

Social Function of Law from Jurisprudential Outlook

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1. Background

Law is the sum total of the rules, regulations, principles, norms, ethics and standards which regulate human behavior in the society. 'Law is nothing but a synthesis of abstract rules and legal institutions meant to serve the contemporary ideals and goals.'¹ It is a body of rules in terms of economic and social goals of the individuals.² Society is the web of social relationship. *Prof. Giddings* opines that, "Society is the union itself, the organization, the sum total of formal relations in which associating individuals are bound together."³ It is the collection of individuals united by the certain relation or mode of behavior. Law is a social institution which governs the society as well as state. Society is the expression of legal order. Society and law for their respective progress inter-relate and influence each other. Law regulates the society; it provides the framework within which a successful society can flourish. Law originates from the society, gets its evolution and development through society. The function is the foundation to understand law and it is an important roadmap to its application. There are several meanings of the term function in various disciplines but here we are concerned with the meaning of function in law. Then there arises the question, what is the meaning of 'function' in the legal literature?

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¹ PROF. S.N. DHYANI, JURISPRUDENCE AND INDIAN LEGAL THEORY, (4th ed.), Central Law Agency, Allahabad, at 150, (2002).

² DR. N. KRISHNA KUMAR, JURISPRUDENCE & COMPARATIVE LAW, (1st ed.), Central Law Publications, Allahabad, at 48, (2007).

³ C.N. SHANKER RAO, SOCIOLOGY, (7th ed.), S. Chand & Company Ltd., New Delhi, at 104, (2012).

Specific meanings of “function” focus on the application of the general functional relationship to various separate systems. Since the purpose of this inquiry is to relate the legal system to the social system, a meaning of “function” which focuses on the social system should be more helpful than an expression of the pure relation itself. Occasionally, the way law actually operates has been called a “function” of law in this purely descriptive sense. Undoubtedly one ultimate goal of juridical science is to understand the “functioning” of law in this sense, and certainly the total functioning of law itself may depend on whether its societal functions are being carried out.⁴ The function is the key to understand law and it is an important guide to its application.

Law has two types of functions viz, normative and social. Every law has to fulfill the normative function wherein it directs something to do or not to do whereas in social function law secures desirable behavior as well as prevents undesirable behavior.⁵ During the 19th century, the analogy and the concept of the word ‘function’ were used very commonly in social philosophy and sociology. But the systematic formulation of the concept of ‘function’ in the study of society can be said to have been made by Emile Durkheim in 1895 in his ‘*Rules of Sociological Method*’.⁶ In 19th century the function of law in society or the social function of law was taken into consideration in the study of jurisprudence. In the nineteenth century the focus of attention goes from individual’s rights towards the social issues and concerns. Emphasis was given on the functions of law in the communal interest and its existence. Particularly, the actual operation of law or law in action is a matter of great concern of this century. ‘Law is a social formation with its own character and features, while at the same time it interacts with and is affected by other social formations.’⁷ The function or utility of law is a part of the process by which law interrelates, interacts, co-operate and connect its network with society. Function of law has the social utility that is the social function of law. For the construction of an ideal type of modern society social utility and use of law is crucial. Social function of law is distinct from the actual purposes of individual or personal needs. It is transpersonal and based on

⁴ DAVID A FUNK, *Major Function of Law in Modern Society Featured*, CASE WESTERN RESERVE LAW REVIEW, Vol. 23, Issue 2, Case Western Reserve University, at 260, (1992).

⁵ DR. BAL BAHADUR MUKHIA, *COMPARATIVE JURISPRUDENCE PART-II*, Aditya Mukhia & B.B. Mukhia, Kathmandu, at 8, (September 10, 2015).

⁶ RAO, *Supra* note 3, at 145.

⁷ D.J. GALLIGAN, *LAW IN MODERN SOCIETY*, (1st ed.), Oxford University Press, New York, at 2, (2007).

the collective interest and collectiveness. It relates with behavior patterns and conducts of the social groupings and entire society. Social function of law indicates action of law which creates more or less inclusive set of consequences and expected effect in the society. In this article authors have tried to give the clear insight and explore the social function of law.

2. Jurisprudential Analysis on Social Function of Law

Law as a social science, sub-system and servant of society has its function in the society. Society is the base of law. Law has its function in society not in vacuum. So, it is said that society is laboratory where several laws are tested. Law therefore, came to be understood as an applied science employing functional methods of investigation and analysis for resolving individual and social problems on the basis of experience derived from collateral social sciences. Law is an indicator and mirror of civilized society and role of law is an ideal of modern society. Law is necessary in daily affairs of human beings and human beings has to launch their activities according to law. Society cannot exist without law therefore, whatever the society either that is primitive society or modern society all depends upon law.

