
Unit -1 □ The Concept of Law, Ethics and Implication of Law, The Role of Law in Social Welfare and Social Security

Structure

1.1 The Concept of Law and Ethics

1.2 The Implication of Law

1.3 The Role of Law in Social Welfare and Social Security

1.1 □ The Concept of Law and Ethics

□ The Concept of Law

In order to live in society we have to abide by certain rules. The source of such rules is different laws and the nation's Constitution accepted from time to time. The source of all state power is the nation's constitution. The constitution has determined all the rights of the citizens for their comfort and well being. It is stated in sections 14, 15 and 16 Constitution that men and women would enjoy the same rights. It is also stated that the state would not accept any kind of inequality in all kinds of fundamental rights' for every citizen. As the Constitution of India is in force any kind of violation of the rights of citizen can be addressed in a court of law. At the same time no one can be dragged to the court if he/she does not abide by any deterministic rule. This is because no deterministic rule has been considered valid under the Constitution. The literal-meaning of the word law is some rules with regard to the legal standards set by the nation. In security for which, there has been laws and by laws. The role of the legal system is to protect the rights of the citizens and in that order enact punitive actions whenever necessary, which has been formalized through the demands and trials, faced by the citizens. The areas that are considered important for protection of rights of the citizen's are -

1. Economic Rights
2. Social Rights
3. Cultural Rights
4. Civil Rights
5. Political Rights

It is the responsibility of the government to protect all rights of its citizens in keeping with the International Human Rights Bill in the name of the social rights. It is often said that for every human rights the importance is on the qualitative standard

of life and status of all citizens. In this respect required legal system has been enacted with the assistance of National Legal Committee. A specialist body has been found to look into how the Criminal Procedure Code, the Indian Penal Code has been effective in the legal procedures taken, punishments given, and the judiciary. The recommendation of this committee is also very significant in issues like law for all people in India etc. thought he section 31 of the Constitution has been abolished in 1978 sections 31 A, 31 B, 31 C has still be effective. As a result there has been ample opportunity for enacting new laws and social change. In keeping with the sections 31 A and 31 B of the Constitution abolition of Zamindari and the Land Reform prospects were devised.

❑ The rules of the law

The legal system of a nation is built mainly to keep law and order and to protect the society by punishing the deviant. By the Indian Penal Code and the Criminal Procedure Code is initiated on the one hand to build a system of procedure to punish the deviant and on the other to build a system of procedure for conducting litigation at the court of law. In respect to the Indian Constitution if there is any kind of threat to the fundamental rights it can be subject to a suit. On the other side of it any threat to the Directive Principles is not subject to a suit. On closer analysis of the different rights of the citizens of India it can be seen that the makers of the Constitution have been too much careful of the positive role the state could play in enforcing law, order and meeting the basic needs of the citizens. J. Bentham has pointed out which principles are important to keep in mind for the betterment of the people. These are-

1. Principle of Utility
2. Principle of sympathy/Antipathy
3. Reformative Principle
4. Morality Principle

These above principles are very important for keeping the standard of the life style of the people, women and child's rights in the family. These principles can be discussed in detail below-

1. Principle of Utility

There are two main bases of this principle. One is to know how much good implementing the legal system can do. Second is to enhance the capacity for awareness that is related to the feeling of goodness and self-satisfaction. This principle has been accepted in all countries of the world with utmost importance. This is because the system of fulfilling demands is directly linked with the demands or needs of the people.

2. Principle of Sympathy/Antipathy

Some have identified this principle as joyful on the one hand and sorrowful on the other. There are still others who consider this principle to be one that does not

conform to the approved norms. It means that some people are joyous for the law while others are not. The law has positive aspects for those who support it while for others it delivers an opposed psychological state. For example, with the implementation of the Dowry Prohibition Act some people are poor have sighed relief because it showered them with the opportunity to get rid of the painful burden of paying dowry. This law seemed to be sympathetic towards their poverty and insecurities. On the other those who thought that receiving dowry was an end in marrying off their sons were opposed to such a law. To take another example, we can consider Prevention of Domestic Exploitation Act, which has delivered some good for women who were a routine prey to exploiters. On the other the exploiters did not consider this law to be a welcome relief because it was enacted in the law that the wrongdoer would be penalized if found guilty. The aim of the principle is to curb the tendency to commit crime. But in order to aim at a healthy society some may benefit out of it while others may not. But still the creation and stability of a law would carry on. It is with this simple truth that laws are formulated.

