



The Function of the Law

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ABSTRACT

The necessity of order in personal and social life is undeniable. Social morality creates order in family and social life and in business transactions, all order can run only on social morality, but it needs the support and force of law. Rules of law formulate and enforce rules governing family arrangements, business transactions and property management. Also, rules of law protect society by prohibiting violence, protecting human life and prohibiting property crimes.

The validity of the law is determined by the features that make the law a 'law'. Such features give 'legitimacy' to rules of law and by their test, rules of law can be distinguished from other rules. Jurists have different views about the features that determine the legitimacy of a law. That jurist attributes such to his unique approach to law. Various jurists have stated the characteristics for the validity of a law in terms of purpose, function, use, origin, operation, utility, external shape and form etc. of the law; For example, a law which is not just or religious or ethical or public interest or which does not promote any value like equality, liberty, fraternity, that law is not considered as 'law'. Socialist jurists do not consider a law that is not socially beneficial as a 'law'; So the Marxist jurists refuse to consider the law which is not compatible with socialist legality as 'law'. Also, some jurists try to determine whether a law is a 'law' or not based on the external form of the law.

INTRODUCTION

There has been much speculation about the function of the law. The law changes from time to time and from country to country. It is never static. Law has to keep pace with changing society and this is one of the major reasons why there is no ideological consensus regarding the purpose and function of law.

One way of thinking is that law is supposed to maintain peace and order in the country. He has to do police work. In Plato's words, man must conduct his life according to the law or else he must live like a wild and violent animal. Hobbes says that the law limits the liberty of certain persons, and that they may not injure others, but cooperate with each other and help each other in fighting the common enemy. According to Jeremy Bentham, the purpose of law is to achieve the greatest happiness for the greatest number of people. In the words of Roscoe Pound, law has four functions: (i) to maintain law and order, (ii) to preserve the 'as is' state of society, (iii) to maximize the freedom of the people and (iv) to maximize the satisfaction of the needs of the people.

According to Hindu law, the work of law (dharma) is to do the maximum welfare of a person in this world and hereafter. According to Muslim law, law means self-discipline, improvement of morals and protection of property, life and dignity. Generally, law works to moderate the conflicting and conflicting interests and bring about a compromise between them.

Two virtues of law are noteworthy: (1) There should be uniformity in the law and (ii) The law should also be flexible. If there is uniformity in the law, it creates certainty and predictability as to the outcome of certain matters. Certainty and knowing in advance what the outcome of one's actions will be, one can manage one's activities accordingly and be rest assured. These two things assume utmost importance in the context of contract and property. Stability and security in a society is established only when the law is uniform and fixed and its rules are definite and unchanging.

Another advantage of the law is its flexibility such that discretion is required when the law is not precise in borderline cases (and making rules for every possible case is an impossible task). Only then can law keep pace with social change. If the law is rigid or immutable, only revolution and violence can change it. Only if the law is flexible can it digest the social change calmly. It is the function of law to achieve this stability and adapt to the peaceful changes taking place in the society.

TRUE FORM OF LAW:

Real nature of law: The operation of law is multi-directional. Its main function is to establish order, peace and justice in the society. The order should also be just. According to Bentham it is the function of law to provide facilities for a good life for the greatest number of human beings. In addition to material comforts, the term pratti also includes idealistic and dutiful behavior. Apart from removing the social evils prevailing in the society, the function of law is also to achieve the maximum interest of the society by harmonizing the mutually conflicting individual and social interests. The law cannot protect all the interests of all persons, but in a conflict of interests, the law will make it clear which interest the law will protect. And the interest thus

protected becomes a right; For violation of which the law provides a remedy. In this way the law keeps in view the overall interest of the society by maintaining a balance between the competing interests. This is why the science of law has been called the science of 'social engineering'.

RIGHT Generally, Haq means protection of one's interest. The words 'wrong', 'duty' and 'interest' are closely related to the word 'right'. So it becomes necessary to know their meaning.

In the words of Dr. Ehring, a right is an interest secured by the state. A person has interests in many things; But not all interests are protected by law or the state; So invasion of secured interests creates raga, dushkarya, but invasion of unsecured interests is not evil. Your right is the same person's duty and breach of duty is wrong. An interest which imposes an obligation on a person can be considered a right.

Not every wrongdoing is criminal in the eyes of law. An act which is against the law becomes a crime; But an act which is morally wrong may not be wrongful in every circumstance. There is no punishment for moral wrongdoing. Such a person may be condemned or criticized in the society, but nothing more. Wrongdoing will be punishable by law.

If there is a legal duty and it is breached, it will be considered as a breach of right to property. The implication of the word 'duty' is different from that of the word debt. Duty is imposed by law. An obligation is a self-inflicted and voluntarily accepted obligation.

Where there is a right, there is a remedy – Ubi jus ibi remedium – is the Latin motto; Which shows that rights without a remedy have no value. Legal rights are backed by law, while moral rights are backed by policy. For any interest to be the subject of legal rights, it must have legal protection and legal recognition. One's legal right is accompanied by one's legal duty; That is called vinculum juris legal relationship / legal knot. In short, wrong means any illegal act; A right means an interest protected by the state and a duty means what is enjoined by law to be done or not to be done. Right and interest are not two identical elements.

Elements:

The elements of any legal right are as follows: (1) Every right has its owner, who is called the person entitled or its subject. (2) The duty arising from the right binds the person, who is called the person bound or the subject of the duty. (3) Every right compels the person bound by it to act (to act) or to omit (to omit), which is called the content of the right. (4) Whether to do or not to do the said act is related to something, which is called the object of the right. (5) Due to which some right vests (rest) in its owner, that is also an attribute of right.

Example : Avinash buys a piece of land from Prakash. shall be called the owner of an inviolable right. It is the duty of other persons to allow the possession of the land to be indestructible. This duty is in rem. The right of the purchaser of the land to enjoy it, is something included in the right. The subject of the right is the land and the documentary evidence of the land which is obtained from the seller is the title of the right.

Each right has the following three characteristics with respect to its owner:

- (a) each right is against a person or persons;
- (a) so occasion arises in respect of that person to do or not to do an act; And
- (e) An act of doing or an act of not doing is about something.

Thus every right is relative to a person, to some act or to some thing

Four Meanings: Haq is multi-faceted. It is generally understood in four senses, but all four forms of Haqq have different meanings. These four meanings are as follows:

- (a) Right in its narrow or strict sense. At the opposite end it is associated with duties,
- (the) liberties,
- (e) Powers, and
- (e) Immunities.

CONCLUSION

They advocate that only those rules which have been framed by the legislature and which the courts have recognized and enforced in their exercise of justice should be considered as 'law'. Thus the rules which are recognized as law by the courts are considered as law. Also, other jurists regard as 'law' the mere principle of the judgment of the High Courts of the State in addition to such rules. Some other thinkers also consider the customary rules enforced by the courts as 'law'. However, today's legislatures can override such judgments of courts and such customary rules. So finally the legislature makes the same role as 'law'; But if a law framed by the legislature is anti-judicial, anti-public interest, totalitarian, oppressive, discriminatory, violative of human rights, anti-ethical, some thinkers refuse to consider such a law as a 'law'. Thus the jurists look for the characteristics of determining the validity of law from the field of law itself. They test the 'lawfulness' of a law only in terms of the process of making and implementing the law. Other jurists go beyond the realm of law to look for features to determine the validity of a law.