Society is the primary institution and law is secondary. Law is for the betterment of society. Law as an institution of society it controls and regulate all other institutions of society such as religious institution, social institution, cultural institution, political institution, economic institution, educational institution etc. Law regulates and controls all the social activities. Law is viewed as an instrumental means to achieving a certain chosen social goal. It is used 'to control the coercive power of the state; a means of exercising power; to subject human behavior to the governance of rules, to coordinate social activities; to integrate society and to settle disputes.'⁸ Law identify and protects the social norms and values which are essential for self-preservation, spiritual development as well as dignified life of human beings.

Function of law is to control members of society by coercion and threats of coercion so as to maintain peace and order. Whereas the ordering function provides a framework for interaction at relatively low social cost, the control function insures actual order. Control becomes necessary, despite its social costs, when people refuse to accommodate their interactions to the legal framework. Law then deals with potential conflicts and prevents them from

⁸ *Ibid*, at 195.

becoming actual breaches of the peace. Thus, law in general is often identified as a form of social control; and this is especially the case with criminal law in particular. Just as often this function of law is described in terms of the ultimate goal of social control - maintaining peace and order.⁹

All the branches of law have different dimensions of social functions to resolve the problem of society.¹⁰ Different types of laws contribute to the realization of different social goods for instance Criminal law controls illegal behavior of human through the threat or use of punishment Constitutional law provides a framework for the creation of law, organs of government, protection of fundamental rights, election of political representatives and regulate the relationship between state and citizens. Contract law regulates the private arrangements of parties of the contract in accordance with the terms and conditions of contract which are created. Administrative law is used to regulate the administrative authorities and to review the decisions of government. Property law defines rights and obligations related to the transfer and title of personal and real property. Tort law allows claims for compensation if a person's right or properties are harmed etc. Law has a major force in modern society; it directs and regulates social relation; it dominates other systems of social control and has a mighty administrative machinery to enforce its dictates. It contributes to the life of communities and individuals, in many ways and, despite a capacity for misuse, it is regarded by most not just as a necessary part of tolerable society but essential to the realization of valued social goods.¹¹ Social function of law comprises preserving the civilization, social interest, social norms, social role, values, morality, ethics, social components, social pattern and peaceful change.

All the schools of jurisprudence from the natural to the post-modernism directly or indirectly connected with the function of law in society. Natural school of jurisprudence applies natural instinct to individual and society. The ultimate aim of Analytical school is establishing peace and order in society by sanctions. Balancing of interest, social solidarity, capitalistic rationality and jural postulates are basic functions of sociological school. Dispute resolutions based on empirical evidences are primary functions of law for sociological school. Socialist school claims function of law is exploitation in capitalism and equality in socialism and establishing classless

⁹ FUNK, *Supra* note 4, at 282-283.

¹⁰ SUMAN ACHARYA, *JURISPRUDENCE OF LAW AND SOCIETY*, available from <https://ssrn.com/abstract=3352664>, (accessed on April 15, 2019.)

¹¹ GALLIGAN, *Supra* note 7, at 32-33.

society in communism.¹² Under Historical school, norms of conduct are controlled by custom, rites, rituals and traditions. Critical Legal Studies movement (CLS) believes, law has political and racial functions where dominant political system represents legal system. Feminist jurisprudence focuses on women's rights protection in society and maintaining equality between male and female. Similarly, for Postmodern Movement Cosmopolitanism, redistribution of postmodern goods, redistribution of economic goods, gypsy rights, victim justice, utilization of natural resources etc. are the functions of law.¹³

Various scholars and jurists of different school of jurisprudence have expressed their ideas and views on the social function of law. 'Durkheim found law to be a key element on the grounds that it both expresses and reinforces the social relations of modern society. A similar idea has passed down through Hobbes and Hume to Bentham and Hart that law is necessary for social order, or survival as Hart put it, especially in providing security against violence, ensuring the keeping promises, and protecting property.'¹⁴ Laws are directed at and are the instruments for achieving social goals. Bentham was the arch-instrumentalist and made it sound straightforward: law is an instrument for pursuing whatever social goals are considered desirable within a society. It can be used for good or bad, it can fall into the hands of special interests, or be the engine of cruelty and oppression; it can also be used to advance the good of society. It is sometimes attuned to existing social relations and aims at strengthening them; alternatively its aim may be change them.¹⁵

In the concept of law, among the many references Hart makes to law's functions, four usages can be identified: (i) the function of social rules is to guide human behavior; (ii) legal rules serve the two distinct functions of imposing duties and conferring powers, and may be divided accordingly into primary and secondary rules; (iii) legal rules serve a range of substantive functions, such as restraining violence, distributing and protecting property, upholding contracts, allocating power and authority, and punishing offenders; and (iv) legal rules as a system function to assure the survival of a society.¹⁶ *Lon Fuller* states, law is the enterprise of subjecting human conduct to the

¹² ACHARYA, *Supra* note 10.