3. Reformatory Principle

The common sense ideas, regulations etc on the one hand try to establish good relations between men and help in integration while on the other it also encourage superstitions and bad habit. To the lawmakers the welfare of the society reformatory measures and their security through law are equally important. The aim of the law is to liberate some people from superstitions that enforce division among people and push some to a marginal position in society. In 1829, the Sati Prohibition Act helped to eradicate the superstition of burning a wife on the funeral pyre of her dead husband. Therefore, the main aim of this principle is to establish laws that consider social welfare with prime importance. This is considered important because it is thought that the lawmakers would consider social welfare to be very important for society. The importance of the principle lay in aiming at eradication of social inequality, caste based in equality etc.

4. Morality Principle

The importance of the Directive Principles in the Constitution is to establish economic and social justice for the people. The High Court and the Supreme Court delivers justice from time to time. It is considered that the guardians of law would deliver judgement in keeping with the fundamental rights and therefore sympathize with the self-respect of the ordinary people. This is how the principles of democracy, liberty and security from individual freedom can be established. This should not lead to believe that the Principle of Morality only seeks to establish individual freedom and security of rights. The main of this principle is to see that people from all classes are able to uphold a good relation with respect to human values and have respect for each other. The lawmakers should consider the social, economic, political and cultural rights of the citizen, which is an indispensable part of establishing self-respect of all

citizens. It can be said that there are punishment for a crime so are the legal procedures and systems. By the means of these reformation of a criminal via justified judgements are to be carried out. The security of individual freedom is therefore the main amulet.

Though different laws have been formulated in keeping with the above-mentioned principles still, the Indian Consitution is over and above all. It is important to consider some Directive Principles of state policy (36-51) here. The Directivie Principles can be divided in to three main sub divisions.

1. Socialist Principles -

Any kind of subjects can be consideired under this head.

- To cater to sufficient means of livelihood for all citizens
- To prohibit accumulation of property through production
- To maintain a balance in distributing property and other services equally among all citizens
- To deliver equal wages for all
- To consider the security of health for all workers
- To save children from all kinds of exploitation
- To render help from government to the old, unemployed, work for those who suffer from ill health and are illiterate
- To make arrangements for work according to merit
- To give opportunities to children to develop
- To help workers participate in industrial work
- To make laws and see that legal help system is widespread

2. Gandhian Principles -

The subjects that are considered under this heading are -

- To work in agricultural areas and animal husbandry
- To establish cottage industry
- To maintain the Gram Panchayat system
- To develop public health facilities and develop the quality of life for all citizen
- To prohibit intake of drags or any beverage that contain drug
- To protect the environment by maintaining trees and wild animals

3. Liberal Principles -

The main aim of this principle is reforming liberal economic situations and developing productive forces within the country by maintaining a productive work force. Though by the 42nd Amendment there were some revisions of all these but later on they were reestablished.

Like any other country of the world, in India too the security of the rights of the citizen is given prime importance through making and renewing laws. The aim here is to make and execute them equally for rich and the poor. In considering this significance, the other sides of the legal system are put forward here.

1.2 □ The Implication of Law

It is a process by which laws are made and executed in keeping with the needs and wants of the society. It means laws are formulated in keeping with the life course of the people. Laws are made while considering the democratic set up of the country and the demands so far made. Laws are enacted with a purpose of eradicating inequality, security of the fundamental rights of the citizens, and the directive principle all help in formulating a law,

1.3 □ The Role of Law in Social Welfare and Social Security

Social welfare is a special kind of attempt, which helps in creating opportunities for the downtrodden insecure poor physically handicapped persons to come to the mainstream society. Generally simple government and non-government attempts can help these people to come in to the mainstream fold. For example, the house building policy, the policy of giving rice and wheat to the needs, old age pension, and all kinds of services fall under this heading.

