SOCIAL ENGINEERING

THEORY

DR. VIJAY OAK    ASST. PROFESSOR

VIDYA PRATIDHTHAN’S VASANTRAO PAWAR LAW COLLEGE, BARAMATI
Roscoe Pound (1870 – 1974) was the founder of American social jurisprudence.

He was highly influenced by the writings of William Jones.

Pound developed his famous jurisprudential theory known as theory of Social Engineering.

It is opposite of legal positivism which emphasised study of law as it is instead of as it ought to be.

Roscoe Pound does accord recognition to sociological factors influencing law making process and even interpretation of law by the judiciary.
BASIC POSTULATES OF THE THEORY

• The aim of social engineering is to ensure satisfaction of maximum wants with least friction & waste.
• Social engineering essentially involves balancing of conflicting interests.
• Pound classified interests into individual interests, public interests and social interests.
INDIVIDUAL INTERESTS

- Individual interests are the interests looked from the viewpoint of an individual. These interests concern the following:

- Personality: It includes interests in physical person, freedom of will, honour and reputation, privacy, belief and opinion. Our Constitution also guarantees certain personality rights as fundamental rights. In Aadhar judgment right to privacy was held implicit in Article 21 of our Constitution.

- Domestic relations: These include interest in parents, children, husband and wife. Hence we have laws imposing legal obligation to maintain parents, wife and children.

- Subsistence Interests: These include interests in property, freedom of industry & contract, freedom of association & continuity of employment. Again Indian Constitution guarantees freedom of trade, profession, business and occupation as fundamental right under Article 19(1)(g).
PUBLIC INTERESTS

• Public interests according to Pound essentially involves claims of the state as a politically organized association.
• The interests of the state as a juristic person involve the following interests
• Interest in integrity & honour of the state’s personality and freedom of action. Hence we have punishable offences in IPC such as waging of war against the state, sedition, etc. To protect the interest of the state.
• Interests in the form of claims of politically organized society such as a corporation &
• Interests of the state as guardian of social interests.
SOCIAL INTERESTS

- These are essentially the claims or interests in terms of social life and these are considered as the interests of social group. These are of following types:

- Social interest in the general society – It includes interest in general safety, general health peace & order, security of acquisitions and security of transactions. Hence we have laws such as IPC, Cr. P. C. Epidemics Act, 1897 to protect public health.

- Social interest in security of social institutions – Social institutions include domestic institutions, political institutions, religious institutions and economic institutions. For example, marriage is an important social institution & hence laws are there to protect institution of marriage.

- Social interest in general morals- The interest of society also lies in preservation of general morals and hence laws are enacted to deal with gambling, prostitution, etc.

- Social interest also lies in social progress, social resources and in an individual’s life. Hence laws such as Environment (Protection ) Act, 1986 and other laws have been enacted.
BALANCING OF CONFLICTING INTERESTS

• According to Pound these interests often come in conflict with each other & hence there is a need to balance them in a harmonious manner. When conflicting interests are balanced it is called social engineering.

• In Vellore Citizens’ Welfare Forum vs. UOI (1996), the Sup. Ct. balanced right to carry on tannery business of tannery owners, right to livelihood of workers employed in those tanneries with right to health of villagers who were affected by discharge of toxic chemicals in river Palar. The Sup. Ct. accordingly directed tannery owners to instal treatment plants.
EVALUATION OF POUND’S THEORY

• Critics have pointed out that Roscoe Pound was over obsessed with the concept of interests.
• Secondly, critics have pointed out that it is difficult to balance individual interest with social interest quite often.
• However it must be said to the credit of Pound that he has given a systematic theory which has practical application in court litigation.
REFERENCE BOOKS

• Edhar Bodenheimer, Jurisprudence, 3rd Indian reprint (2001)