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Law Opinion

Quest for 'What is Law in South Asia'

Mohammad Rubaiyat Rahman

Glanville Williams in 'Learning the Law' opines that law is the cement of society which synchronises all the parts of society in a harmonious way. The debate over the meaning of law has been going on over a long period of time. It has become a constant source of contention in the orb of study of law. Many different societies conceive their own legal as well as justice traditions. When we wade across the realm of 'Hindu Philosophy of Law' we would see the approaches pertaining to issues of law and justice are quite different from that of Common and Roman Law families. However, law and society are entwined to each other. Furthermore, the legal science is stitched to some core 'social facts' which can be listed as the political system in tandem with the level of the democratic conscience of the people and the level of sense of civic responsibility. Hence, if we trace back the relationship between law and human society, it would be very obvious to us that 'Law' is the indefeasible part of human society. Anarchy begets where there is downward spiral of law and order. Therefore, law is a means of protecting and making a viaduct of social safety and peace. Law can be used as a means of protecting the weaker ones by enabling the latter to compete in a protected condition.



Different jurists comprehend law from different angles. Hence, the meaning of law varies. Salmond illustrates law as body of principles recognised and applied by the state in the administration of justice. Austin defines law in a 'majestic way' by saying that law is the command of sovereign, where the command obliges a person or persons to a course of conduct. Roscoe Pound sketches the meaning of law as body of principles recognizes or enforced by public and regular tribunals in the administration of justice. On the other hand, the Vedas explains law as the king of kings, far more robust and rigid by whose aid even the weak may prevail over the strong. These pedantic outlooks envisage that law creates harmony in the society, from uphill to down dale, by mopping the dragging line between the strong and the weak. Law smoothes the ruffled feathers of human society. It means it always endeavors to make the society a just place.

However, it is evident that in the western as well as the eastern jurisprudence, the meaning of law is not all the same. Though both have deficit of some important facts that veer round the meaning of law to illusion, it is much acute in the western jurisprudence. Prof. Dr. Yubaraj Sangroula in his 'Jurisprudence: The Philosophy of Law' casts the opinion that all these propositions of Austin, Ihring and Pound are erroneous. He makes his opinion gilt-edged by analyzing the definition of law provided by Austin that, 'He (Austin) drew his analogy from the early Roman history in which the dictates of the emperor had been followed by citizens as binding law. Law for Austin represents the will of the sovereign which is typically political in nature. Hence, his (Austin's) theory fails to reflect on the true nature of law.'

Enforcement of law in Western societies is secured largely by the preparedness of citizens to uphold the sanctity of law. They take law not as 'fiend' but as a friend protecting their rights. Ironically, citizens of South Asia deem law from a different perspective which is very much negative in nature. Here in South Asia, law is an apprehensive instrument to subdue common people. Thus, the perception of common people as to law, in South Asia, is negative. Rather than notion of obedience, the legal rules are deemed as an (Austinian) imperative system of rules. The moral force in rule of law has not yet reached at a very stout level in this South Asian region to consider the image of legal regime as notion of obedience up to the hilt. The entrenching gap between the expectations of the common people and the performance of the mechanisms of the legal system depicting the scenario that rule of law is deficit of moral force here in South Asia.

Delving into the root to chug out the reasons would visualize that in the societies of South Asia, law, due to its ineffective rule of law, fails to flourish common and needy peoples' aspirations; promotion of their creativity; free choice of selecting values and ways of leading life. The participation of common people in producing new norms is tacitly discarded. In the preceding decades, in the name of law making, the institutions of South Asian States happened to impose their opinions on the shoulder of common people. The blind copying of laws from the developed societies and strategically unplanned observance of principles of law and justice from societies having institutionally structurally different set up - all of these are pivotal reasons behind the fragile edifice of the image of law in this South Asian region. Though latterly there has been a voice to change to swerve from these symptoms, the thrombosis still occurs.

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