Scholarly Research Journal for Interdisciplinary Studies,
Online ISSN 2278-8808, SJIF 2021 = 7.380, www.srjis.com
PEER REVIEWED & REFEREED JOURNAL, MAY-JUNE, 2021, VOL- 8/65
https://doi.org/10.21922/srjis.v8i65.1337

CHANGING DIMENSIONS OF LAW: AN ANALYSIS

Amit Pratap Singh

Assistant Professor in Business Laws, National Law Institute University, Bhopal

Paper Received On: 21 JUNE 2021
Peer Reviewed On: 30 JUNE 2021
Published On: 1 JULY 2021
Content Originality & Unique: 75%

Why Law?

It is the most common conception amongst us that law governs our behaviour through rules and sanctions. It sometime provides for what is permissible and obligated to be done like road or traffic rules or duties towards old age parents. But mostly it tells us what we can't do or manifest like thinking about waging war against the nation or killing a fellow human being. Some jurists also claim that these kinds of do's and don'ts are norms which we call laws. Such normative elements does not limit itself to the rule recognition in society, but also it involves an element of punishment or certain social or behavioural detriment to be caused for disobedience and we call that sanctions. That very punitive element or sanctions requires an impartial investigation into putting or locating the burden. We call the process as adjudication. One way of looking at the adjudication is that it serves the very societal cause of controlling the defuncts and plugging the loopholes or adding the course correction, thus giving such notions of adjudications woven around an element of justice.

One very interesting way of looking at law is that it does not disclose the reality or a fact situation. It provides for a situation or a circumstance and if it is fulfilled then it gives the causal output, e.g., Mr. Sam killed his neighbour in the heat of the moment when he has caught him red handed with his wife. Now we can say that killing a person is a punishable offence and whosoever does it will get the infliction of punishment as provided under the Indian Penal Code, 1860. Interestingly, the simple it looks but example involved revolves around concepts like homicide, murder, general exceptions, mental capacity, adultery, etc.

Due the very nature of descriptive one, people starts saying whether the very element as provided therein is right or wrong. Hence it brings the very interesting element of the moral conscience of the groups or society at large. How to say an element is or definition or a provision is right or wrong? Who decides it? Based upon what and whose standards? Some say that it is the nature which already contains a particular set of behaviour through certain indicators like group survival standards and collective wisdom. Contractualists believe that it is original and general contract among the people to preserve and protect life, property and liberty that become standards of saying what is right or wrong. Some says that is the divine source which provides for the very source of the law or the collective habituality. With the very prevalence of the legislations, today, we say that it is the parliament or the sovereign which or who decides the right or wrong to the law.

Further, howsoever right or wrong you point out to any law but the central point to discussion remains as what its objective is? One way of looking at it is that it corrects certain behaviour. It stops chaos to arrive, binds people in a coherent idea of sanction and penalty, thus stabilises society.

How law is created and manifests itself maybe understood through the views of Anthropologists when they say current structure of society has begun with its smallest entity, i.e., a human being coming into contact with another human being. Certain religious texts also support this thought process[1]. The chains of interaction thus begin led to bigger primitive groups in their efforts of survival and social progress. Such social groups were not only congregation of individuals but also interactive congregation of ideas and human desires. Such multitude of human desires essentially led to some frictions within the human interactions and ultimately led to a control and command structures. The moment we refer to any as such command and control in human being or groups, essentially we are trying to manifest some external or internal mechanism to say 'what one can do and what can't do'. A particular set of jurist say that the very natural survival tactics in the group begun as the earliest known examples of law and sanctions, e.g., procreational and marital practices, bodily and individual protection within the group. Such groups becoming bigger with time and creating some notions of society, resulted into some new notions e.g., property, ownership, demand and distribution of resources. With each complexity and newness of human interactions, law and sanctions became more concrete and institutionalised. The very

[1] Adam and Eve story in Bible

conflicting claims over person or property led to the very system of adjudication. As a simple proposition, as we understand, the rules of the game usually declared at beforehand of the game. Same way the law became known to the general mass in the very process of the adjudication that this is what a formal command look like. One the point, how law took birth, one can say, a person who started exercising some level of control over the group or society, his words became the law, be it monarch or a tribe-head. Other believe that certain natural notions of the law and sanctions were already there in nature and we have picked and started following.

Once the existence of law was known, many variances in much form came to our own use. If the matter was pertaining to some right over property, we have developed property law. If the matters of protection and preservation of life, liberty and property became prominent, we have led the way of criminal procedure code. At some point the specialisations became separate streams of laws and we needed them for our own betterment.

