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Poundian Interests and Fundamental Rights

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ABSTRACT

Human is a social animal and its existence can not be imagined by disintegrating him from society. The Law governing men is the result of constant forces evolving within the society to bring about harmony and common enjoyment of rights. The rise of Sociological school of Jurisprudence can be seen as a reaction to the Imperative Analytical school based upon the coercive command of the Sovereign and the inadequacy of the historical school regarding the origin and development of Law. Sociological school is mainly concerned with the Purpose and Function of Law in the society. Hence sociological jurisprudence strives to study law in terms of immediate needs and requirements of individuals and other varying social groups. This school is concerned more with the working of law rather than the codified law, the law in action rather than static in the shelves of statutes. Since human conducts is primarily motivated by his interests so there is a need to ascertain those interests with the interests of the others and society. The purpose of the law would be therefore to regulate these interests to minimize any conflicts between them.

Law is an instrument of social progress. Regard is to be given to the effect of law on society and how society affects Law making process. The participation of the individuals in the society is the determining factor in Law making process which is synonymous to VOLKGEIST of Savigny.

I. INTRODUCTION

Human is a social animal and its existence cannot be imagined by disintegrating him from society. The Law governing men is the result of constant forces evolving within the society to bring about harmony and common enjoyment of rights. The rise of Sociological school of Jurisprudence can be seen as a reaction to the Imperative Analytical school based upon the coercive command of the Sovereign and the inadequacy of the historical school regarding the origin and development of Law. Sociological school is mainly concerned with the Purpose and Function of Law in the society. Hence sociological jurisprudence strives to study law in terms

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³ S.N. DHYANI, Fundamentals of Jurisprudence the Indian approach, Central Law agency Allahabad,,3rd edition 2004

of immediate needs and requirements of individuals and other varying social groups.¹This school is concerned more with the working of law rather than the codified law, the law in action rather than static in the shelves of statutes. Since human conduct is primarily motivated by his interests so there is a need to ascertain those interests with the interests of the others and society. The purpose of the law would be therefore to regulate these interests to minimize any conflicts between them.

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II. SOCIAL ENGINEERING

Dean Roscoe Pound often regarded as the Father of American Sociological Jurisprudence. To determine the purpose and function of law he came up with the concept of Social Engineering. According to Pound, "*Law is social engineering which means a balance between the competing interests in society,*" in which applied science are used for resolving individual and social problems.⁴

Pound compared the task of the lawyer jurists to the engineers. He stated that the aim of social engineering is to build a structure of society as possible which requires the fulfillment or satisfaction of maximum wants with minimum usage of resources. It involves the balancing of competing interests. He called this theory as the theory of "*Social Engineering.*"

Just like in a machinery there are different tools which are in constant motion with each other resulting in friction and wear and tear similarly a society is like a machinery where there are competing interests of individuals like public and private and there are interests of the society as a whole resulting in conflicts here the Law comes into action. Pound was of the view that the task of Law is to reduce this friction. Law will serve the purpose to minimize these conflicts and to make the societal and individual interests in harmony with each other. If law is viewed as social engineering its end is conceived to be the satisfaction of all demands and the securing of all interests with a minimum possible conflict so that means of satisfaction have the widest possible distribution.

Law making interpretation and application takes account of societal conditions and similarly society responds to law. The process of experimentation continues till the law serves the

⁴ TRIPATHI, B.N.MANI, JURISPRUDENCE (LEGAL THEORY), Allahabad Law Agency 18th edition 2010

purpose. It is observed that to get the validity and effectiveness the law has to conform with the societal conditions.

Law therefore is a science of engineering concentrating on the functions and operation to maintain social order and control. It provides a framework where there is maximum satisfaction of maximum wants with least waste and friction. Pound's techniques of social engineering are study of actual social effects of legal Institutions and legal doctrines study of the means of making the legal rules effective sociological study for law making study of judicial method sociological history the importance of reasonable and just solutions of individual cases and of a Ministry of Justice to make efforts more effective toward the purpose of legal order.⁵

III. POUND INTERESTS

Interests are defined as claims or wants or desires which is to be secured by Law to regulate society. In a society the conduct is motivated by the interest of the individual and everyone wants his/her interest to be secured. Conflicts between interests arise because of the competition between the individuals and society. To resolve such conflicts there is a need to recognize those interests which are justified and securable. For this purpose, a legal system has to recognize certain interest Define the limits within which such interest are to be legally recognized and given effect to it. finally, the above interest should be secured.

Pound has classified interests under three main heads:

INDIVIDUAL INTERESTS: These are claims or demands involved from the stand point of the individual life which consists of interest of personality, interest in domestic relations and interest of substance.

PUBLIC INTEREST: These are the claims or desires asserted by the individual from the stand point of political life which means every individual in a society has a responsibility towards each other and to make the use of things which are open to public use.