¹³ *Ibid.*

¹⁴ GALLIGAN, *Supra* note 7, at 195-96.

¹⁵ *Ibid.*, at 193.

¹⁶ *Ibid.*, at 199.

governance of rules. Law is a set of rules that governs the behavior of the society.

Gerald Postema writes: 'The task of law, according to Bentham, is to define anew, to establish, and then to sustain, a social and political order and framework for broad-scale social interaction'.¹⁷ *Bentham* opines that the function of law is to achieve the greatest happiness of the greatest number of people. According to him, there are mainly four functions of law i.e. to provide subsistence, to produce abundance, to favor equality and to maintain security. For *John Locke*, the function of law is to protect life, liberty and property of an individual. Similarly, *Thomas Pine* says, the function of law is to protect life, liberty and pursuit of happiness. *Plato* favors law functions for maintaining social harmony. *Aristotle* gives emphasis on distributive and corrective justice. *Kant* identify, law protects our individual freedom. *Stammler* believes respect and participation of all with harmony is the function of law.¹⁸ *John Rawls* opines, the main aim of law is to achieve justice and maximization of liberty. He focuses three function of law in society i.e. Maximization of liberty, Equality and Elimination of all sorts of Inequality. *Finnis* argues, functions of law is realizations of common goods. *Fuller* wants to establish inner and outer morality through procedural law. *Joseph Raz* opines, the social functions on the other hand are the intended or actual social consequences of the law. *Kelsen* recommends imputation and delict control as a function of law. The idea of *Ihering* was reflected in his famous thesis titled as 'Der Zweck in Recht (Purpose in Law) which has been translated into English as "Law as a means to an end" (1877). According to him, the purpose of law is to protect or reconcile protect, protect as well as serve the interests of society. *Eugen Ehrlich* speaks, only the living law can function in the society. Similarly, balancing the interest is the function of law for *Roscoe Pound*. For *Karl Marx* law functions to protect the interests of the ruling class and control the working class.

Social function of law consists of primary and secondary. Primary functions of law from social perspective comprise (i) preventing the undesirable behavior and preventing social interests, criminal law functions, regulating individual behavior in society, (ii) providing facilities, for instance, private law, contract law, company law, associations of persons, religion, business/commercial law, banking and financial laws, (iii) provisions of service and redistribution

¹⁷ *Ibid*, at 209

¹⁸ ACHARYA, *Supra* note 10.

of goods and services, taxation, electricity, resource management, distribution of wealth, provisions of public security, social welfare. Secondary functions of law from social perspective are (i) operation of legal system (Kelson Grundnorm), settlement of disputes, establishment of law courts, enactment of arbitration laws etc., (ii) process of legal change (iii) rule governing and law enforcement bodies.¹⁹ Social legislations bring about social change. There are two ways to look at the function of law. Firstly, law establishes and maintains social control. Hence the major issue before law is to design legal sanctions to minimize, deviance and to maintain social solidarity and social order. Secondly, law is dynamic. It states that the function of law is not just to maintain social order but also to bring about social change by influencing individual behavior, beliefs and values.²⁰ Social legislation are the laws designated to improve and protect the economic and social position of those groups of society which because of age, sex, race, physical or mental defect or lack of economic power cannot achieve health and decent living standard for themselves. *Dr. R.N. Saxena* opines, social legislation is any Act passed by the legislature or a decree issued by the government for the removal of certain social evils or for the improvement of social conditions or with the aim of bringing about social reform. So, we can say that, social legislation are the laws designated for the special purpose of improving the socio-economic condition of social life.

The social function of law ensures social solidarity, social cohesion, social harmony, social stability and social order. 'Social function of law is not only to have social cohesion but it also make social change, progress, e.g. to eliminate social evil, notorious custom, provide educational facilities to the people to control undesirable activities and develop rule of conduct.'²¹ Social function of law also involves reshaping the society, maintaining social coordination, Social interaction, social facilitation, social discipline, promoting social justice, providing integration, establishing standard and social relation with each other and reducing social conflict. Where the law does not perform all these functions there is no humanity in the society. There will be might is right and chaos. It preserves the value of humanity, prevents undesirable interference. In the absence of law there would be crisis in the society and

¹⁹ MUKHIA, *Supra* note 5, at 9.

²⁰ NAVENDU K. THAKUR, *AN INTRODUCTION TO SOCIOLOGY*, (2nd ed.), Central Law Publications, Allahabad, at 223. (2011).