Yet simple it looks to say why law, but it stands much difficult to say what law is. Sir Frederick Pollock in his book of Jurisprudence[2] says: "We find all human sciences that those ideas which seem to be most simple are really the most difficult to grasp with certainty and express with accuracy,…". He also further says that the "more a person has opportunities of formal training in legal principles, the greater will be his hesitation in answering the simple question, what is Law?"

Law as a discipline

Initially, law was thought as simple rules as to the conduct or thing of the use of the soverien and the subjects. The academic discourse was lacking into it on the part of it being recognised and regarded as a separate discipline of study. Most of the earliest thinkers regarded it as thing of philosophical discourse or an activity of logic or an instrument of state-craft. Due to this the formal training it the letters of the law was lacking and due to that lot variances were visible into the judicial pronouncement in the common law. People used to oppose law as a discipline because it was basically misunderstood as right reason, abstract rationality, natural notions, morality, collective conscience, or mass habits. This approach has given many set-back to the formal or scientific enquiry in to law as a separate discipline.

It was the appointment of William Blackstone at Oxford University gave a paradigm shift in the support to the law as a discipline into academic discourse. Jeremy Bentham and John

[2] Jurisprudence and Legal Essays. By Sir Frederick Pollock, B t.; selected and introduced by A. L. Goodhart: Macmillan & Co., Ltd.; New York: St. Martin's Press. 1961

Austin finally gave the much needed appreciation to the law as subject for legal enquiry and formal training into the law.

With recognition of the law as subject for academic enquiry, it has opened its horizon to the different subject which has their nexus with it. If we say law applies to society and it is an instrument of social change, then it has a relationship with the sociology or social sciences. The rules to ensure effective distribution of resources and control the arbitrariness into the market led to the interface of law with the economics. The interface of law and ethics came to rescue the situations of goodness, badness of the law or utilitarian application of the law.

Further, the people were mostly concerned themselves to the very sanctions which were they in the law. Most of the time, citizen wanted to understand to justify their acts or omission to get out of the clutches of the law or they want other one within the boundary of the law. This created a demand of a profession who can be attorney in such circumstances or if needed can argue before the judges. This established law as a profession through a training in the law.

Meaning and types of law

A society and its members, whether the institutions or the *Homo sapiens,* conduct themselves according to the law laid down or as we understand in the bare terminology as command. In the words of Aristotle, *"At his best, man is the noblest of all animals; separated from law and justice, he is the worst."* Yet the simple it looks to say that law for most regulates the human conduct on one hand but the human conduct itself is quit complex, accordingly the term 'law' also encompasses varied connotation and various meaning attached to it. The three letters word with multitude of dimension varying from human to robots, sea to sky, intellectual property to artificial intelligence, and corporate to municipality and so on, having been attached to paraphernalia of everything of daily walks of life, has become difficult to connote a simple sense. Etymologically the word 'law' relates to plural of 'Lag' an old Teutonic word meaning 'layer, stratum, a laying in order'. Further, the Old Norse word 'Log' meaning 'things laid down or fixed' and Proto-Germanic 'Laga' meaning 'that which is laid down' stands related to the recent understandings of the word 'Law'. Going with the historical connotation, it seems very easy to answer, what is Law? Volumes have written on the subject with no satisfying result.' In very simplistic approach, it is certain standards of do's and don'ts laid down by the courts or the parliament.

Point to ponder!

In old archaic English the term 'law' also means a push start or additional time given to participant in a running competition!

On one hand we use the term 'law' for putting uniformity to causal relations, e.g., laws of trading, laws of social evolution. Other hand we use 'law' for certain universal theorems and principles of scientific world, e.g., laws of gravitation, law of inertia, law of motion, so on and so forth. Yet none of these answers the standing question, what is law? Thus we see that law stands as fascinating phenomena which surrounds us in every walks of our life. The origin and sociological background to any term governs the structural meaning of the words in general sense. The word 'law' is an English term. In Hindu system of jurisprudence, it is very near to 'Dharma'. In German, it is 'Recht'. In French, it is 'Droit'. In Islamic Jurisprudence, it is equated to 'Huqum'.

But then what is law? This quest can be beautifully equated to the very metaphysical quest surrounding the concept of 'truth' in our vadic tradition. When a learned man asks, 'what is truth?', the Rig Veda provides the very spiritual and relevant answer, एकम् सत् विप्रा बहुधा वदन्ति[3], .i.e., it is the one but different philosophers told different meaning of it.