On the other it has already been discussed about social security that can lend support to people who have faced an accident for which the family has lost an economic support base. For example, insurance of any kind can deliver such a good.

The legal system and the constitution play the most important role in delivering social security and social welfare. The important areas this under the constitution of India is as follows-

- a. For women and children -
 - Oppression-it is criminal to oppress women and children. For example, physically abuse them, denying food, unnatural sexual behavior, to keep them in locked etc. This includes psychological oppression like not letting one to see his/her children, to punish children in order to hurt the mother etc. There is punishment in Indian Penal Code against such crimes in 498 (A), which states both jail and fine. On the other hand to lock anyone for a period of time is punished under rules 341 and 348. By implementing such laws oppression against women have curbed down to some extent.
 - Violation of modesty-the law in India cares for the status and respect of

women by writing rules against rape and any such attempts. It has been possible for these laws to protect the modesty of women in the country.

- ❑ Abduction and illegal act-abduction is alluring or by taking unfair means to transfer young boys and girls and women from one place to another. For this there are laws namely 363 and 363 A that consider punishment. There are different types of punishments prescribed under rules 364, 366 to 371. Moreover, the law that prohibits economic trafficking also considers such acts as criminal.
- ❑ Marriage, Divorce and Maintenance-there are different types of marriage rules for different communities. In many marriages, registration of marriage is mandatory. There are also some differences taking place in religious confirmation of a marriage. If any one party in marriage is of other religion the marriage has to be registered (1954) so that the legal importance of the marriage is established. In 1955 the provisions for divorce after marriage and the question of maintenance thereafter the Hindu Marriage Act of 1955 was established. The Muslim marriage generally called the Sharyati Law has been in vogue for long and the Christian Marriage Act is in action from 1972. In all these laws the age at marriage of the two people, their religion, caste and all other possibilities have been discussed along with the rules of divorce and punishments to be enforced for the deviant are written down even who will take the responsibility of the children after divorce are all clearly specified. The women till a long time could not take the recourse to law because they were ignorant of what it had in store for them. But with time they became conscious like others and that is how they have started to benefit out of it. As a result, now women are able to take help of these laws in groups too.
- ❑ Child Welfare.- the makers of the Constitution have made provisions for the guardianship of the child in India. There is a strict code that protects every child who is below 14 years of age from laboring for money. Other than this there are laws for juvenile delinquents (Juvenile Act 1986). The child labor act (Prevention and Control) 1986 and ***** can be specially mentioned. The other law that can be mentioned is Child Marriage Prevention Act 1929 under which boys below the age of 21 and girls below the age of 18 are prohibited to get married. The guardians and parents of such boys and girls are also liable to punishment under this law. By the enactment of such law the poor and the economically backward families are lesser a prey to the exploitations these days. It is for this reason that many have been able to come in to normal life. Moreover by the such laws number of crimes of such dimension has decreased to a great extent.

b. For the labor and the employee-in a country like India most of the people are

engaged in the unorganized sector, where the employer is the supreme authority. The most of the people are engaged in works like binding bidi, breaking rocks, building roads etc. Moreover in such works too much education is also not important. As a result a sizeable portion of the backward people are engaged in such work. There are many instances of exploitation on such workers. The government has taken initiatives from time to time to make necessary laws and amendments for this purpose.

