
Role Of Law In Social Control

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Abstract

The most significant formal tool for social control is the law. Early cultures relied on informal social control, but as societies developed in size and complexity, they were forced to formulate rules and regulations that defined the required patterns of behavior and specified the consequences that would be inflicted on those who disobeyed them. A body of rules issued by legally sanctioned entities and enforced by sanctioned authorities is known as law. It clearly defines rights, responsibilities, and the consequences of violating them. The scale of modern society is enormous. They have a complicated structure that includes a variety of groups, organizations, institutions, and entrenched interests. To sustain social order and peace, informal measures of social control are no longer sufficient. Relationships in modern culture are of a secondary character. Formalization of norms is required for the protection of life and property, as well as the orderly ordering of interactions. In this sense, law has a significant impact on people's conduct in modern cultures. The term "social control" refers to the set of norms that should be obeyed by all members of a society. Some of the standards of conduct fall under the category of good manners as defined by the culture. As such, they characterize socially acceptable but not necessarily obligatory behavior. Other rules of behavior are mandatory and are enacted through legislation.

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Order and Acts.

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I. Introduction

“Law is the cement of society and also a crucial conduit of change,” writes Glanville Williams. Without a foundation of social organization, no society can exist. It establishes a system of order among its members who share some common convictions about living a regulated life. Social control is required to safeguard an individual from himself as well as to prevent disorder in society. It is the procedure for establishing and maintaining a social order.¹

Certain mechanisms are found in every civilization to govern the behavior of individuals and compel them to behave in a certain way. They compel and restrict the members to refrain from wrongdoing. These systems can be categorized into two groups: -Law and Government -Religion The former is an external control mechanism, whereas the latter is an internal control mechanism.²

The political organization is made up of law and governance. Currently, societies rely only on political institutions for decision-making and authority. But there was nothing political about it at first. No one has broad authority to rule, decide, or negotiate on behalf of the people of the community. There was never such thing as a state or a government.³ As in our civilized society, there was no legislation. The modern primitives still have a similar set up. We find no full-fledged legal system with the court, the judge, the barristers, the solicitors, the jury, the law books, and so on among the nonliterate. Morgan, Maine, and others have argued that government did not exist in the early stages of human society. They had studied this truth from the standpoint of the simplest societies of the time. They used the Andamanese of the Andaman Islands, the Bushmen of Africa, the Yámana of Terra del Fuego, the Eskimos of the Polar Region, the aboriginal people of Australia, and others as examples of societies that live on the lowest level of subsistence economics

¹ Divya Prakash, ‘*Role of law: a critical perspective*, SCRIBD (2011) (May. 3 2022, 9:40 a.m.) <https://www.scribd.com/document/49489204/Role-of-Law-in-Society> .

² Ibid 3

³ Sheryar Naeem, ‘*The role of law in society*, SCRIBD (2020) (May 3, 2022, 11: 30 a.m.) <https://www.scribd.com/document/481260422/The-Role-of-Law-in-society> .

and lack any form of organized warfare.⁴ Because civil law does not exist, these civilizations are characterized by criminal law.

This means that there are laws in place to deal with certain criminal offences. However, Lowie demonstrated that this viewpoint was incorrect; the lack of authority did not imply anarchy. Although these cultures have little evidence of power outside the family, when a situation arises that necessitates collective action, a leader is temporarily nominated from among the tribe's elders.⁵

Any community member may be chosen for this function, but he must be superior to all others, either in terms of bravery or spectacular performances, or simply in terms of scrupulosity. A local group like this can serve as a springboard for the emergence of government.⁶

II. What Is Law?

"Law" refers to the entire process of maintaining and enforcing recognized binding laws, including the reasons and values that influence judges, as well as all the various societal forces that keep the majority of people from ever having to face a court⁷. When Radcliffe Brown stated, "some primitive civilizations have no law, although all have conventions that are reinforced by punishments," he was referring to a particular method of enforcing rules, as well as the ramifications of establishing laws and rules enforced in this manner.⁸ However, when Evans-Pritchard wrote that "there is law" within a Nuer tribe, he implied that law exists when people agree that certain actions infringe on the rights of others, and that injuries can be made good, and that disputes can be formally settled and parties reconciled through the payment of compensation.

⁴ University of Lucknow, 'Law and Social control' (May 3, 2022, 12: 45 p.m.) https://www.lkouniv.ac.in/site/writereaddata/siteContent/202004120825283934tara_bhatt_anthro_law_and_social_control.pdf.

⁵ Id

⁶ Id.

⁷Lkouniv, *supra note 4*, at 2.