Similarly, the answer lies to long and extensive pondering in the subject leading to different schools of thoughts and intellectual perspectives. Different schools in jurisprudence based upon their academic and intellectual enquiry gave different postulations about the answer to the long standing question, i.e., 'what is law?' Their attempt not only answers what is law but also how and where to find it? The particular source or the background attached to it given the fascinating yet not so complete meaning to the term law. Through the particular surrounding subject, we may categorise certain distinct approaches or way to find the answer to the question.

- Based on etymology or language approach, law can be seen as a collection of the words or utterances accepted as norms or provisions in specific language called 'legal language'. Law, in this approach is a linguistic phenomena in which layman understands law as norm or provision. Based upon the language approach, meaning of the 'law' can vary as to language of courts and lawyers or lawmen. This definition is very evident in Civil law countries like France. In Common law countries like United Kingdom and India, the difference is very negligible because it is mostly judge-made and it is never revolutionary.

[3] R̥ig Veda 1.164.46
इन्द्रं मित्रं वरुणमग्निमाहुरथो दिव्यः स सुपर्णो गुरुत्मान् ।
एकं सद्विप्रा बहुधा वदन्त्यग्निं यमं मातरिश्वानमाहुः ॥४६॥

Points to Ponder!

- In some jurisdiction, we address judges as My Lord! Me Lord! This is out of court or legal practice.
- In India we have 'Basic Structure' in our Constitutional Jurisprudence, yet is not defined in any legal texts.

- Value or Philosophical approach signifies law as expression of certain values like 'law as something fulfilling justice', and putting more pertinent question whether law and justice both are same, inter-related or different.

Points to Ponder!

The recent certain changing dimension of Human Rights can seen as philosophical one! When certain river are declared to posses human rights or Chicken are claimed to have human rights !

- Based on the social sciences, law can be seen as social agent covering relations and institutions like marriage, family, kinship and it develops through social constructs prevalent in society and shapes itself through 'law in practice'.

Points to Ponder!

How certain family constructs once forbidden becomes a talk of the time!

Same Sex marriages, Single Mother and prohibition of dowry

- Based on psychology, law can mean to be set or norms occurring as 'group fiction' and an adjective or objective based deemed fiction.

Points to Ponder!

When a deity can be regarded as person to have rights and defend it through filing cases in court of law for their own right.

How particular geographical region claims a status of 'state' within the legal system?

- Based on economics and political sciences, law can be seen as something which acquires its meaning according to politics or the commercial activity for the time being.

Points to Ponder!

Certain aspect of tax statutes are changing according to the needs of the economy at the time.

Wealth Tax, Foreign Direct Investment Rules !

It's very evident to understand that these approaches merged together answers the basic question and that's why today we study law and other discipline together as multi-disciplinary one. To understand this lets take an example: An engineering student who is trying to become a land surveyor has to equip himself or herself to the basic laws of physics, mathematics and algebra. The moment he starts his practice as land surveyor, he or she has to make her well acquainted with land laws, property laws, valuation rules which are totally different from law of physics or etc. but totally inter-woven. If he has to arrive at a particular outcome, not only the physical laws but also the legal terms associated have to be taken into account.

Different theories about 'Law'

Theorising 'law' is a continuous attempt to illustrate and signify how a particular phenomena happens and further how it is being driven or regulated, is one aspect in which we deal law as a posteriori concept. A fact situation arises or it is there in society and we bring into effect a law to regulate or associate or dissociate it. We had menace of 'dowry', then a prohibition was brought into effect as the Dowry Prohibition Act, 1961.

But not all theorisation is based on a posteriori, the natural law theory and school believes law as something existing in nature and cardinal ones'. Many religious scriptures signifies that 'one should kill other human beings'. Law has formalised it into law on manslaughter and law of murder or culpable homicide.

Other than priori or a later thing approach, there is also way to look at law as having proper descriptions in itself detached from moral judgments or beliefs of the person(s). This is call 'legal positivism'. This view is undertaken by jurists like Jeremy Bentham, John Austin, Thomas Hobbs and David Humes. In bare essential way, John Austin regarded 'law' as 'a command of sovereign'. There are certain criticisms to this school of legal positivism.

Ronald Dworkin strongly opposes the above positivists approach by saying that law is not always positivist in the sense that it mainly comprises of two very specific and distinct elements, i.e., rules and principles. Rules are the parcel of the legal texts and could be ascertained via codified provisions or illustrations as enunciated by the courts. But principles

are not written expressly, but these are the 'institutional morality'. These are the basic collective understanding which acts as guiding force to the very rule allocation or formulation, e.g., the best practices of the market adopted under UNCITRAL, law of the merchants adopted under contract act.