SOCIAL INTEREST: These are the claims or demands in terms of social life which means to fulfill all the needs of a society as a whole for the proper functioning and maintenance of it.

INDIVIDUAL INTERESTS

These are claims or demands involved from the stand point of the individual life which consists of interest of personality, interest in domestic relations and interest of substance.

⁵ S.N.DHYANI, Fundamentals of Jurisprudence, the Indian approach, Central Law agency Allahabad,,3rd edition 2004

PERSONALITY- Interests of personality includes the interests of

(a) the physical person

(b) the freedom of will honor and reputation privacy and sensibilities beliefs and opinion

Interests in Domestic Relations

- husband and wife
- parent and child
- matrimonial interests

Interests of Substance

- Interests of property, Succession and testamentary disposition
- Freedom of industry and contract
- Promised advantage

Advantageous relations with others Contractual Social Business Official and domestic Freedom of association Continuity of employment.

PUBLIC INTEREST

These are the claims or desires asserted by the individual from the stand point of political life which means every individual in a society has a responsibility towards each other and to make the use of things which are open to public use.

1. Interest of state as a juristic person

Interest of state as a juristic person i.e., protection claims of the politically organized society as a corporation to property acquired and held for corporate purposes.⁶

2. Interests of State as a guardian of social interests

It includes the superintendence and administration of trusts and charitable endowments, conservation and protection of natural environment and natural resources, regulation of public employment to make use of things which are open to public use.

SOCIAL INTERESTS

These are the claims or demands in terms of social life which means to fulfill all the needs of a society as a whole for the proper functioning and maintenance of it. Social interest in general security including general safety, general health, coppage and order security of transactions

⁶ DIAS, LEXIS NEXIS, FIFTH EDITION 2013

insecurity of acquisitions Social interest in the security of social institutions which includes General security of domestic institutions religious institutions political institutions economic institutions Social interests in general morals, comprising of prevention and prohibition of prostitution, drunkenness, gambling etc.

Social interests in the conservation of social resources-

Social interests in general progress economic progress including Freedom of use and sale of property Free trade Encouragement of invention by grant of patents

(a) Political progress including

1. Free opinion
2. Free criticism

(b) Cultural progress including

Free science

Free letters

Encouragement of higher education Improvement of aesthetic surroundings

Social interests in individual life:

The claim or want or demand involved in social life in civilized society that each individual be able to live a human life therein according to the standards of the society.

Each individual to be able to live a human life according to the individuals

Political life

Physical life

Cultural life

Social life

Economic life

Dean Pound gave priority to these social interests over individual and public interests. These are the interests which are given to the individuals by the virtue of being a member of the society. It is to be noted that if the societal interest is secured the individual interests are also secured.⁷

The distinction between individual and social interests is while the former relates to single

⁷ AIR 1996 SC 2715

individual and restricted to limited domains the latter claims the infestsas a whole. It is a kind of umbrella protecting the interests of individuals.

IV. CONFLICT OF INTERESTS

According to Pound, balance of competing interest means satisfaction of maximum interests with less friction and waste. It means to harmonies and adjustthe social and individual interest. In reality it is seen that these two interests cannot be balanced and here the Law comes into play. There is a constant strugglebetween these two as someone has to sacrifice in preserving other. However, the Sociological school gave primacy to the social interest. One may compare it with the general will theory of Rousseau according to which general will is always better than individual will, since it is for the welfare for each and every individualas well as the natural environment of the society. General will cannot be unjust because nobody is unjust to himself and individual will be always wrong since it is motivated by selfishness.

For instance, freedom of trade and business is an individual interest and a personis owning an industry relating to hazardous substances can claim it as a matter ofright but that interest can be allowed to override the societal interest of healthy and safe environment.⁸

V. POUNDIAN INTEREST AND FUNDAMENTAL RIGHTS

It is the legal recognition of these interests that they become rights and can therefore be claimed by the individual as well as the society. we see a large number of interests getting transformed as fundamental rights. These rights are conferred upon individuals by merely being a member of the society

We see an overlapping of individual interests and social interest. for example, right to life and personal liberty is an individual right but it is also a social interestsince society also wants the right to life of its members to be protected as individuals are the building blocks of society. One cannot imagine the existenceof a society without its members.

However, one can observe a contrast between individual and social interests such a classification by Pound may be viewed as motivated from the theories of utilitarianism of Ihering and Bentham to whom the approach to law as a means to social end and as an instrument in social development. For the achievement ofsatisfaction of maximum wants, the individual interests can be rejected sometimes. In civilized societies which are described in the Jural postulates of Pound, he talks about standard of interests to be recognized and secured by law. **UDHR, ICCPR** and **ICESCR** is a reflection of these interests. Part of Indian Constitution

⁸ AIR 1987BSC 1086

enshrined fundamental rights which are available to citizens and noncitizens also.