⁸ Palomor Edu, 'Law' (4 May 10: 00 a.m.) https://www2.palomar.edu/anthro/control/con_2.htm.

By implication, he defined law in terms of an institution, a mechanism for reparation and reconciliation; if a Nuer is hurt by a member of another tribe, he is justified in retaliating, but there is no procedure for resolving the conflict, and thus no law, according to his theory.⁹

III. What Is Social Control?

There are various definitions defining meaning of social control some of them are:

Gillion and Gillion: “Social control is that system of measures, suggestions, persuasion, restraint and coercion by whatever means including physical force by which a society brings into conformity to the approved pattern of behaviour or sub-group or by which a group moulds into conformity its members.”¹⁰

Jones: “Social change is a term used to describe variations or modification of any aspect of social patterns, social processes, social interactions or social organization.”¹¹

Davis: “By social change is meant only such alterations as occur in social organization, that is the structure and function of society.”¹²

Majumdar: “Social change may be defined as a new fashion or mode either modifying or replacing the old in the life of a people or in the operation of a society.”¹³

MacIver and Page: “Social change is the change which occur in social relationships alone”, they further say, “it is seen apparent that social change is a process responsive to many types of change,

⁹ Id.

¹⁰ Dr. S.R. MYNENI, SOCIOLOGY 206 (Allahabad Law Agency 2006)/

¹¹ Id.

¹² Dr. S.R. MYNENI, *supra note*. 10.

¹³ Id.

to changes in the attitudes and beliefs of men, and to changes that go beyond human control to be biological and physical nature things.”¹⁴

Auguste Comte: “The father of sociology” divided the subject of sociology into two major parts, namely, social statistics (Social order) and social dynamics (social change).¹⁵ The study of social order and that of social change are closely related and the understanding of one lead to that of the other. Social change is a continuous process and so many factors contribute for such changes from time to time.¹⁶

IV. Characteristics Of Social Control

The following are some characteristics of social control:

1. Public opinion, force, social suggestion, religion, appeal to reason, or any other approach can all be used to exert social control.¹⁷
2. Social control refers to the power that groups wield over individuals, such as the family, the church, the state, the club, the school, the labor union, and so on.¹⁸
3. Social control is the use of power to promote the well-being of a group as a whole. Other people's presence and interests are brought to the individual's attention, and he or she is expected to promote them.¹⁹
4. Social restrictions are unique to a certain group or society.²⁰

¹⁴ Dr. S.R. MYNENI, SOCIOLOGY, *supra note. 10* at 207.

¹⁵ Id.

¹⁶ Dr. S.R. MYNENI, SOCIOLOGY, *supra note. 10*.

¹⁷ Id at 119.

¹⁸ Id.

¹⁹ Dr. S.R. MYNENI, SOCIOLOGY, *supra note. 10*,at 119.

²⁰ Id.

V. Types Of Social Control

Karl Mannheim distinguished between direct and indirect social control i.e., Direct and Indirect social control²¹

Direct social control: The control performed on an individual by the reactions of people living in close vicinity in the family, neighborhood, playground, and school is known as direct control. Criticism, praise, suggestion, persuasion, derogation, and other factors influence or control an individual's behavior.²²

Indirect social control: Indirect control refers to the influence exerted on an individual by variables that are external to him. Traditions, institutions, and customs, among other things, have an impact on opinion, law, and custom.²³

VI. Means Of Social Control

There are formal and informal means of social control. Here are some of the other formal means of social control including law.

Education, law, and coercion are the primary formal tools of social control²⁴

Education: Education instils in a person a sense of politeness that varies from society to society. Education teaches us how to comprehend our abilities, capacities, and intelligence. Discipline, cooperation, tolerance, and sacrifice are all values instilled in children through education. Honesty, fairness, and a sense of right and wrong are also instilled in students through education. It also prepares people to conform to society's changing norms.

²¹ Dr. S.R. MYNENI, SOCIOLOGY, *supra note. 10*, at 200.

²² *Id.*

²³ *Id.*

²⁴ Lkouniv, *supra note. 7*.

It transforms newborns into conforming adults who, in most cases, perform their functions satisfactorily. People's behavior is influenced by their education. As a result, the importance of education in social control cannot be overstated.

