SOCIOLOGICAL APPROACH TO LAW

The Sociology of Law – What is it?

The Sociology of Law has its earliest foundations in the scholarship of Max Weber and Karl Renner, amongst many other distinguished contributors, including Émile Durkheim and Vilhelm Aubert in the 20th century.

The field aims to transcend traditional legal boundaries by bringing into consideration the role of society and its system of values and norms. Despite the definitional challenges the field currently faces, the Sociology of Law has contributed positively to the critical analysis of specific issues and in opening up legal theory and practice.

Sociology of Law Today

The **Sociology of Law** has first and foremost it's foundations in the field of sociology. This area does, however, take an interdisciplinary as opposed to duel approach in analysing and understanding the relationship between law and society.

Within this area, it is key to consider legal structures (i.e. the legal system), legal process (how law is made) and the interaction of the law in societal change and social control. It is important to critically analyse the impact, positive and negative, of law on race, class, gender and other social differential values, as well as highlighting that:

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    - Law needs to be understood as part of social institutions

    - It is important to critically analyse how law and society interact with each other.

    - Legal categories and legal reasoning interact with social hierarchies based on race, class, gender and sexuality.

    - It is important to analyse relations between law and social control and social change.

A sociological interpretation and application of the law, however, does not bar the study of rules but only "differentiates between the proclaimed objectives of legal norms, on the one hand, and the actual workings and consequences of law, on the other" . The values and application of sociology as a discipline enrich the interpretation and application of law in many areas, giving rise to the Sociology of Law as a unique and evolving area of knowledge and expertise.

The study and critique of the Sociology of Law has been well underway since the mid-19th century. Whilst the development of the field has continued to the modern day, it is important to acknowledge and appreciate some of the key thinkers and contributors to the field.

Importance of Law in Society

The law is important for a society for it serves as a norm of conduct for citizens. It was also made to provide for proper guidelines and order upon the behaviour for all citizens and to sustain the equity on the three branches of the government. It keeps the society running. Without law there would be chaos and it would be survival of the fittest and everyman for himself. Not an ideal lifestyle for most part.

The law is important because it acts as a guideline as to what is accepted in society. Without it there would be conflicts between social groups and communities. It is pivotal that we follow them. The law allows for easy adoption to changes that occur in the society.

Society is a 'web-relationship' and social change obviously means a change in the system of social relationship where a social relationship is understood in terms of social processes and social interactions and social organizations. Thus, the term, 'social change' is used to indicate desirable variations in social institution, social processes and social organization. It includes alterations in the structure and functions of the society. Closer analysis of the role of law vis-à-vis social change leads us to distinguish between the direct and the indirect aspects of the role of law.

1. Law plays an important indirect role in regard to social change by shaping a direct impact on society. For example: A law setting up a compulsory educational system.

2. On the other hand, law interacts in many cases indirectly with basic social institutions in a manner constituting a direct relationship between law and social change. For example, a law designed to prohibit polygamy.

Law plays an agent of modernization and social change. It is also an indicator of the nature of societal complexity and its attendant problems of integration. Further, the reinforcement of our belief in the age-old panchayat system, the abolition of the abhorable practices of untouchability, child marriage, sati, dowry etc are typical illustrations of social change being brought about in the country trough laws.

Law is an effective medium or agency, instrumental in bringing about social change in the country or in any region in particular. Therefore, we rejuvenate our belief that law has been pivotal in introducing changes in the societal structure and relationships and continues to be so.

Law certainly has acted as a catalyst in the process of social transformation of people wherein the dilution of caste inequalities, protective measures for the weak and vulnerable sections, providing for the dignified existence of those living under unwholesome conditions etc. are the illustrious examples in this regard. Social change involves an alteration of society; its economic structure, values and beliefs, and its economic, political and social dimensions also undergo modification. However, social change does not affect all aspects of society in the same manner.

While much of social change is brought about by material changes such as technology, new patterns of production, etc., other conditions are also necessary. For example, as we have discussed it before, legal prohibition of untouchability in free India has not succeeded because of inadequate social support.

Nonetheless, when law cannot bring about change without social support, it still can create certain preconditions for social change. Moreover, after independence, the Constitution of

India provided far-reaching guidelines for change. Its directive principle suggested a blueprint for a new nation. The de-recognition of the caste system, equality before the law and equal opportunities for all in economic, political and social spheres were some of the high points of the Indian Constitution.