Herbert L.A. Hart goes ahead and says about primary and secondary rules while commenting about the positive morality.

Pure Theory of Law regards law as pure from the moral biases. Hans Kelsen was chief advocate of this school of though. This regards law having a normative nature in which it is

Now, if we say law is norm backed by sanctions to regulate human conduct. Then how to differentiate it with a duress or threat? Further, there are certain laws which regulates companies, corporate, deities, nom-human persons. Thus, law posing itself something as norms or regulation or as rules of conduct. Now not all such rules or norms can be universal or absolute that's why we see variance in the term of meanine g and enforceability in different countries. Hence, a new proposition comes in to the picture that law is something as a rules, regulation or norm for regulating conducts in a 'legal system'.

Law and Types of Law

According to Max Weber a lawyer turned renowned sociologist a legal system means: "Integration of all analytically derived legal propositions in such a way that they constitute a logically clear, internally consistent, and, at least in theory, gapless system of rules, under which, it is implied, all conceivable fact situations must be capable of being locally subsumed." So, we have a well defined system for adjudication, execution and legislation so as to have to the best possible extent a coherency of rules and norms where any new situation of demand of time can be factored with.

Points to Ponder!
When the computers and IT peripherals becomes and rule of the game, we adopted a law and courts gone into detail to illustrate various aspect of it. Now we have regime for data protection!

Municipal Legal System, International Legal System Foreign Legal System Principle Based or Rule Based Municipal Legal System

Interface between law and morality

Law and legal systems involves an interface of growth and development. What is bare minimum a single or simple rules, in due course, with social interactions or with the interface with different subjects of enquiry, becomes a comprehensive norm. Such norms when

recognized by mass at large or involves voice through a sovereign element yield 'law as branch in the legal system'. At the same time, the issue of human externalities starts affecting the very shaping of the law. What could be said as collective obedience to certain social practices or behavioral way when continued over a period of time, can we say it becomes a tenet of law? Hence, started the very interesting deliberations as to what becomes law. Is it the morality or way of life of the majority which becomes law? Or is it the habits of the monarch become the general obedience to citizen and subjects. Morality can be understood as a collective norm habituated by mass over a period of time. The thing, the rationality could either be its part or with due course the localized element of rationality in the moral values may become redundant or it may not serve the need of the current time in the society. System of Sati Pratha could be said to be morally justifiable serving a segment habituated need in time frame but the changing dimensions of the society itself will this completely absurd or unwarranted. There is reverse cycle as well. A popular notion about a building or a structure may have different notions or appeasement to different people in moral set-up, but monarch or sovereign can use its command to impose a particular moral idea over the society and that very thing might be known in particular way only.

Further, an interesting way of looking at the relationship of law and morality is that morality structures the law and law advances the morality in turn. They make life worthwhile. We may take example of seeing justice delivery system as the example of bringing morality through law, or order through chaos. Accordingly, we see that positive law regarded as codification or aggregation of rules corresponding to the aggregation of the moral principles or collective morality. Such codification of the rules derives its authority from the aggregation of the collective morality. The justness or unjustness of the positive rules are defined or decided according to its closeness or difference to the collective codification of the moral laws. This, obliviously, lacks the scientific abstraction, as it becomes very difficult to ascertain the collective morality every time. Many jurists regards themselves as followers of the scientism and abandon this view of relation of law to the collective morality. The courts and legislations do not bind themselves to the collective notions of the society and thus they pronounce and define law according to the objective and abstract notions of the justice. The moment we try to fit justice as to the rules according to the morality, there lies the danger of mass appeasement and twisting the law according to the mass agitation.

Laws reflect the very societal structure and allocation of political, social and economic rights. It lays down very relationship between and amongst the citizen and the state. It is law which

reflects the government will to people's welfare. Law reflects the very aspirations of the society.

The legislation as parcel of law is always futuristic. It aspires what is to be laid down and to be followed. The case laws lay down the things of the past. Due to the futuristic nature of the legislation as law, it concedes with the morality, as morality is also futuristic and having the nature of an aspiration. Hence, law and morality influence each other at great length. Law to be very effective, ideally it has to be in consonance with the morality of the people. If it is alien to the current notions of the morality, it will be very difficult to create a notion of habituality in the people. Any attempt to provide an exception in the notified rule through exceptions is many a time an attempt to absorb morality into it, or adopting the norms already being followed. On this note, the law and morality can't be said to be different from the politics and ethics. Plato's Republic is one glaring example on this.