Administration of Law: Law, according to Holland, is a general rule of external activity enacted by a sovereign political power and enforced by the State's courts in specific instances. "Law is the most specialized and well-equipped engine of social control that society employs," Ross adds. Individuals in society are governed by laws enacted by the government. The government punishes disobedience to these laws and their violations. Controlling the law entails exercising administrative power vested in government authorities. The executive branch of government is empowered by law to punish individuals who break established social orders while also rewarding those who operate responsibly and cooperatively. Law has a strong influence on people's behavior because it prevents one person from being an impediment to another and protects the law-abiding from the disobedient.²⁵

Coercion: Coercion is the most extreme form of social control, involving the use of force to attain a goal. Corporal punishment, jail, and the death penalty are all options. Physical force may have an immediate impact on the offender, but it has no long-term consequences. A civilization that relies solely on external force demonstrates a lack of social control rather than a strength. The threat of physical punishment is a powerful deterrent and effective weapon that motivates people to respect social order and obey social control. The police, the army, and weaponry are all tools of pure physical force, and there are many of them in our world to show that physical force is still the most effective social control tool.²⁶

²⁵ Dr. S.R. MYNENI, SOCIOLOGY, *supra note. 10*, at 205.

²⁶ *Id.*

VII. Some Of The Informal Means Of Social Control Are:

Belief: Belief is the conviction that something is true, such as the existence of an unseen power, reincarnation, Nemesis, the goddess of vengeance, hell and heaven, the immortality of the soul, and so on. "Belief in these supernatural sanctions on behavior has significant advantages," assert Gillin and Gillin. It is both efficient and cost-effective. The superior strength of the criminal can sometimes paralyze legal and societal penalties. They are costly, and they only affect the external deed; they have no influence over the heart's reasons. However, the notion that the sinner will be punished by the goddess of vengeance for his transgressions and that those who conform will be rewarded with select favors goes to the very foundations of individuals, and the individuals endorse the forms of behavior that the group accepts. The beliefs strengthen the hands of social controls, as well as society's stability and order.²⁷

Customs: Customs are long-established social norms that govern the lives of society's members. There is no authority to enforce or protect them. Since the customs have evolved over time and have taken into account factors such as the social environment, etc., People have no qualms about obeying them and don't see any reason why they shouldn't. This also protects one from social ridicule. Social life is heavily regulated by customs.²⁸

Morals: Morals are rules governing the conceptions of good and evil. Nonviolence, truth, fairness, equality, and other moral values are valued in civilized society, and behavior that violates them is frowned upon.²⁹

Norms: Norms serve as a guide for action. The norms provide society its cohesion. They have an impact on people's attitudes. In light of the socially determined context, conformity to the norms

²⁷ Dr. S.R. MYNENI, SOCIOLOGY, *supra note. 10*, at 202.

²⁸ *Id.*

²⁹ *Id.*

is qualified. Violations of norms may result in a loss of prestige, social humiliation, or even a more serious penalty.³⁰

Folkways: Folkways are socially acceptable patterns or types of behavior, and hence the foundation of community culture. These ways are instilled in children from an early age, and as a result, they have a strong influence on man's behavior in society.

VIII. Rules And Laws

Every community contains regulations that are referred to as "laws" and others that are referred to as "customs.". It's a matter of understanding what people expect of them in both cases. People recognize that you can do many things that other people don't like, but only a few of them will get you in trouble with the police; that you can have many grievances against other people, but you can only go to law about a few of them where Malinowski called them "Codes, courts, and constables." When there are no courts or constables, it becomes difficult to define. Some writers on that type of civilization use the term "customary law" to be safe.³¹

IX. Is A Definition Required To Determine Which Of These Rules Are Laws And Which Are Not?

Such definitions are frequently proposed, scrutinized, and dismissed. What is known as the Austinian definition of law—"the command of a sovereign"—clearly cannot apply where there is no sovereign, and it has been rejected by modern-day attorneys as well. Some American writers

³⁰ NOIS, *Introduction to Law*, (May 4, 2022, 11: 50 a.m.) https://nios.ac.in/media/documents/SrSec338New/338_Introduction_To_Law_Eng/338_Introduction_To_Law_Eng_L5.pdf.

³¹ Sociology Guide, *Law* (May 4, 2022, 12: 15 p.m.) <https://www.sociologyguide.com/social-control/law.php>.

have stated that law is whatever a court can enforce; however, this is ineffective if there are no courts.³²

E.A. Hoebel of the United States and Max Gluckman of South Africa are the two anthropologists who have made the biggest contributions to the study of law in the recent two decades. Hoebel broadens Radcliffe- Brown's description to include the Nuer and other peoples in possession of the law where public opinion permits and encourages retaliation notwithstanding the absence of a court to impose punishment. Indeed, according to Hoebel, there is a court: what we refer to as "the bar of public opinion." "A social norm is legitimate if its violation or neglect is frequently confronted, in threat or in fact, by the application of physical force by an individual or group with the socially acknowledged privilege of doing so," Hoebel says.³³

