

Law and Social Control

INTRODUCTION

No society exists without a framework of social organization. It provides an order, which operates among its members who share some common convictions to undergo through a regulated life. Social control is necessary to protect an individual against himself as well as to save the society from chaos. It is the process by which a social order can be established and sustained. In each and every society to control the conduct of the individuals and to compel them to behave in conformity, certain kinds of mechanism are found. They force and restrain the members from doing wrong. These mechanisms can be broadly divided into two categories: -Law and Government -Religion The Former acts as an external means of control, where as the later exerts an internal control. Law and government comprise of the political organization. Human life is full of conflict and tensions. To hold the integrity of the group and also to protect the group against the neighboring communities, law and order is needed. Societies at present entirely depend on political institutions for decision and power. But in the beginning, there was nothing political. No one exercise any general authority to rule or to decide or to negotiate on behalf of the community.

There was neither any state nor any government. Even no legislation was there as like our civilized world. The contemporary primitives still show a more or less same set up. Nowhere, among the non literates we find any full-fledged legal system with the court, the judge, the barristers, the solicitors, the jury, and the law books and so on. Morgan, Maine and others have denied the existence of government in the earliest stage of primitive society. They had considered this fact in the perspective of simplest societies of the contemporary period. They cited the examples with reference to the societies like Andamanese of Andaman Islands, the Bushmen of Africa, the Yamana of Terra del Fuego, the Eskimos of Polar region, the aboriginal people of Australia etc., who live at the lowest rank of subsistence economics and lack any form of organized warfare. As there is no scope for civil law, these societies are characterized by the criminal law. This means, some sort of laws prevail there to deal with different criminal offences. But Lowie showed that the view was not correct; absence of authority did not mean a situation of anarchy. Although these societies hardly

show any trace of authority outside the family, but when an occasion arises in which collective action is required, a leader is temporarily appointed from among the elders of the tribe. Any man of the community may be chosen for this purpose, but he should be superior of all, either for his bravery or extraordinary performances or quite simply for his scrupulosity. Such a local group can be taken as starting point for the rise of government.

LAW

“Law” means the whole process by which rules that are recognized to be binding are maintained and enforced, including the motives and values that influence judges, and all the manifold social forces that prevent the majority of people from having to come before a judge at all. When Radcliffe Brown wrote, “some simple societies have no law, although all have customs which are supported by sanctions”, he was thinking of a specific way of enforcing rules, and also by implications defining laws and rules enforced in this way. But when Evans- Pritchard wrote that within a Nuer tribe “there is law”, he implied that law exists where people agree that certain actions infringe the rights of others, and also agree that injuries can be made good, and so disputes formally settled and the parties reconciled, by the payment of compensation. By implication he here defined law in terms of an institution, the procedure of compensation and reconciliation; if a Nuer is injured by a member of another tribe he is held to be justified in retaliating, but there is no procedure for ending the quarrel, and therefore, on his argument, no law.

Rules and laws

Every society has rules that it calls “laws” and others that it calls “customs”. Both are matters of knowing how people expect of them. Where there are what Malinowski called “Codes, courts and constables” people recognize that you can do many things that other people won’t like, but only some of them will get you into trouble with the police; that you may have many grievances against other people, but you can only go to law about some of them. The difficulty of definition arises where there are no courts or constables. Some writers on that type of society play safe by referring to “customary law”.

Are we then- it is necessary? - to frame a definition to tell us which of these rules are laws and which not? Such definitions are constantly being offered, examined, and rejected. What is called Austinian definition of law-“the command of a sovereign”- obviously cannot apply where there is no sovereign,

and it has been rejected by lawyers in modern states as well. Some American writers have said that law is whatever you can expect a court to enforce; but that is no good where there are no courts.

The anthropologists who have contributed most to the study of law in the last two decades are the American, E.A. Hoebel, and the South African, Max Gluckman. Hoebel expands Radcliffe- Brown definition in a manner that would grant the possession of law to the Nuer, and to other peoples where the public opinion allows and approves retaliation although there is no court to authorize punishment. Indeed Hoebel would say that there is a court: what we call “the bar of the public opinion”. Hoebel writes: “A social norm is legal if its neglect or infraction is regularly met, in threat or in fact, by the application of physical force by an individual or group possessing the socially recognized privilege of so acting.”

Gluckman dealt with this difficulty by showing that a distinction between types of society is a different matter from a distinction between different types of rule. Courts and constables are legal(or judiciary) institutions, and they are possessed in some form by every society that recognizes a ruler, and some others as well, such as the East African age- organized societies where the settlement of disputes is the duty of elders as a body. Societies without courts, says Gluckman, have *rules of law* but not legal rules. He calls such societies a-legal. The rules he refers to are those that Radcliffe Brown called *jural*. The word comes from the Latin word *jus*, meaning a right, whereas “legal” comes from the Latin word *lex*, meaning a law in the sense of something enacted (the command of the sovereign). So justice by derivation means giving people their rights rather than enforcing laws, and this is somewhere in people’s mind when, as they often do, they contrast justice and legality.

