

Law social engineering

Profession



LAW AS A TOOL FOR SOCIAL ENGINEERING IN INDIA KARANDEEP MAKKAR¹

Roscoe Pound introduced the doctrine of “ Social Engineering” which aims at building an efficient structure of society which would result in the satisfaction of maximum of wants with the minimum of friction and waste. It involved the rebalancing of competing interests. This article analyses the role of legislations, constitutional provisions and court judgements in the process of social engineering in India.

Introduction India, known around the world as a “ cradle of civilizations” has always been a queer mixture of various faiths, religions, a place where the cultures of the world meet, constituting an environment of composite culture. It was for this reason that Pandit Jawaharlal Nehru called India the “ the museum of world religions”. Indeed, the very paradigmatic setting of India has been pluralist all along. Even today the land mass called India, spread over 3. 8 million sq km of area inhabited by a thousand million plus population, with every imaginable kind of a weather pattern from minus 40 degree Celsius in greater Himalayan region to 50 degree Celsius temperature in the deserts of Rajasthan and temperate weather of coastal regions, 20 official languages written in 16 different scripts, around 2000 dialects, 16 well demarcated agro-climatic zones² and almost all religions of the world well and adequately represented, presents a mind boggling variety and plurality.

And all this has a bearing on India’s liberal, secular, republican, politico-legal system. Under these conditions, it becomes very necessary to have a mechanism for balancing the interests of the individuals, society and the state. India, after independence, adopted the ideal of a socialistic pattern of

society and has formulated programmes of social welfare in various spheres. The aim is to establish a social order which would eradicate exploitation, secure equal opportunities for all citizens, ensure that they share just obligations and enjoy social security.

The means adopted in achieving these ideals these ideals are peaceful and democratic. The goal is sought to be achieved mainly through the enactment of suitable laws. It is generally recognised that legislation does create healthy conditions for such changes. It is in these circumstances that law comes into play to act as an agency balancing conflicting interests and becomes a tool for social engineering. This article analyses the 1 2 Student, 3rd Year, B. A. LL. B (Hons.), Hidayatullah National Law University, Raipur. Data taken from <http://en.ikipedia.org/wiki/India> accessed on 31-03-2010 role of legislations, constitutional provisions and court judgements in the process of social engineering in India. The Concept of Social Engineering Roscoe Pound was one of the greatest leaders of sociological school of jurisprudence. He introduced the doctrine of “ Social Engineering” which aims at building an efficient structure of society which would result in the satisfaction of maximum of wants with the minimum of friction and waste. It involved the rebalancing of competing interests.

Roscoe Pound defined the legal order by reference to the end of law: " It [the legal order] may well be thought of as a task or as a great series of tasks of social en-gineering; as an elimination of friction and precluding of waste, so far as possible, in the sa-tisfaction of infinite human desires out of a relatively finite store of the material goods of ex-istence. " 3 Interests", " desires", " claims", " wants" - for the most part the words are used

interchangeably in Pound's writings, although "interests" sometimes serves as the inclusive term. He writes, " For the purpose of understanding the law of today I am content with a picture of satisfying as much of the whole body of human wants as we may with the least sacrifice. I am content to think of law as a social institution to satisfy social wants--the claims and demands involved in the existence of civilized society--by giving effect to as much as we may with the least sacrifice, so far as such wants may be satisfied or such claims given effect by an ordering of human conduct through politically organized society.

For present purposes I am content to see in legal history the record of a continually wider recognizing and satisfying of human wants or claims or desires through social control; a more embracing and more effective securing of social interests; a continually more complete and effective elimination of waste and precluding of friction in human enjoyment of the goods of existence-- in short, a continually more efficacious social engineering. " 5 Like the engineer, the jurist constructs, creates - but not out of thin air.

Like the engineer, he must work with resistive materials, without which, however, he could not build at all; and always there are adverse conditions imposed upon his activity. Friction and waste, represented by a sacrifice of interests which might be secured, must be overcome. The task is one for human activity: though requiring methodical care, there is nevertheless nothing static about it. Technique and materials may be improved. Jurist 3 4 5 Pound, Roscoe, " Interpretations of Legal History", Harvard University Press, 1946, At P. 160. Pound, Roscoe, " The Spirit of the Common Law",

Transaction Publishers, 1999, At P. 96. Pound, Roscoe, “ An Introduction To ThePhilosophyOf Law”, Transaction Publishers, 1999, at p. 20. must work on, must create an ever greater, ever more serviceable structure. The engineering analogy stands out as both graphic and timely. 6 According to Roscoe Pound, law is an instrument of social engineering. The task of jurists is to find out those factors which would help in the development of culture conducive to the maximisation of satisfaction of wants. These factors are principles as Jural Postulates. 7 Technique of Social Engineering:

Pound advocated the technique of Social Engineering for the purpose of balancing the conflicting interest of the society, in order to achieve maximum satisfaction of maximum want of the individuals. He advocated that the study of law should be supplemented by social aspects so that it may become more attractive and useful. Spencer and Bentham also in a way directly and indirectly applied law to men in society. Judicial Application: Pound suggested that judicial application of law should take into account the following factors: (a) The factual study of social effects of the administration of law. b) Social investigations as preliminaries to legislation. (c) The means by which the law can be made more effective should be devised. (d) A study of legal and philosophical aspect of judicial method. (e) Sociological study of Legal History. (f) The achievement of the purpose of law. (g) Possibilities of jurisprudence of interests and reasonable solution of the individual case. SOCIAL LEGISLATION AS TOOL FOR SOCIAL ENGINEERING When unequal distribution of wealth exists in a society or when social justice is denied to certain sections of the people, laws are enacted to bring about equilibrium.

These laws may be designated under “ social legislation”. Social legislation tries to remove inequalities and to benefit the whole community rather than a few individuals. It adjusts ^{6 7} Douglas, Some Functional Aspects of Bankruptcy (1932) 41 YALE L. J. 329, 331. Dr. Laxmikanth, “ Law and social transformation”, at pg. 6 supplements and sometime replaces the existing legal system. In other words, in addition to ameliorating the social conditions of people, it bridges the gulf that exists between the existing law at the requirements of the society at a given time. Social legislation, in this sense has a special significance. It is different from ordinary types of legislation in as much as it reflects, the legislative policy of establishing social justice on humanistic and egalitarian principles. The primary functions of social legislations are summed up by Hogan and Inni in following words: (1) To provide for the orderly regulation of social relationship. (2) To provide for the welfare and security of all individuals in the social unit. ⁹ Social legislation, therefore, aims at establishing socialequalityin society.

The needs of society are adjusted and those who are responsible for creating imbalances or inequalities in society are prevented from doing so. It is however, necessary that all social legislation must be accompanied by “ social preparedness” - by effective propaganda to educate the people about its objects and to convince them of the ultimate utility of a particular legislative measure aimed at promoting the common good and fostering the common welfare. It is only then that the law can give direction, form and continuity to social change. The effectiveness of social legislation also depends on attitude of judiciary.

Under the traditional approach, the judges usually paid greater heed to the letter of the law and the mischief that was to be removed by the law. Social conditions and economic trend were not supposed to influence him in arriving at a certain decision. But this attitude appears to have changed in recent times. The judge appears to be conscious of the felt necessities of the time. He feels that his duty is not only to point out mistakes of legislature or remove unjustifiable hardships caused by law but also to assist in the social and economic progress of our times. 10 LEGISLATIONS ENACTED FOR THE PURPOSE OF SOCIAL ENGINEERING 9 10 Balbir Sahay Sinha, Law and social change in India, , 1983, Deep and Deep Publications, pg. 25 Hogan and Inni, “ American Social Legislations”, Harper and Brothers, New York, at p. 4. Supra Note 7. The introduction of certain major changes in the Hindu family law is a very important instance of social reconstruction in India in recent times. This has been brought about by such Acts, as The Hindu Marriage Act, 1955, the Hindu Minority and Guardianship Act, 1956, and the Hindu Adoption and Maintenance Act, 1956. The provisions of these Acts are calculated to generate effective means of social control.

For instance, Section 12 of the Act prohibits polygamy which was very prevalent in the society before the enactment of the Act. This can be viewed as a measure to balance the interests of the husband and wife as also a means for social control. The socio-economic revolution that has resulted from new land legislations is best seen in rural India. The land reform measures, adopted by the State Governments in the wake of Constitutional amendments, are meant to mitigate the hardships of tenants, strengthen and safeguard their tenancy rights and confer a new status on them.

This type of legislation can be rightly regarded as one neutralising the socio-economic disharmony in the rural population. The pitiable conditions and large-scale poverty of the rural population produced a sense of frustration in our peasantry endangering the entire society. The grievances of the agriculturists are being gradually removed by the land reform projects which would ultimately bring about a degree of social satisfaction and create a spirit of co-operation in the masses. 11 The new labour laws are aimed at bettering the conditions of the workers in trade and industry.