The very consonance of the law and morality puts lesser burden in the governance. If we bring a codification which is apposite to the notions of morality or future aspirations, then much resources are lost to have effective obedience in the masses.

Conclusion

Legal system stands as a coherency of the law and institutions built around the law. Usually we call anything a system when it is coherently connected to serve a purpose. Ideally, law and legal institutions maintain a tandem to deliver the justice or to fulfil the aspirations of the mass at large. Further, to bring coherency in the system, an umbrella is need which can subsume any friction within and amongst the law and the legal institutions. We have agreed to give this notion of umbrella to ourselves as we have provided in our constitution that, "....we the people of India.....". Further, the constitution has led down a well defined structure of institutions and also defined the meaning of law. Thus, we can say that the Constitution of India gave birth to our legal system and polity both.

Our legal system is much influenced with the common law flavour. Many of our judicial elements and legal notions are adopted as customs due to the very habitual obedience for long time under the british raj.

Indian diverse demography and rich diversity has led to layered unification of the legal system. British Raj took civil and criminal administration in their hands but left the personal matters to be administered by and through religious texts and community customs. Even the very scattered polity gave very heterogeneous flavour to many laws. The states had different property laws, succession and inheritance laws along with the land and revenue laws. Post-

Independence, the unification of the polity also brought harmonisation and unification of the legal system.

Our grand document, the Constitution of India, provided for the polity and legal system given by the people of India to themselves and ensuring a sovereign, socialist, secular, democratic republic, i.e., India.

The historical connotations of Nyaya, Dharma, Niti and Artha moulded over the basic realisation of justice, equality, fraternity, liberty and integrity of the polity. The rule of law is deeply enshrined in our constitution providing the supremacy of the Constitution itself.

Towards the very sources of the law and institutions, the Constitutions provided that not only the legislations, and customs will be having force of law but also the decisions of the Supreme Court will also be having the very force of the law and will be enforced throughout the India. The doctrine of stare decisis as applicable in India provided for a hierarchy of the judicial system in which the Supreme Court stands at top and high courts having the power of judicial review and territorial jurisdiction over the states. Further, the subordinate courts ensured the local administration of the justice delivery and adjudication system.

The law making was put the Parliament of India at union level and state assemblies at the state level having well defined subject and legislative competencies as according to the Constitution of India. The residuary power was given to the Union so as to put cohesive exercise of democratic processes. Law making was not limited to the parliamentary processes only, we had provided executives' led law making through delegated and subordinate legislations. This has ensured a robust law making at ground level according to the societal and technological advancements. As a common law country, our legal system always enshrined the evolutionary method of law making rather than revolutionary method of law making as practised in the civil law countries.

Initially, law and legal institutions were mostly dominated by the british flavour in their effects. Post 1991, with the opening up of economy and the market, and adoption of the liberalisation, privatisation and globalisation, the call for reforms in the personal as well as transactional laws were felt due to interactions amongst the people and economies. Many positive reforms were made to ensure gender neutral laws. Protective and welfare regimes were strengthened for marginalised and vulnerable sections of the society. We have provided for the economic welfare laws to attract the players in the market though SEZ laws, reforms in the land laws and labour laws.

We stood the test of the time and our laws and legal system are justifying the very theorisation under the legal theory or the jurisprudence. Many a time, we are incorporating customs to our law, and also we are negating the unreasonable customs through legislations. Morality shaping the very harmonisation of the legal rules in the form of provisions for the betterment of the socially and economically backward sections of the society, but also legal rules is negating the morality in the form of negation of certain societal aspirations like temple access etc.

To summarise the critical appraisal of law in India, we may say that now the fineness of the law is dependent upon the very profession of the law. The legal education has become synonymous with the rule and the law in India. To cope with the current and new challenges to law and legal system in India, we must make our profession ready to encompass the development in the law and morality, law and economics, law and sociology, law and philosophy, and most importantly, law and technology. Also, we must be very cautious in our multi-disciplinary approach. We should keep the very ethos of the law intact to be understood devoid of morality, ethics, and mass appeasement. With the incorporation of data sciences into the law with the help of the artificial intelligence, now machines are able to put their artificial cognitive thinking onto the law and the rules. Now, we are becoming more able to provide procedural certainly to law and into legal system even when there are multitudes of the externalities like ethics, morality, and social aspirations are present. Finally, to conclude with, law now by large catering the distributive justice to the market and masses, and it is shaping the very subject to ensure optimal resource utilisation because the numbers of Homo sapiens are ever increasing as their human need and desires.