- ❑ Minimum wage-in 1948 the minimum wage law was enacted for giving wages at government rate. It was enlisted in the said law that it would be a criminal offence to exploit anyone-child labor, girls/boys, and adult workers etc.- in this respect. Even if anyone agrees to receive lesser amount of wage it is mandatory for the employer to give the due in the form of arrears as soon as possible. Another law that is equal pays for equal pay has been enforced in 1976. It is considered a crime to pay a woman any less or higher amount than a man doing the same work. There cannot be any discrimination on promotion on the basis of sex either. The employer is bound to pay double amount for any extra time at work. There is an inspector at every block office to look in to the matter. Any kind of redress can be addressed to him. By the law ***** enacted in 1970 any contractor who has a supply of more than 20 labors under him has to register his name. He is also responsible for making necessary arrangements like suitable place to sleep, eat, medical facilities etc.- for these labors. If he fails to make such arrangements the labors can file a case against the said contractor. This type of law has helped many labors of the unorganized sector to pressurize the contractor to take necessary action.
- ❑ To consider accidents-all labours more or less come from families that are economically backward. The other members of their families are totally dependent on them for money. Any kind of accidents can permanently cripple the labor and his family. With this question in mind in 1923 a provision for a right for compensation has been bestowed with the family of the unfortunate laborer. In 1947 it was legally sanctioned that no labour can be sacked at the whim of the employer. This has brought a relief to most of the labor force. The labors employed under a contractor are also liable to get benefit from this law. But primarily a doctor's certificate, a request for compensation in written form to the employer, petition in the local labor officer or the Assistant Labor Commissioner has to be produced.
- ❑ Labour union-the labors are allowed to organize in unions to protest against their exploitation. According to the trade union law of 1926 any seven labour can organize to form a union and register it. In that case the employer cannot file a criminal case against the leaders of the union

for violating the contract between the employer and the worker. As the leaders exchange arguments in favor of the labors they cannot be considered responsible of creating any criminal offence.

- Opportunities for labors-there are many instances where there can be disharmony in the relationship between employer and the labor. Generally this disharmony results from arguments for various demands, holidays etc. it is notified that even if a worker works for no less than 30 days in any year the employer is bound to give him bonus. In 1965 the bonus law was enacted where the lawmakers have specifically notified such emoluments for workers of the primary sector. In 1972 by the gratuity act provisions of paying pensions for people who have worked for five years at a stretch are made. If the employer disowns the required amount the case can be put forward to the gratuity officer. In this respect the provisions under this law can be said to be in keeping with the welfare of the worker.
- c. for the oschedule castes and scheduled tribes - it was enacted in 1950 that India is a sovereign, socialist, secular, democratic republic. With all the rules it has been stated that there will be no discrimination on the basis if caste creed sex and the like. Every citizen in India is liable to get equality of opportunity for employment etc. In 1955 by the enactment of the Citizen Rights Act is has been ensured that no one can be discriminated on the basis of untouchability either. If found guilty of that the person can be fined and suffer imprisonment. As there has been a continuous flow of superstition regarding untouchability it has been ensured through the Scheduled Caste Scheduled Tribe Prevention and Cruelty Act 1989 that no one specially from these special groups are victim of such cruel action. To ensure smooth functioning of this Act a special officer at the block level has been engaged, where any kind of cruelty against these groups can be taken care of. By the enactment of this law equality and justice for all has been ensured. There are different schemes and policies taken for them with an aim of development for them. In this way their role in the development procoess has increased. The Amendment of the Act in 1995 has also increased the rate of progress of these people.
- d. For the physically handicapped - as a citizen of India those who are physically handicapped are given the same opportunity of education, employment, government facilities etc. in 1995 all physically handicapped people are given equal opportunity and after that there has been a widespread acceptance of the amendment. It has ensured an increase in confidence among these people by this law. It is a message of equality and social welfare. As a result this can be said to be a road towards development and change.

- e. For the insecure and the old-along with the women the child, the people who are victims of any kind of accident and the old all are a sizeable number who are taken care of by the department of social welfare of the government. But the most of the responsibility is taken up by the voluntary organizations as well. To meet the demand of a number of people for a long time two special laws have been implemented. ***** (1955) and ***** (1960). It has been ensured by these laws that no voluntary organization can take up the cause without prior consent of the government. As a result the responsibility and the clarity of work in voluntary organization were also ensured. In 1985 another legal step was taken in the form of *****. Before the juvenile criminals were accused in the same court of law as for the adult. This was a difficulty in restoring them in the society after they served sentence at jail. By this law a separate court where only their special cases will be brought under scan has been ensured. It has also been ensured that these juvenile convicts are accused with reference to a special code of law. By this every marginal people has been brought in the mainstream society.

It can be said therefore that the importance of law in social equality and social security is unquestioned. This is not limited in making new laws now and then. It also the aim to find out how far the laws are implemented and how much it has been able to eradicate inequality, superstition and the like. The legal implication depends on all this. That is to find out how far the laws have been able to increase the rate of development by faster rate of delivering justice.