²¹ HIMA RAJ GIRI, *LEGAL METHOD, THEORY AND PRACTICE*, (1st ed.), Pairavi Prakashan, Kathmandu, at 11, (2014).

people always remain in fear in the society. Law promotes pursuit of social goods, such as the removal of discrimination, the protection of human rights, and the creation of a global order.

Law has the dual function i.e. stability and change. 'There can be no system stability without continuous adaptation and adjustment to lower level changes. This condition of system stability through adaptation to change may be characterized as ultrastability. Hence, at the macro level there can be no stability without change. In fact if there is no stability there is not even any frame of reference by which to define change. Thus, stability and change become interdependent and this may have serious implications for law and legal institutions.'²² It is often said that law is necessary for the basic social tasks of protecting one from the other and providing the rules for elementary forms of social life in matters of contract, property, and family relations. Law strengthens and makes more secure social relations existing naturally and spontaneously. In contemporary societies it goes much further by changing and redirecting social relations. It is used for the pursuit of positive social ends and goals by regulating a range of activities from employment practices to financial services to human rights.²³ Social function deals with security of persons and property, predictability and regularity in social relations, settling disputes, protection of rights, the provision of social welfare, the protection of the environment and controlling the powers of officials. Law is an instrument to cope with the social problems and it is key of social planning. Major Social functions of law are briefly elaborated in point wise basis hereunder:

- 1. Social Facilitation and Direction:** In society law facilitates in social interaction between individuals to individuals, individuals to groups, groups to individuals and groups to groups. Social facilitation and direction is related to socialization. *Ross* defines, 'Socialization is the development of the we feeling in associates and their growth in capacity and will to act together.'²⁴ Law plays a role in the socialization of human beings. Bringing law to the service of human beings by addressing the contemporary needs and contexts is the main objective of socialization of law. Law facilitate human affairs and achieve the ethical legality. Socialization does not promote anarchy; it rather promotes social security

²² FUNK, *Supra* note 4, at 264-65.

²³ GALLIGAN, *Supra* note 7, at 1.

²⁴ VIDYA BHUSHAN & DR. SACHDVA, *AN INTRODUCTION TO SOCIOLOGY*, (XLVIII ed.), Kitab Mahal, Allahabad, at 75, (2015).

and social solidarity.²⁵ Law is used to give effect to certain private arrangements and social relationship between individuals and between groups. Every society has certain basic needs for e.g., business, housing, consumer products, medical treatment, education, employment etc. The law plays a role to assist those needs and it directs and provides the framework for the members of the society to determine their conduct and affairs.

2. **Dispute Resolution:** Law plays a vital role in the conflict and dispute settlement. The law is important because it acts as a guideline of society. Without it there would be conflicts between social groups and communities. Disputes are unavoidable in the society and it is the role of the law to settle disputes which are created in the society. Law resolves or mitigates tensions and conflicts between individuals and between groups in order to maintain the solidarity of some more inclusive group.

Llewellyn considers the disposition of ‘trouble-cases’-orderly resolution of disputes as they arise-to be pre-eminent. The second function of law is what he calls preventive channeling and reorientation of conduct and expectations to avoid conflicts.²⁶ As per *Ihering*, law was to be seen as a coercive instrument which existed to resolve conflicts which might arise between the interests of individuals and the interests of society as a whole. Law has to play the role in the resolution of social problems and disputes for regulation human relationships. It reacts against law breakers as well as renders fair and impartial justice by resolving disputes. Law maintains co-operation and regularizes disputes and strife into conformity. Disputes are settled by the Law Courts, Quasi-Judicial bodies, Tribunals and by alternative dispute settlement methods i.e. Mediation, arbitration, negotiation, conciliation and so on. Law maintains peace, order and security by resolving the disputes.

3. **Justice:** It is to be stated that law is not an end in itself. It is a means and an instrument to secure justice in society. Almost all theories regarding law accept that the purpose of law is to secure justice.²⁷ Social utility of law is dissension of justice. Justice works at three different level

²⁵ DR. YUBARAJ SANGROULA, JURISPRUDENCE THE PHILOSOPHY OF LAW, (3rd print), Lex & Juris Publication Pvt. Ltd., Bhaktapur, at 587, (2018).

²⁶ ROGER COTTERRELL, THE SOCIOLOGY OF LAW: AN INTRODUCTION, (2nd ed.), Butterworths, London, at 80, (1992).

²⁷ DR. B.N. MANI TRIPATHI, JURISPRUDENCE (LEGAL THEORY), (18th ed.), Allahabad Law Agency, India, at 122, (2010).

i.e. Distributive justice, corrective justice, economic justice and social justice. Maintaining justice is the ultimate goal of law. Justice is the synthesis of liberty, equality, fairness and fraternity. Justice must be speedy, fair and impartial which can be rendered by the court of law, administrative authorities and tribunals as per the procedures established by law. If there is no law, justice cannot be rendered and if there is no justice the significance of law cannot be ensured or justified.