The Relationship between Law and Society

Theorists have traditionally maintained that there are certain broad views on the substantive criminal law. One set of such constraints concerns the sorts of behaviour that may legitimately be prohibited. Is it proper, for example, to criminalize a certain kind of action on the grounds that most people in one's society regard it as immoral? The other set of constraints which concerns what is needed in order to establish criminal responsibility that is liability, independently of the content of the particular statute whose violation is in question.

Legal system reflects all the energy of life within in any society. Law has the complex vitality of a living organism. We can say that law is a social science characterized by movement and adaptation. Rules are neither created nor applied in a vacuum, on the other hand they created and used time and again for a purpose. Rules are intended to move us in a certain direction that we assume is good, or prohibit movement in direction that we believe is bad.

The social rules are made by the members of the society. Disobedience of the social rules is followed by punishment of social disapproval. There is no positive penalty associated with the violation of rules except excommunication or ostracism. On the other hand, law is enforced by the state. The objective of law is to bring order in the society so the members of society can progress and develop with some sort of security regarding the future. The state makes laws. Disobedience of state laws invites penalty, which is enforced by the government by the power of the state. What is not enforceable is not Law.

Relationship between Sociology and Law

Sociology and Law are two interwoven topics. Society is directly related to Sociology and in this matter, every society follows certain laws. Therefore, Laws are the essential part of the society. Sociology helps law to better understand society for smoother regulation and formation of laws. Similarly, the law is important to regulate a society. Norms, customs, traditions all these come under the law if the law did not exist then the society would not be less than a jungle. A human need certain rules and regulation to keep them on track and hence laws were made. These laws are made and established by society itself or governments are elected to formulate laws. From the formation to the execution till its impact on society everything comes under the umbrella of Sociology.

Laws are produced to and put into action through different societal processes. Every social institution such as family, polity, crime, corporation also individuals all these requirements and comprise of different laws.

In Sociology, we would say that law is a Social Control over Society. To have harmonious society one needs to build laws. Social control is basically a component utilized by the administration which manages the exercises of all people inside any general public, with the law being an immaculate illustration. When something is orally people tend to ignore and take it lightly. So therefore now people have to build Judiciary system and law enforcement agencies. When something goes wrong these agencies look after that issue and hence people keep in mind what consequences they can face if they go against the law and act as an

example for others. This is also related to Politics but it is also as important for Sociology. The different institution may likewise be utilized as types of social control, for example, the training framework i.e. Schools and colleges, religion or media, contingent upon how and to the degree which they are utilized. For example, every one of them has the ability to show individuals an arrangement of good standards and principles, which is likewise a type of social control.

Law is a societal phenomenon. Often law and sociology are seen as two different trains or domains and different groups of information. However, law and Sociology has similar subject matters such as both evolve around social relationships, principles, social controls, commitments and desires coming from specific social status and connections between or among people and society. Anything happening in social lives of people liable to lawful control and legal explanations does have likenesses with the social hypothesis and frequently read like the social hypothesis.

Often laws get neglected due to developments in society. So, as the social changes occur there must be changes in the law. Just like modern Sociology of law after Second World War sociology of law became the field of learning and factual study but a law was not central but some well-known sociologist wrote about a law in society. Sociologist Talcott Parsons in his work stated that law is the essential part of social control. Later, critical sociologist evolved with an idea that law as a weapon of power. Further sociologist Philip Selznick contended that modern law has become receptive to general public's need instead it should be drawn ethically as well. German Sociologist Niklas Luhmann shares that Law is functional system of society therefore he states

"All collective human life is directly or indirectly shaped by law. Law is like knowledge, an essential and all-pervasive fact of the social condition."

— *Niklas Luhmann*

Hence, in simple words Law is an essential element of Society and Society work smoothly with the law. Both go hand in hand. One needs to understand Societies different elements for better Law formation and enforcement and same goes for society to have peaceful and well-structured society laws should be followed.

Law : A form of social control

Social control is simply a mechanism used by the government which regulates the activities of all individuals within any society, with law being a perfect example. The judicial system (courts) and law enforcement agencies, such as the police or even the military, are also used as forms of social control as they are able to exert punishment upon the populace if any law is broken. People are therefore coerced by these powers into following the law by the letter and know the consequences if they do not. This is known as the "**rule of law**" (more prominent in political theory than sociology), where it is law that governs a country. Other institutions may also be used as forms of social control, such as the education system, religion or the media, depending on how and to the extent which they are used. For instance, all of them have the capability of teaching people a set of moral principles, which is also a form of social control.