X. Role Of Law In Social Control

The country's independence signaled the start of a new era. The Constitution spelled out the goals that the country pledged to attain. The Constitution was written with our nation's socioeconomic goals and foundational faiths in mind. It enjoined the law with the task of making environmental adaptations to the existing legal system, sensing the needs and wants of the people, evolving legal principles, legislative formulations, and statutory institutions that will harmonize with the urgencies of our time, and putting the Constitution's mission into action.³⁴

The re-discovery of the goals of our Freedom Struggle, the realization of our national identity, reflection on our founding faiths and fighting creeds, the strengthening of our resolves, and launching on our future with a flaming spirit, at once authentic, impatient, and adventurous are the driving forces of social change in the Indian context. The mission begins with a militant understanding that we are free people committed to social justice who are yet operating within the legal system, divided and in spiritual distress.³⁵

³² NOIS, *supra note* 30.

³³ Id.

³⁴ Norman P. Barry, *Law and social control* (2021) (May 4, 2022, 2: 10 p.m.) https://link.springer.com/chapter/10.1007%2F978-1-349-20201-0_2.

³⁵ Id.

The political declaration of independence is our manifestation as a nation; the economic declaration of independence is a struggle for autonomy, progressing from the Constitution to law-in-action. To be honest, the establishment suffers from the disease of dual personalities, identity loss, and amnesia of our fateful encounter. The call on the Indian jurist is for a powerful, planned comprehensive legal Protestantism, radical enough to break the grip of five-star wealth and wage war on mass poverty and social infirmity.³⁶

XI. Removal Of Social Evils

Many additional social evils and disabilities have been eradicated through legislation such as the U.P. Removal of Social Disabilities Act, 1947; the West Bengal Hindu Social Disabilities Removal Act, 1948; and the Untouchability Offenses Act, 1955; renamed the Protection of Civil Right Act. The Madras Animal Sacrifices Act, 1950, and the Madras Prevention of Devadasis Act, 1947, have abolished or restricted the evil practice of Devadasis, the sacrifice of animals in holy locations, and the prohibition of some sections of society from entering temples. For social reform and to reconstruct the Hindu social order, the Madras Temple Entry Act of 1947, the Bombay Hindu Places of Public Worship (Entry Authorization) Act of 1956, and many more similar Acts have been passed.

XII. Supreme Court And Socio-Economic Differences

As guarantor and protector of fundamental rights and interpreter of the Constitution, the Supreme Court of India has a constitutional duty to ensure socioeconomic and political fairness to all inhabitants of the country. It should be recognized that the Constitution is primarily a political instrument, not just a legal one.³⁷

³⁶ Id.

³⁷ NOIS, *supra note*. 30.

As a result, policy formulation is involved in the interpretation of major constitutional concerns. The core of judicial activism can be found here. The Supreme Court has used judicial activism to interpret the law in favor of social and economic reforms.³⁸

It has not been slow to respond to the need to conduct socioeconomic reforms, and it has been molding its remedies to meet new interactions, and it has progressively come to lead the technique of implementing such reforms and supervise the implementation of these programs. In truth, the Supreme Court has made more far-reaching modifications in recent years; it is impossible to describe them all in this lesson; but, a quick mention of such developments in select domains may be made.³⁹

XIII. Interpretation Of The Constitution (Changes)

The definition of "other authorities" as used in Article 12 of the Constitution has been significantly broadened in order to include a growing number of institutions and organizations within the term "State" and to prevent them from acting in violation of Fundamental Rights. In the area of civil liberties, the Supreme Court has gradually broadened its viewpoint. A new trend has formed in *Menaka Gandhi v. Union of India*. Following that, the Court began to push the boundaries of fundamental rights and natural justice with a range of inventive interpretations motivated by judicial activism.⁴⁰

Many elements of the Constitution were rewritten as a result of the process. The right to life and personal liberty in Article 21 was, for example, turned 'de facto' and 'de jure' into a due process clause, which was not the objective of the Constitution's framers. This right was quickly broadened to include a wide range of other rights.⁴¹ By granting new rights to inmates under Article - 21, this has spawned a new type of prison jurisprudence.

³⁸ Id.

³⁹ NOIS, *supra note*. 30.

⁴⁰ Id.

⁴¹ NOIS, *supra note*. 30.

The right to a speedy trial, the right to free legal representation, the right to human dignity, and the right against torture have all been added to the list of fundamental rights in this new prison law.