4. **Social Order:** Social function of law is to order society by providing a framework or model for social and individual interaction. To maintain social order little coercion is essential. The ordering function of law includes creating organization, the ordering of social relationships, and providing a framework. Law also provides a framework within which individuals may organize their personal affairs. Therefore, it is said that some laws provide individuals with facilities for realizing their wishes by conferring legal powers upon them, provides certain specified procedures and subject to certain conditions, structures of rights and duties within the coercive framework of the law. Law cannot fulfill its ordering function effectively unless the framework of rules is relatively stable. Therefore, it is observed that aim of law is to create predictability so that rules will not be changed after commitments are made and so that rational means may be chosen for individual ends of contemplated actions. Whether the interactions are individual or social, law provides a framework within which these interactions may take place. Judiciary also plays a remarkable role in making the society safer for the people and ensures social order.
5. **Social Solidarity and Social Cohesion:** The law promotes social cohesion. Social cohesion refers to the action or fact of forming the united whole/solidarity. Law is used to unite the society. The social cohesion work across the spectrum in the society. For example, family members, club members, political party members etc. *Emile Durkheim* emphasis on the doctrine of social solidarity as a fact and necessity of social life. He talks about two types of solidarity i.e. mechanical and organic solidarity.

The doctrine of social solidarity of *Leon Duguit* focuses on the mutual interdependence between the people and which unite individual members of a social group by the sheer force of their common needs and interests. Law has to promote and protect social solidarity among men by imposing

upon individual duties in order to regulate or order their conduct accordance to the exigencies of social solidarity. *Duguit* thus, regarded social solidarity not as a rule of conduct or imperative, but as a fundamental facts of human coexistence.²⁸ The social function of law is the realization of social solidarity. Thus, law is an instrument for preforming the function of promoting social solidarity.

- 6. Social Engineering:** The purpose of law in modern age is to balance the conflicting interests of the society. Law has to play the role of ***Social Engineering and Balancing interest*** which was propounded by *Dean Roscoe Pound*. Law protects fundamental right of people and reminds important driving force for balancing the conflicting interest of individual, social and national interest. Pound classified the various interests to be protected by law into three heads i.e. Private Interest, Public Interest and Social Interest. Balancing of interest involves a process of reconciliation, harmonization and compromises between conflicting demands and interests. Law is the body of knowledge and experience with the aid of which a large part of social engineering is carried out. Pound says, “like an engineer’s formulae, law represents experience, scientific formulations of experience and logical developments of the formulating their requirements by means of a developed technique.”²⁹ The concept of social engineering and balancing interest aims to build an efficient structure of society.
- 7. Social Control:** Law is the most powerful formal means of social control in the modern society. According to *Ogburn and Nimkoff* says, ‘Social Control refers to the patterns of pressure which a society exerts to maintain order and established rules.’³⁰ Early societies employed informal means of social control but when society grew in size and complexities they were forced to formulate rules and regulations defining the appropriate behavior on the part of the individuals and specify the penalties to be imposed upon the violators.³¹ Law changes the habits, attitude, pattern and behavior of the people which are not confronted with the law. Law in wider sense encompasses all forms of social controls, including customs,

²⁸ DR. S.R MYNENI, JURISPRUDENCE (LEGAL THEORY), (2nd edition), Asia Law House, Hyderabad, at 502, (2012).

²⁹ Ibid, at 511.

³⁰ DR. INDRA SRIVASTAVA & DR. SHEKHAR SRIVASTAVA, SOCIOLOGY, (1st ed.), Central Law Agency, Allahabad, at 187, (2011).

³¹ THAKUR, Supra note 20, at 120.

moral codes and internal rules of groups and associations such as tribes, clubs, churches and corporations. In this context, lawyers' law is only a highly specialized form of social control involving specialized agencies like legislature and courts.³² Social control is made by the use of force of law. For social control there must be legitimacy or validity of laws. Social control is possible through the law because law has binding force and implementation mechanism.

Law as a means of social control maintains social order and social discipline in the society. The main aim of social control is to bring social conformity and social solidarity. Each members of the society may have different social norms, values, ethics, various behaviors and interests. It is important to control the socially unacceptable behaviors and activities of people. Law clearly specifies rules and norms that are essential for the society and punishes activities which are strongly rejected by the society.