Fundamental rights in our constitution are also not absolute but limited. For instance, the right to freedom of speech and expression is limited by reasonable restrictions and one of such restrictions is “in the interest of general public”. Here the term interest of general public means nothing but the social interest which is paramount to the individual interest. Such a primacy is given to social interest so that individual rights can be allowed to hamper the rights of society.⁹

VI. JUDICIAL PRONOUNCEMENTS

Vellore Citizen’s Welfare Forum v. The Union of India¹⁰

Supreme Court observed as “The Constitutional and statutory provisions protect a person’s right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment”. The Court further observed, “Our legal system having been founded on the British Common Law, the right of a person to pollution-free environment is part of the basic jurisprudence of the land”. Thus, the Court gave priority of public interest over individual

M.C. Mehta v. Union of India¹¹

Supreme Court laid down the rule of Absolute Liability in which it was held that “where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous activity, then the enterprise involved is strictly and absolutely liable to compensate to all those who are affected by the accident”.

It is observed that law gives first priority to social interest over individual interest of substance i.e., in conserving natural resources and in the protection of natural environment which is required by the whole public against the private individual who is the owner of the enterprise. Finally, the maximum claims of the people were satisfied with least sacrifice of individual interest. By this act it can be seen that how various claims were categorized and compensation were given, which ultimately says that law is an instrument of social change.

Sarla Mudgal v Union of India¹²

The court embracing the concept of Sociological Jurisprudence said that marriage celebrated

⁹ S.N.DHYANI, Fundamentals of Jurisprudence, the Indian approach, Central Law agency Allahabad, 3rd edition 2004

¹⁰ AIR 1996 SC 2715

¹¹ AIR 1996 SC 2715

¹² AIR 1995 SC 1531

under one personal law cannot be dissolved by application of any other law. This observation matches up with the concept of Pound wherein he said that in case of conflict between interests, the interest of same plane will be weighed together.

Hence it is found that Social Interest prevails over the Individual Interest. But this is not true in many cases. Social Engineering deals with as many satisfactions of human wants which means law should play an important role in bringing social change by fulfilling the interest of the society as a whole.

N. Adithayan vs Travancore Devassam Board¹³

It was observed that the distinction based on cast could not be allowed to permeate in the social fabric of the society. Thus, the Court reaffirmed its stand that discrimination of any sort, amounting to untouchability would not be tolerated.

Bandhua Mukti Morcha vs Union of India¹⁴

It was held that the Court should abandon the Laissez Faire approach in the judicial process particularly where it involves a question of enforcement of fundamental rights and forge new tools, devise new method and adopt new strategies for the purpose of making fundamental rights meaningful for the large masses of people

Maneka Gandhi v. Union of India¹⁵

The supreme court broadened the scope of Article 21 and held that the term procedure established by law incorporates due process of law. The apex court integrated the Social and individual interest and the right to life also includes right to live with human dignity.

Olga Tellis v. Bombay Municipal Corporation¹⁶

The apex court held that the right to life included the right to livelihood. The petitioners contended that since they would be deprived of their livelihood if they were evicted from their slum and pavement dwellings, their eviction would be tantamount to deprivation of their life and hence be unconstitutional. The court, however, was not prepared to go that far. It denied that contention saying No one has the right to make use of a public property for a private purpose without requisite authorization and, therefore, it is erroneous to contend that pavement dwellers have the right to encroach upon pavements by constructing dwellings thereon. The court observed the overriding nature of social interest over individual interest. Of course,

¹³ AIR 1996 KER 169

¹⁴ 1997 10 SCC 549

¹⁵ AIR 1978 597

¹⁶ 1985 SCC (3) 545

individual interests have not been ignored, it is in the larger interest of the society which has been assigned a key place in the scheme of governmental priorities and planning.

State of Bihar v. Kameshwar Singh¹⁷

Our constitution has not ignored the individual but has endeavored to harmonize the individual interest with the paramount interest of the community and it is this interest which pervades our constitution.

The provisions contained in the Directive principles of state policy reflect the concept of welfare state. In a welfare state, the policies and the intent of the legislature is to bring about the development of the community as a whole ignoring the individual concerns.

M.C. Mehta v. Kamal Nath¹⁸

Supreme court relies upon the theory of public trust doctrine and held that the aesthetic use and the pristine glory of our natural resources, the environment and the ecosystem of our country cannot be permitted to be eroded for private commercial or any other use unless the court finds it necessary, in good faith for the public good and in public interest in encroaching upon the said resources.

¹⁷ 1952 1 SCR 889

¹⁸ (1997) 1 SCC 388