The Court is increasingly emphasizing the importance of Directive Principles of State Policy. It has been determined that there is no conflict between the Directive Principles and a Municipality's obligation to make public sanitation arrangements under the Court's supervision.⁴²

The Supreme Court's different decisions will go a long way toward promoting social fairness in this country. Public Interest Litigation and Interpretation of Welfare Legislation are two much strong actions taken by Supreme court.⁴³

- **Public Interest Litigation:** PIL is a lawsuit brought in a court of law to safeguard "Public Interest" issues including pollution, terrorism, road safety, and construction dangers, among others. Any issue that affects the general public's interest can be resolved by filing a Public Interest Litigation in a court of law⁴⁴
- **Interpretation of Welfare Legislation:** Legislation aimed at improving the economy of rural areas or the welfare of the poor has been liberally interpreted in their favor. Land reform measures enacted by numerous states have been affirmed by the Supreme Court.⁴⁵

The legislative and the courts have occasionally taken opposing positions. It's also worth noting that there have been times when the Legislature and the Judiciary, the two organizations in charge of social and economic growth, have tugged in opposite directions. The right to property is one such critical issue.

The Supreme Court's interpretation of it was determined by Parliament to be impeding economic development. Thus, between 1951 and 1964, Constitution Amendment Acts were passed stating that the right to compensation guaranteed by Article 31 of the Constitution was not justiciable in a court of law and that the amount of compensation determined by the legislature was final.

⁴² Ibid

⁴³ NOIS, *supra note*. 30.

⁴⁴ Drishti IAS, 'Public Interest Litigation (May 4, 2022, 5: 30 p.m.) <https://www.drishtiiias.com/to-the-points/Paper2/public-interest-litigation> .

⁴⁵ NOIS, *supra note*. 30.

In addition, changes have been made to insulate some types of law from the applicability of Article 31. Similarly, as outlined in the Bangalore Water Supply case, legislative efforts have been made to narrow the term of "business."

However, there haven't been many occurrences like this. The full impact of law reforms has yet to be seen. In general, both the Legislature and the Court have enacted, developed, and shaped the law in order to accomplish the Constitution's purpose of social, economic, and political justice. However, the full impact of the changes has yet to be realized due to the masses' ignorance and illiteracy, as well as a lack of competent and effective enforcing apparatus.

XIV. Adjudication Of Disputes Or Wrongdoings

The determination of guilt is critical to the administration of justice and social control. Evidence and punishment are the two main components of a verdict⁴⁶.

Evidence: Evidence is the method by which a person's innocence or guilt is established. In primitive societies, there is no such thing as a cross-examination expert judge or prosecutor. As a result, individuals must rely on supernatural assistance to obtain proper information. However, oath and ordeal are the two most common methods of obtaining proof.⁴⁷

Oath: It is a promise made in the name of God not to lie. It is stated that if a person's facts are proven to be incorrect, that person will be punished by God. This is a method of persuading someone to voluntarily admit his or her own guilt.⁴⁸ Before presenting his evidence, an individual is required to take an oath while sitting on a tiger's skin or jaw among the Oraons and Mundas of Choto Nagpur.⁴⁹

⁴⁶ LKOUNIV, *supra note*. 7, at 5.

⁴⁷ Id.

⁴⁸ LKOUNIV, *supra note*. 7, at 5.

⁴⁹ Id.

Oeder: It is a method of judging guilt or innocence by subjecting the accused to a dangerous or painful test that is conducted under supernatural supervision. Fire, charcoal, and water are commonly used in such testing among the primitives. A chunk of flaming charcoal, for example, is placed on the palm of two Oraon youths suspected of stealing. One of the boys is judged innocent if he can tolerate the hot charcoal on his palm, while the other boy is considered guilty.⁵⁰

Punishment: The leaders of the community penalize anyone who breaks the tribe's general norm. Punishment is the society's collectively sanctioned negative sanction. According to the severity of the offence, the punishment will be awarded.⁵¹

XV. Conclusion

Undoubtedly, a legal system is a specialized system of rules, distinct from moral rules, that at the very least provides a framework within which individual behavior can be regulated and a degree of certainty assured, and that at the very most may provide a comprehensive framework of regulations covering nearly all aspects of an individual's life. We can understand now how desirable it is to law to enter the wide area of society.⁵²

I conclude that Law is the most desirable means of social control, and its purpose will be entirely fulfilled when everyone abides by it.

⁵⁰ LKOUNIV, *supra note*. 7, at 5.

⁵¹ Id.

⁵² Legal services India, 'Law and social change' (May 5, 2022, 9: 15 a.m.)
<http://www.legalservicesindia.com/article/1171/Law-And-Social-Change.html>.