The law is used as a penal instrument to prohibit and prosecute criminals. The laws are enacted by the legislature and implemented by the court decisions define criminal and delinquent behavior as well as specifying the sanctions imposed for violations. The ultimate sanction of law is physical coercion, and physical force may enter more or less prominently into all the types of social control. Law operates the society and it controls the anti-social and unlawful activities like homicide, human trafficking, theft, rape, drug abuse, fraud, domestic violence etc. So, law prohibit unlawful action and it also react against the breaking of laws. It controls the human behavior, and preserves social norms and values. Law gives punishment to the criminals and provide to the justice to the victim. It prohibits the arbitrariness and gives priority on fairness and impartiality in the judicial administration as well.

8. Social Change: Social change may be defined as the process in which there is a visible alternation in the structure and functioning of a particular social system.³³ It is observable differences in any social phenomenon over any period of time. Law plays an agent of modernization and social change. Law ensures and directed purposive, planned and peaceful social

³² SURI RATNAPALA, JURISPRUDENCE, (1st South Asian ed.), Cambridge University Press, New Delhi, at 188, (2011).

³³ THAKUR , Supra note 20 at 201.

change. 'Legal system defines the parameters of the role that it can possibly play in the process of social change. Accordingly, it may either facilitate or accelerate law's intended participation in the achievement of certain social goals or it may construct or even obviate its intended objective of facilitating a change in the social reality.'³⁴ It is a common place of modern societies that law is used to bring about social change. Legislation is one of the most powerful and important factor or tool which help to change of society, e.g. Soviet Union had successes in making enormous changes in society by use of law. China has managed their growing population, economic development and modernization. They issued proper law, policy as the changing society. Similarly, USA and Japanese government also use law as an instrument of coercion to bring desire goal.³⁵ The change in law in European societies since the nineteenth century can be attributed, as we have seen, to change in economic structure and class relations, to the raise of the labor movement, and to the spread of democratic, socialist and humanitarian doctrines.³⁶

Social change occurs through changing the way people behave individually or in groups and organizations. The use of legislation and judicial decisions to change attitudes and practices concerning discrimination and segregation has probably attracted more attention than any other.³⁷ Major function of law is to serve as an instrument of conscious change, either of society or of particular individuals in that society. In analyzing processes of change it is helpful at the outset to clearly identify the various persons involved. In order for law to be used as an instrument of conscious social change, some individual, individuals, or group must desire the change and use law as an instrument to effect that change.³⁸ As an initiator of social change law brings about fundamental social changes in the one hand and on the other, constantly overhauls itself so as to adopt it to the realities of perpetual social change. Law also must be able to adapt to the social changes. In this connection, law and social change are interdependent i.e. social change affects the law and vice versa.

³⁴ J.S. Gandhi, *Law as an Instrument of Change in India*, SOCIOLOGY OF LAW, (1st ed.), Oxford University Press, New Delhi, at 98-99, (2005).

³⁵ GIRI, *Supra* note 21, at 58.

³⁶ T.B. BOTTOMORE, *SOCIOLOGY A GUIDE TO PROBLEMS AND LITERATURE*, (5th Impression), S. Chand & Company Limited, New Delhi, at 260, (1986).

³⁷ GALLIGAN, *Supra* note 7, at 331.

³⁸ FUNK, *Supra* note 4, at 288.

Law allows for peaceful change by legislation and judicial development. Legislative, administrative and also judicial re-interpretation of constitution, statute and precedent change the society. Law and especially the social legislations lays emphasis on humanistic values and to abolish bad and ill practices and rituals of society such as abolition of Domestic Violence, Sati, Salivary, Chaupadi, Dowry, Untouchability, Caste Discrimination, Gender Discrimination, Polygamy, Child Abuse, Child Marriage, Witchcraft and all sorts of discriminations. All these bad practices in every form of its manifestation is a serious violation of human rights and fundamental freedoms. It often combines with coercion and most extreme form of exploitation.

Social legislations are indispensable to mitigate these social evils. In Nepal various social legislations has been enacted to maintain social change such as, Land Reform Act 2021 B.S., Social Practice (Reform) Act 2033, Gender Equality 2063, Domestic Violence Crime and Punishment Act 2066 B.S. and so on. Constitution and several laws are amended or changed time and again to suit in the new situations. Thus, law allows for easy adoption to changes that occur in the society and it must undergo progressive change to serve need of society.

- 9. Social Welfare:** Social welfare indicates the well-being of the entire society. It is the aid programs designed to ensure the happiness of citizens. Law tries to enable the citizen to do his duties and it also helps to achieve the maximum satisfaction of the human wants. Nepal is a welfare state. Welfare state plays a key role in the protection and promotion of social and economic well-being of its citizens. In Nepal law can be used to manage various governmental public benefits and welfare services such as education, health services, sanitation, transportation and road facilities, drinking water services, social security, old age allowances, single or widow women allowance, allowance to the disable, handicapped and differently abled people. All these social systems by the state assumes primary responsibility for the welfare of its citizens.

