement did not bend for good but law faced pressures from certain group of people. Media hype and mass pressure often play a role in bending the course of law. But again these mass pressure and media plays an important role when the law becomes vindictive and destroys the establishment of human liberty and good will. The universal protest against the imprisonment of Nelson Mandela, the home imprisonment of Ang Sang Su Ki not only helped liberate those people but established justice at large. So yielding to the pressure of the mass is not always contiguous it has good effects also.

Law playing internationally

Law is not only what holds the state or the nation with the coded rules but in modern days it also holds the nations together the Geneva convention, the United Nations Organisation, the International Labour Organisation etcetra were created with high hope of safeguarding the liberty and sovereignty of people around the world even if the immediate state ruling has jeopardised from its functioning as a law abiding authority. Thus the United Nations in their vigil to restore peace at Afganisthan or Eraq were actually the vanguards of law guarding the peace and life of people who were denied their basic human and legal rights. Here also the sentiments and action was driven by the larger consensus of people around the world who are rational and politically aware.

The reach of law is not always all pervasive

Law sometimes fail to pervade the shield of social and political intricacies and bring the legal fruits to the defenders. This is because the offenders may be too clever in moulding the law in their favour through pressure of politics, finance and other means. The stand of the government also plays an important part in bringing in justice to the defenders. Example may be given here that though dowry is a system banned and

punitive, there are instances of giving and taking dowry even in the most erudite and affluent societies and these are somewhat done on free will. The reach of law here is weak and law fails to enforce the anti-dowry act. This menace spreads even in the lower rung of the society and dowry system is a kind of extortion to the bride's home to provide with cash and kind to the groom. Even if one is not willing, people have to comply to social pressure and it is still a curse of the society. Similar is the case of child marriage where some parts of the society marriage of people in their adolescence take place. The custom is still prevalent among tribal regions and lesser educated societies. Here again the question of free will comes in and it is difficult to put at bay such practices. The triple talaq banning is not yet stringent in the society and law acts only when a case is taken for judgement. There are many instances especially in the lower rung of the society in India where such cases are not taken for judgement and the said law remains just a non-exercised entity.

The requirement of law in society

In spite of everything the social atrocities can be curbed only when law is codified and enacted. It needs the vigilance and strength of the government to bring law into force. But it is the general behaviour and psyche of the people to disobey the rule and ethics when there is no codified law. For example now at least the Muslim women who are victims of triple talaq can address to law with the hope that judgements will be given in their favour. The law checks the multitude of such instances. The Muslim men knows that he cannot play with his whims and there is law to safeguard against his taking for granted a wife and then shirking the responsibilities just at his free will. Such law has an impact on the society and though slowly it changes the attitude of the people.

At times, some laws lose pertinence but when enacted the laws were very much necessary to change the attitude and stance of the society. Example may be given of widow remarriage act. That was a time child marriage was most prevalent and the average age of Indian men was lower than today. Women widows of tender age were galore in the society, widow marriage was not only a well thought of remedy, it was necessary for a healthy and flourishing society. Though opposed from a larger section of Hindu fanatics, there was the law to safeguard the widows if anyone dared to break

the social barrier and remarry. Now in the modern age where people are free to live together or have a relationship according to their will, such an act seems out of date. But the time it was invoked it has its implications.

Law has come a great way in changing the behaviour of the society through the enactments of legal codes and articles. This has happened in every country. Today if we think of the right of women to equality, the rights of the coloured men of America to be treated at par with the white people, the right of the immigrants in Australia, everywhere law has contributed in a large way in safeguarding the rights of the socially apartheid. Here law has brought justice to the deserving masses. It is conscience of the society which has driven for the enactment of such laws. Society always had a large role in pushing the judiciary for the enactment of the legal codes to avenge the sufferings of the people.

(Jacobs)

Conclusion

To conclude, we must say it is the society which forges the law for the better living of the people and most of the time it is successful in codifying the legal dos and donots. People follow these codes unanimously to adhere to the guidelines and behave accordingly and in general the people are law abiding and follow law for their own good. If any harm is hurled on them by aversive mob or individual, people take refuge of law to avenge the misdeeds. This is the normal scenario. But pleading the refuge of law is a matter of time and money every one cannot still avail the refuge of law in the desired rate. Also affluent offenders try to bent bend the course of law through their political and financial strength to ward off the punitive consequences. So many of the time law becomes just a fallacy defending those who are powerful and are affluent. In such cases law becomes a mockery. Also societal pressure and sentiments sometimes change the course of law. Many a times law becomes a myth of the society unable to perform the way it should have performed and yields to pressure. It largely depends upon the society how to utilise law for its own good and time has come we become dispassionate and detached and let law take its own course of action which is good for the society and individuals inhabiting in such a society.

Bibliography

Jacobs, Jonathan. "Moral Independence and Civil Society." Researchgate (2018): 1-10.
Skogan, Wesley G. "Judicial Myth and Reality." Washington University law review (January 1971): 310-334.