These laws have had an impact on social structure to a large extent. The individual worker's interest has been given great importance. The freedom of contract between the employer and the employee has been regulated in the interest of the worker and attempt has been made to assure to every worker condition of work ensuring a decent standard of life. A number of important enactments as, for example, The Industrial Disputes Act, 1947, The Minimum Wages Act, 1948, The Plantation Labour Act, 1951, The Maternity Benefit Act, 1961 have been designed to curb, if not eradicate, the urge to exploit workers.

Thus, they promote the welfare of workers and balance interests of employees and employers hence resulting in social engineering.

CONSTITUTIONAL PROVISIONS PROMOTING SOCIAL HARMONY The glaring inequality of different types more particularly based on sex and caste prevailed in Indian society until the pre-independence days, despite continuous efforts by the state, reformers and missionaries to control and eradicate them. The immediate 11 Supra note 7, at pg. 27 task for the Indian people and constitution makers was to establish an egalitarian society.

Therefore, in the preamble of the constitution it was declared that “ we, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: 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. 2 The constitutional provisions relating to secularism aim at bringing about integration and harmony in the society. Article 15 of the Constitution forbids a classification on the ground only of religion, race, caste, sex, place of birth or any of them, subject to specified exceptions and Article 16 makes a like provision in connection with public employment with the addition of “ descent” and “ residence” as forbidden grounds of classification. The Constitution gives the right to all persons to profess freely, practise and propagate religion subject to public order, morality and to other provisions of the Constitution on Fundamental Rights. Thus, in India no religion is given a preferential status or accorded any special privilege and the Constitutional provisions aim that no person should suffer any disability because of his religion. In order to achieve social progress and political advancement, the practice of untouchability has been outlawed by Article 17 of the Constitution and by the Untouchability Offences Act, 1955 enacted in pursuance of Article 17. These are clear indications to end social equality.

The provisions referred to are aimed at effectively balancing the various conflicting interests in the society and form the basis of what Roscoe Pound termed as “ social engineering”. A STUDY OF CASE LAWS While Sociological

jurists emphasize on the balancing of the conflicting interests of the individual, society and the public through the process which Roscoe Pound terms as the process of ‘social engineering’, the same has also been witnessed through the action of the Supreme Court when, in *Vellore Citizen’s Welfare Forum v.*

*The Union of India*¹³ which is known as the *Tanneries’ case* the Supreme Court observed as “The Constitutional and statutory provisions protect a person’s right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common 12 Bal Gobind, Kashyap, *Reformative law and social justice in Indian society*, 1995, Regency Publications, New Delhi, at p. 8 13 AIR 1999 SC 2715 law right of clean environment”. The Court further observed, “Our legal system having been founded on the British Common Law, the right of a person to pollution-free environment is part of the basic jurisprudence of the land”.

Thus the Court gave priority of public interest over individual interest. In *B. Venkatamma v. State of Madras*¹⁴, the passing of a communal order by the Government allotting certain vacant posts in government services in fixed proportions to Muslims, Christians, Harijans, Backward Hindus, Hindus, Non-Brahmin Hindus, and Brahmins was taken to be a violation of Article 16(1) of the constitution by the Supreme Court. CONCLUSION Rapid change in Indian social life is the result of many factors.

The influence of public opinion, the lessons of history, and the examples of progress achieved in other countries, the impact of ideas from the West- all have played a part. The legislative activity in India after independence has been directed, by and large, towards the creation of a new social order. The <https://assignbuster.com/law-social-engineering/>

gap between pressure of changed patterns and the slowly evolving new norms of social life was sought to be plugged by many important laws. To make social engineering through the use of law, the importance of other factors like economic development needs to be realised.

Law cannot, by itself play a vital role unless it is accompanied with economic development. Public opinion also plays an important role. There should be awareness amongst the various sections of the society before legislation is enacted for its successful enforcement. The purpose of social legislation like other types of legislations is not fulfilled if its enforcement is lax. If laws are evaded by people, this undermines the purpose of legislation, breeds corruption and puts the administrative machinery under heavy strain. This may ultimately lead to disintegration of the society.

Hence, rather than passing a number of legislations in this area without making adequate provisions for their enforcement, it is better to have fewer social laws containing clear-cut provisions for effective enforcement. The conflicts in modern Indian society are largely due to the fact that social life has not been properly adjusted to the forces of present age. In order to harmonize our relations in the society, it is absolutely essential that changes in law should be preconditioned by the existing public opinion in the society.

In other words, the changes in 14 AIR 1964 SC 572 law should be only in those directions and to that extent which the people in general aspire in the society. Mere super-imposition and direct adoption of foreign models in their entirely original form can create disruption and disorder in the society. We should retain our own social values and include foreign ideals in such a

manner that the latter are fully assimilated and become a part of our social system.