Law safeguards the weaker section of society and promote social justice. The welfare activities are carried out by enacting the appropriate laws and all the welfare programs are carried out in accordance with the law. Through the concept of social welfare state laws are being used to achieve social justice, social welfare, eradication of poverty and economic

exploitation. Nepalese Constitution has also guaranteed the Right of Women in Article 38 and Right of the Children in Article 39 for the welfare of women and children. Likewise, in Nepal various welfare laws are enacted to maintain social welfare such as, Senior Citizen's Act 2063, Protection and Welfare of the Disabled Persons Act 2074, Labor Act 2074, Children Act 2075, Consumer Protection Act 2075, Compulsory and Free Education Act 2075, Public Health Service Act 2075, Crime Victim Protection Act 2075 B.S. etc.

3. Social Function of Law and Nepalese Legal Mechanisms

In Nepal, law enables the social activities and reshape the Nepalese society with the help of various laws and Constitutions of Nepal. The preamble of the constitution announces, protecting and promoting social and cultural solidarity, tolerance and harmony, and unity in diversity by recognizing the multi-ethnic, multi-lingual, multi-religious, multi-cultural and diverse regional characteristics, resolving to build an egalitarian society founded on the proportional inclusive and participatory principles in order to ensure economic equality, prosperity and social justice, by eliminating discrimination based on class, caste, religion and gender and all forms of caste-based untouchability...³⁹ Social rights and social justice are guaranteed to the citizens through the Constitution and social legislations. Social justice is the recognition of greater good to larger number without deprivation of actual legal right of anybody. Social justice is a dynamic device to mitigate the sufferings of the poor, weaks, dalits, tribals and deprived sections of society and to elevate them to the level of equality to live life with dignity of person.

Constitution made a commitment for promoting the social justice as a fundamental right. Law has been used for the protection and empowerment of the minorities, disadvantaged, marginalized and vulnerable sections. For this positive discrimination scheme is practiced in Nepal through the inclusion, reservation and quota system. 'The economically, socially or educationally backward women, Dalits, indigenous nationalities, Madhesi, Tharu, Muslims, backward classes, minorities, marginalized communities, persons with disabilities, gender and sexual minorities, farmers, labourers, oppressed or citizens of backward regions and indigent Khas Arya shall have the right to participate in the State bodies on the basis of principle of proportional inclusion.'⁴⁰ The indigent citizens and citizens of the communities on the

³⁹ THE CONSTITUTION OF NEPAL, PREAMBLE, (2072 B.S.)

⁴⁰ Ibid Art. 42(1).

verge of extinction shall have right to get special opportunity and benefits in education, health, housing, employment, food and social security for their protection, upliftment, empowerment and development.⁴¹ The Constitution have guaranteed the citizens of disabilities with the right to live with dignity and honor, with the identity of their diversity, and equal access to public services and facilities. Similarly, the farmers have the right to have access to land for agro activities, select and protect local seeds and agro species. The families of martyrs, disappeared persons and those who become disabled and injured in all people's movement, armed conflicts and revolutions that have been carried out for progressive democratic changes on Nepal have right to get a prioritized opportunity with justice and due respect in education, health, employment, housing and social security.⁴² Similarly, the conditions of people are managed with the help of the fundamental rights which are guaranteed in the constitution. The fundamental rights guaranteed in Article 16-46 are oriented to the social function.

The Provisions of the Directive Principles, Policies and Obligations of the State which is mentioned in the Part-4, Article 51 of the Constitution are related to the policies of the state relating to national unity and national security, political and governance system, social and cultural transformation, economy, industry and commerce, agriculture and land reform, development, basic needs of citizens, labor and employment, social justice and inclusion, justice and penal system are mentioned in the constitution to make social function of law. Laws in Nepalese society are not different than other practices as it has also been fulfilling social purposes. In the legal and constitutional history of Nepal various laws have been enacted which are associated with the social issues and social function. In past Social Practices (Reform) Act, 2033 (1976) was enacted in Nepal 'to impose restriction on existing as well as growing competitive pomp and worthless expenses in social practices in order to make reforms.'⁴³ This Act is a social legislation which make restriction on dowry, bride side, marriage feast and so many other issues which creates social problems.

Other major social legislations and Acts related to curb with social degradation, social malpractices in the history of Nepal from the past to till this date are, Civil Rights Act 2012 B.S., Essential Service Operation Act

⁴¹ *Ibid*, Art. 42(2).

⁴² *Ibid*, Art. 42(3)(4)(5).

⁴³ Social Practice (Reform) Act, Preamble, (2033 B.S).