3. FORMS OF GOVERNMENT

The different forms of Government as found among the existing societies can be classified in the following ways: **Oligarchy:** When the supreme power of the state is vested in the hands of a small, exclusive class. **Monarchy:** When the supreme power is vested upon a single individual, the king. **Gerontocracy:** When the government is run solely by the old men of the society. **Democracy:** When the supreme power rests on a representative group of the common people. Elected representatives from the state form the government. **Theocracy:** When

the supreme power is endowed with the priest or other sacred specialist. Such type of government shows a super naturalistic domination over the government.

4. SOCIAL CONTROL

4.1-Types of social control Society makes use of various means of social control depending upon the time and social situation for the realization of its purpose.

Formal Control: Law, legislation, military force, administrative devices, political, educational, economic (industry) etc.

Formal Social control: courts –State systems possess a monopoly on the use of force -Through systems of codified law, state both forbids individuals from using force and determine how it will use force to require certain behaviors from citizens -When legal prescriptions are violated, state has authority to fine, imprisonment, or even executes the wrong doer -Unauthorized use of force happens- crime, rebellion, revolution -Emphasis on punishment to avoid threat to the legitimacy of political and legal authority -Whereas state systems of government emphasize punishment, some small scale society emphasizes re-establishing harmony.

Informal Control: Public opinion, sympathy, sense of justice, norms, values, folkways, mores, customs, religion, morality, fashion, etc.

5. NATURE OF PRIMITIVE LAW

Like any other social institution, law is a part of the society and functionally related to the structure of that society. It is a rule of conduct, essential for the stability of the society. The imposition is done by an authority and accepted by all members of a community. In simple societies, the force of public opinion or a decision arrived at by democratic procedure is impelled on the accused. The community or the council acts as the court. Primitive law stands exclusively on time-honored customs, usage and beliefs of the people. At times, supernatural fear enhances its force. On the whole, primitive laws are essentially different from the modern laws on the following grounds:

- *Primitive laws* largely count kinship ties rather than the territorial ties. Kinship bond are highly emphasized. Both the internal and external problems are dealt with the kin group. Clan elders possess the right to punish the offenders and settle the dispute. They look after the community for the prevention of any deviation of customary law as well as bear the responsibility of organizing the

warfare. However, this law may be regarded as a private law, which is totally different from the modern law.

- *Primitive Laws* coincide with ethical principles and rooted in public opinion. Since the number of the individuals is limited in such communities, they know each other quite well. Naturally there is no scope of segmentation in the public opinion; common sentiments are shared by all. So, the opinions of the public based on ethical norms stand as exclusive, strong and compelling in the society. These opinions discriminate between “good” and “bad”, and are expressed in Tribal meetings.

- *Primitive law*

do not differentiate between the “crimes” and “torts” i.e., between the public and private wrongs as evident in modern jurisprudence.

6. TYPES OF SOCIAL SANCTION

The social sanction can be broadly divided into two categories –*primary* and *secondary*. Primary social sanctions are the immediate sanctions that are obtained by an individual in his society. Primary sanctions are of two types- positive sanction i.e., approved behavior and the negative sanction, the disapproved behavior. Both the positive and negative sanctions can again be divided in two groups-diffused and organized. Some of the social sanctions, whether they are positive or negative, are carried out following a traditional as well as recognized procedure. These come under the “organized group”. On the other hand, sometimes society expresses the approval or disapproval of the behaviors quite spontaneously. These make up the “diffused group”.

Every individual in the society has a desire for being praised and he avoids the hatred of his fellows. Again, one aspires to win a reward and avoids a punishment that a community offers or threatens. No individual never wants to be an unworthy, disreputable, dishonorable and discourteous person. All these factors ultimately, keep a cumulative general effect on the community at large and help in restoring the equilibrium by providing a collective expression of social approval. Negative sanctions in a primitive society generate from the ethical and supernatural forces because certain acts are considered as displeasing to the god, which make the accused a sinner.

6.1 Forms of Positive Sanction The common belief is that, ancestor and other spiritual beings are pleased by good conduct. Some believe in reward after death. Ao- Nagas is a head hunting tribe. In their society, the individuals who hunt a greater number of heads achieve a higher position in the society. In diffused type of positive social sanction, an individual is praised for his work;

he is respected by his fellow members in the society. In case of organized positive social sanction, special honour is bestowed on a person. He is crowned or glorified in some definite ways. **6.2 Forms of Negative Sanction** It is the disapproval for the non- observance of certain social standards. In diffused negative sanction, the force of authority is super nature. Among the Nagas, eating of goat's meat is prohibited. They believe that, those who ignore this taboo, their hair become prematurely grey. Organised negative sanction is characterized by some penalties, which protects the individuals from going to an immoral way and such instances of punishments also help to rectify the behavioral modes for the rest of the members in a society. The nature of penalty varies from society to society on the basis of guilt.