The "**social contract**", popularly theorised by the likes of Jean-Jacques Rousseau, John Locke, Immanuel Kant and Thomas Hobbes, is a non-physical "agreement", so to speak,

between the government and its civilians which states that some individual freedom has been sacrificed in exchange for protection under the government. This simply means that, to be a citizen of a functioning state, you must sacrifice a part of your own personal liberty and abide by their laws in order to experience the benefits of being a fully-fledged civilian. For example, you may no longer have the right to kill your neighbour for a possession he has but at least it can't happen to you personally. There are laws against killing people and agencies, such as the police, which prevent, or at least try to prevent, you being killed. This is a form of social control as people are expected to act in a very specific way, you must abide by the principles of your greater societal community.

However, sometimes there may be too much or too little social control. Too many laws which may paint a country as a dictatorial regime or too little laws which may throw a country into uncontrolled chaos. When this occurs, this is known as "**anomie**", key theory of sociologist Émile Durkheim. Anomie simply translates to "rebellion" as you become estranged from a political system which either prevents you from exercising too much of your remaining personal freedom or one which does not permit you from walking down the street without being mugged in broad daylight. No longer will you abide by the agencies of social control and you will, non-physically, "rip up" the social contract. You may refuse to listen to the police, you may begin to ignore laws that you find completely unnecessary or even initiate a rebellion to overthrow the government. This generates unhappiness and dissatisfaction targeted at the current social order. People will demand change in the most extreme cases but, where there is only small traces of anomie, certain marginalised people, such as minorities or the disabled, may express their own anomie. They may organise demonstrations or even commit suicide, which is what Durkheim himself analysed in his book "*Suicide*". Anomie is any action or practice (such as associating oneself with a deviant subculture) which betrays the values of the established order and are deemed abnormal by society if ever committed in public.

Crime itself is considered a symptom of anomie as it is frowned upon but Durkheim himself stated that small levels of crime are normal in any society. There must be a balance between the levels of social control, specifically law, so that they do not breach too many personal freedoms of the individual but also so that they don't allow for too many excessive freedoms either.This is a simple rundown of the prominence of law in sociology.

The Significance of the Sociological Approach to Law

On the basis of the development of social values and common rules of behavior we may distinguish three types in the sociological approach to law: 1) the classical sociological approach, which is characteristic of traditional society; 2) the modern sociological approach, which is characteristic of industrial society; 3) the post-modern sociological approach, which is based on maximizing individual welfare. The sociological approach is essentially practical and expresses the relationship between society a well as its individuals and groups with law. The classical sociological approach to law emerges as the legal order of the state is gradually replaced by the legal order based on customs. The development of the modern sociological approach to law can be divided into two stages: 1)   The stage of developing a democracy, where order is established by means of laws and successive legislation. Members of society are expected to voluntarily obey the legal order of the state. Thus legislation is based on increasing knowledge about the reality of law. Knowledge of "legal realism" is a stimulus for the sociology of jurisprudence and the development of the sociology of law. 2)   The stage of using modern law as an instrument of creating the modern state. In the process of symbiosis

between democracy and modern political thought jurisprudence has created the notion of law as an instrument of social change. This notion has put together two variables – the growing power of the modern state and social change. Modern law is considered only an instrument of the state's political power and its efficiency is determined by the concentration of political forces, independently from the support of other systems of social regulation. Analyzing the sociological approach to law has lost its relevance. This explains the negative consequences of society's legal culture: 1) the unconditional endorsing of the instrumental approach to law; 2) the weakening of the link between society and law. The weakening of the link between society and law is particularly hazardous because individuals' voluntary obedience to the rule of law gives basis for the existence of society as such.

Conclusion

Law is a system of rules and guidelines which are enforced through social institutions to govern behaviour, wherever possible. It shapes politics, economics and society in numerous ways and serves as a social mediator of relations between people.

If the harm is criminalized in legislation, criminal law offers means by which the state can prosecute the perpetrator. Constitutional law provides a framework for the creation of law, the protection of human rights and the election of political representatives.

The legal response to a given social or technological problem is therefore in itself a major social action which may aggravate a given problem or alleviate and help to solve it.

Finally, it may be said that the Sociology of Law has had a long history of dedicated followers and practitioners. It is a discipline that seeks to transcend legal traditions and challenge what the limited understanding of the interaction and inter-relationship between society and the law, in all areas.

It is critical that further learning and analysis is needed to attempt a formalisation of definitions, values and limitations of the discipline in order that it may continue to challenge traditional interpretations of socio-legal issues.