2014, Birta Abolition Act 2016, Begging Prohibition Act 2018, Infectious Disease Act 2020, Public Road Act 2031, Black Marketing and some other Social Offences and Punishment Act 2032, Birth Death and other Personal Events (Registration) Act 2033, Social Welfare Act 2049, Environmental Protection Act 2053, Legal Aid Act 2054, Local Self Governance Act 2055, Child Labor (Prohibition) Act 2056, Contract Act 2056, Bonded Labor Act 2058, Income Tax Act 2058, The Prevention of Corruption Act 2059, Poverty Alleviation Fund Act 2063, Companies Act 2063, Senior Citizens Act 2063, Human Trafficking and Transportation (Control) Act 2064, Bank and Financial Institutions Act 2073, Protection and Welfare of the Disabled Persons Act 2074, Labor Act 2074, Children's Act 2075, Crime Victim Protection Act 2075, Social Security Act 2075, Employment Act 2075, Food Right and Food Sovereignty Act 2075, Caste Discrimination and Untouchability (Crime and Punishment) Act 2075 B.S. Provisions of family law, law of property, law of contract of the Muluki Civil Code 2074 B.S. etc.

The Supreme Court of Nepal has been playing a decisive role to make social reform. It has given several verdicts in the various cases, writ petitions and Public Interest Litigations for ensuring and social function to solve social problems and towards social reform. In the case of ***Man Bahadur Bishowkarma v. Ministry of Law, Justice and Parliamentary Affairs***⁴⁴ Supreme Court orders not to make discrimination on the basis of caste which is essential to create a society free from discrimination on any ground. Another case is ***MeeraDhungana v. HMG***⁴⁵ the Supreme Court has recognized the property rights of daughter.

In the Case of ***Advocate Shyam Krishna Maske v. Government of Nepal***⁴⁶ Supreme Court of Nepal challenged the concept of social engineering and says that, in the name of social engineering, there shouldn't be encroachment of jurisdiction and functionality of various social organs and Court cannot perform the job of parliament in the name of social engineering. In another case of ***Advocate Amita Gautam v. Government of Nepal***⁴⁷ the court held that development and innovation is necessary but theory shouldn't be against people and humanity. So, development and construction must be favorable to mankind. Similarly, in the case of ***Bishnu Prasad Timilsina v.***

⁴⁴ N.K.P. 2052 B.S., D.N. 4670, at 1010.

⁴⁵ N.K.P. 2052 B.S., at 462.

⁴⁶ N.K.P. 2068 B.S., Issue 4, D.N. 8589.

⁴⁷ N.K.P. 2074 B.S., Issue 6, D.N. 9829.

BirHospiti et.al⁴⁸ right of access to medicine is an important issue of people and society. So, public hospital should operate drugs store without granting other people in lease. All these legal provisions, case laws and practices are launched and guided by the notion of social function of law.

4. Conclusion

By analyzing the above mentioned discussions and literatures we can conclude that, the functions of law which is related with the social life, collective interest and social utility is known as the social function of law. Law is a social function, an expression of human society concerning the external relations of the individual members. One purpose of this analysis of social functions of law is to shift the emphasis in jurisprudence away from the more traditional emphasis on the definition and scope of law. This is not to deny the usefulness of an inquiry into the definition and limits of law. In fact, an analysis of the social functions of law requires a comprehensive and working definition and widening the scope in context to social reality. Law in this context includes both laws and legal institutions in a legal system, interacting in turn with other systems in society.

Jurisprudence of law and society believes that law is the cement of society which ties up the society and social interests and social function of law is concerned with preserving the civilization, social interest, social norms, social solidarity, social cohesion, social harmony, social stability, social order, social role, values, morality, ethics, social components, social pattern and maintaining peace, order, security, tranquility, stability, certainty, prosperity, unity, uniformity, equality, fairness, harmony, fraternity, justice, and peaceful change. Social function of law also deals with morality, reshaping the society, maintaining social discipline, social coordination, social interaction, social planning, social arrangement, social facilitation, promoting social justice, providing integration, establishing standard and social relation with each other, predictability and regularity in social relations, settling disputes, protection of rights, the provision of social justice, social security, social welfare, social control social change and reducing social conflict. Social function of law is also used to manage the social issues like violence, population control, poverty, development (Sustainable development), resource management, distribution of wealth and budgetary issues, environmental problems, corruption control, good governance and so on.

⁴⁸ N.K.P. 2075 B.S., Issue 2, D.N. 9957.

Social function of law depends on the actual needs of society and will of the state. There are certain issues which are offence in one country but not in other countries. Likewise, what was justified in the ancient time may not be justified now for example, Sati and Slavery system. Sati and Slavery system was justified in ancient time but not today. Therefore, the purpose of society and social relations determine the function of law. The social function of law differs according to the need of society and it changes with the pace of time and situation. This is because whether there is need for regulation or not is depends on the societal needs.

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