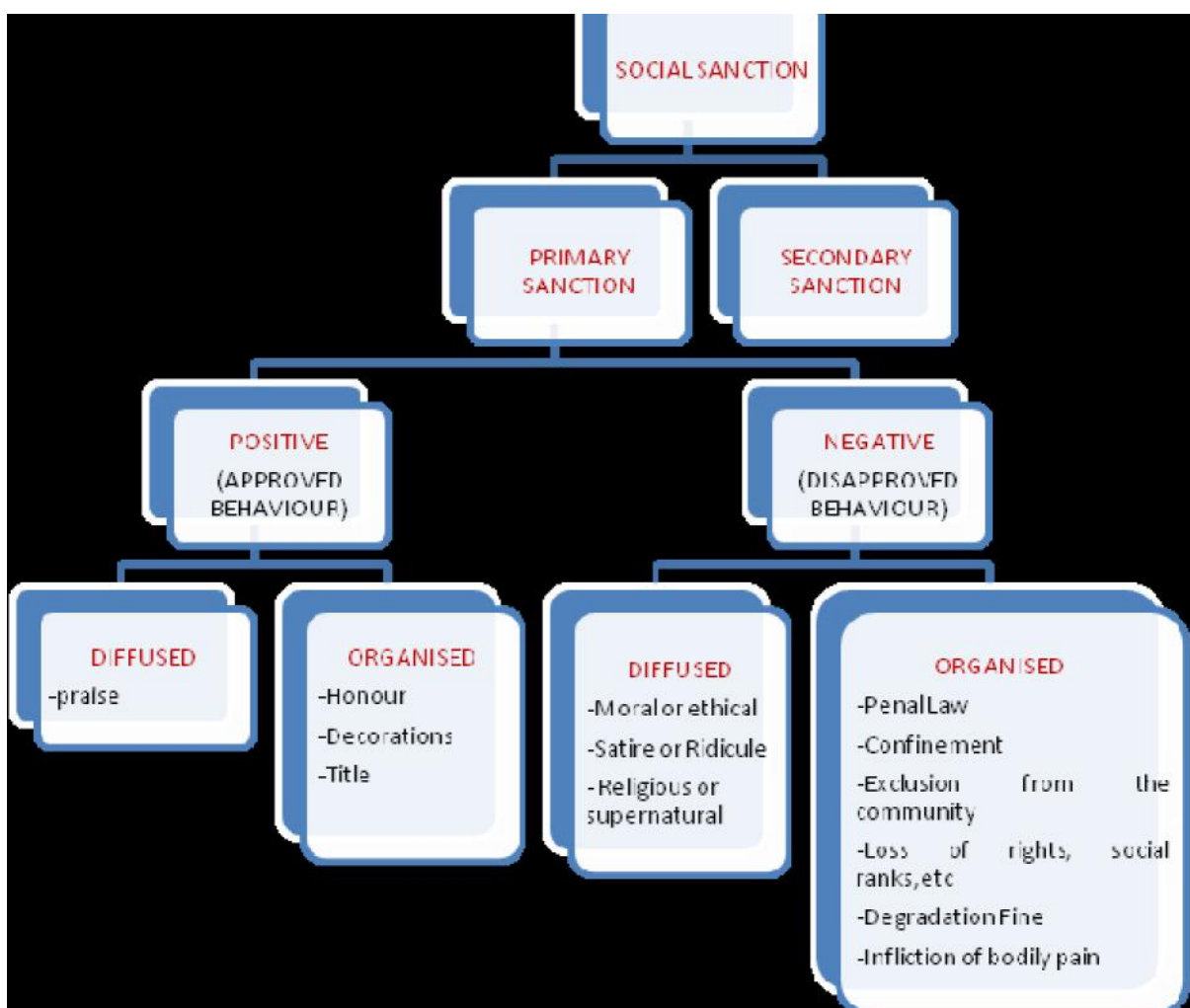


FIGURE -1 -A MODEL SHOWING TYPES OF SOCIAL SANCTION IN THE SOCIETY

7. ADJUDICATION OF DISPUTES

Establishment of guilt is always important for the administration of the justice. A judgment essentially comprises of two parts-evidence and punishment.

Evidence: The process by which the innocence or guilt of a person is established is called evidence. In the primitive societies, no judge or prosecutor is found who is expert in cross- examination. Therefore, to get the accurate facts people have to rely on supernatural support. However, the two main ways of getting the evidence are oath and ordeal.

Oath: It is a promise in the name of God for not to tell a lie. It is said that, if the facts furnished by a person is proved false, the person will be punished by God. This is a technique of compelling one to confess his own guilt voluntarily. Among the Oraons and Mundas of Chotonagpur, an individual before producing his evidence is asked to take an oath sitting on a tiger's skin or tiger's jaw.

Ordeal: It is a process of determining the guilt or innocence by submitting the accused to a dangerous or painful test under supernatural control. Among the primitives such tests are usually done with fire, charcoal and water. For instance, among the Oraons, a piece of burning charcoal is placed on the palm of two boys who are suspected of theft. If one of the boys is able to bear the hot charcoal on his palm, he is considered as innocent, whereas the other boy is considered as guilty.

Punishment: If any one violates the general rule of the tribe, he is punished by the leaders of the community. Punishment corresponds to the organized negative sanction of the society. The several modes of the punishment can be categorized into two principal types- *Trial* and *Weire-guild*, according to the gradation of crimes.