



Society Advances When Law is Enhanced

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Absract:

Social transformation and law are a very unique concept which highlights the studies and changes in society. Social problems could be getting solutions through legal approach. Law changes the society means that the law of the land compels the society to be changed according to the law. Whenever dispute arises the matter is brought before the judiciary, which applies the rule of law principle to change either the law or existing custom. Society changes the law it means that the law is made by the society according to the requirement of the democratic institutions of the society. It can also be brought out either by adopting customs or by legislating function and practices. Law has always been seen as an important instrument that could bring out social change. An attempt is made in this article to emphasize that though there are several devices to bring about a change and transformation in our society but for law none can be considered as the safest and most effective method.

1. Introduction

Interaction between law and social development can be seen at different levels. Laws are the indicators of the nature of societal complexity and social change, especially the relationship between law and society could be studied in following three phases in India, Indigenous or traditional, Colonial, Developmental. India is a large democratic country divided into 28 States and 8 Union Territories. It has a variety of religions, languages, dialects and cultures so the cultural diversity is the hallmark of Indian society. In Indian society there are strong feelings of regionalism and castism. Ancient Indian society was divided into Four broad varnas;

- Brahmin,
- Kshtriya,
- Vaishya,
- Shudra

First two were known to be the upper castes, 3rd as an intermediate caste and last as lower castes. Shudras are divided into close to 4000 castes¹. Out of these castes 'Dalits' which are known as Schedule Castes who have been traditionally been the victim of the practice of untouchability by the upper caste. Women were also exploited in ancient time. Social development occurs due to several factors such as changes in ideology and technology changes, in economic policy and political life and in legal principles or institutions.

2. Necessity of changing the law

According to justice P.N.Bhagwati, "It is the judge who infuses life blood into the dry skeleton provided by the legislature and creates a living organism appropriate and adequate to meet the needs of the society." Indian judicial system has generally found to be alive to the social thinking. All types of courts have brought their new dimensions and fresh implications to the law². So laws are the instruments of social changes and transformation. To show the instrumentality of law on social

¹ Malik & Raval "Law and Social Transformation in India, Allahabad Law Agency,

² Ibid pg 1 to 3

transformation, it is necessary to study some special changes which have taken place in India. This study shows that nothing is permanent only changes are permanent.

There were many changes came into force only because of laws which transform the society, they are as under;

3. Abolition of Untouchability

Untouchability refers to a social practice which looks down upon some depressed classes solely on account of their birth and also makes discrimination against them on this ground.³ These people's physical touch was considered to pollute upper class people. Many castes were called untouchables. They were not allowed to draw water from the same wells or use the tank which is being used by the upper castes. They were also not allowed to enter some temples and suffered many other disabilities. Article 17 shows the importance attached by the constituent assembly towards eradication of evil practice of untouchability and this article also have significant provision from the point of view of equality before law and equal protection of law (Article 14). Article 17 also guarantees social justice and equality.

There are various forms of discriminations against 'Dalits'. Like prohibition from marrying with the other caste's members, separate cups and plates at the village tea stall, prohibition from eating with upper caste members, discriminatory seating arrangements in village functions and festivals, separate burial grounds, bonded labor, separate seating area in school for Dalit children etc. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

4. Abolition of Sati System

'Sati' means burying live of widow along with corpse of her husband, by this way widow scarifies herself by sitting atop her deceased husband's funeral. Sati system was considered to be a great honor among ancient Hindu society. The Indian social reformer Raja Ram Mohan Roy fought against sati system in 1829⁴. Governor Lord William Bentinck banned this practice in Bengal presidency and also declared this practice of Sati as illegal and punishable by criminal courts by enacting the Bengal Sati Regulation Act 1829⁵. In post independent period India Sati System was not curbed effectively but after independence legislature took serious steps by introducing a special law commission of Sati Act 1987. After that now in most areas of India Sati System is forgotten.

5. Abolition of Child Marriage

According to New York Times report the origin of child marriages in India to be the Muslim Invasions that began more than 1000 years ago⁶. In Indian law child marriage is a marriage where woman is below the age of 18 or the man is below the age of 21. According to Unicef Child marriage is a form of violence against children. Indian Prohibition of Child Marriage Act was enacted in 2006⁷. This act also introduced Child Marriage Prohibition Officer and extended the powers of family courts to decide the matter under the prohibition of Child Marriage Act. This Act also enhanced the punishment up to two years rigorous imprisonment or fine up to 2 lakhs or with both.

6. Widow Remarriage

The Hindu widows Remarriage Act 1856 was the first major social reform legislation after the abolition of Sati System. This Act legalized the remarriage of Hindu widows in all jurisdictions of

³ The Untouchability Act of 1955

⁴ Ishwar Bhatt.P, " Law and Social Transformation , Eastern Book Company, First Edition, 2009

⁵ Classels, Nancy G(1965) 'Bentinck Humanitarian and Imperialist-The Abolition Of Suttee'.

⁶ The New York Times (May 11, 1998)

⁷ Prohibition of child Marriage Act 2006.

India under East India Company Rule. This Act was drafted by Dalhousie and passed by Lord Canning⁸. Before that all the upper castes of Hindus disallowed the remarriage of widows to protect their family honor and property. But this act provided legal safeguards against loss of certain forms of inheritance for remarrying a Hindu widow. This act especially targeted the Hindu Child widows whose husbands had died before consummation of marriage. Thus, this act empowered a Hindu widow to live a life.

7. Abolition of slavery and bonded labor system

Indian Slavery Act was passed in 1843 to remove slavery. According to sections 370 and 371 of Indian Penal Code it is an offence. Indian Constitution also gives protection from trafficking of human being and forced labor as a part of fundamental rights (Article-23)⁹. Within a few generations lower caste poor Indians enter and perpetuate a cycle of illiteracy and poverty, children often abandon school and join the work force.

8. Right to free and compulsory Education (Article 21 of Indian Constitution)

Honorable Supreme Court declared the Right to free and compulsory Education as a fundamental Right in ambit of Right to life under Article 21 in 1992. The Constitution was amended in 2002 by inserting Article 21A¹⁰ to implement the right to free and compulsory education of every child of age group of 6 to 14 years and inserted fundamental duties of parents and guardians. Free and Compulsory Education Act 2009 was put in force with free and compulsory education from 1 to 8 standards to every child of India on 1st April 2010.

9. Female Infanticide

Female infanticide is a common practice in all over India. In attempt to curb female infanticide Government of India enacted the Pre-Natal Diagnostic Techniques (PNDT) Act in 1994¹¹, which prohibits sex determination and also regulates prenatal diagnostic techniques to prevent misuse. To control sex selective abortions the government established a bureaucracy for controlling the sale and regulating the use of ultrasound machines. The government also amended the PC PNDT Act in 2003. The continual decline in the sex ratio with each National census questioned on effectiveness of this Act but in 2010 review of the PC PNDT Act the Public Health Foundation of India acknowledges data till 2006 reveal that almost states in India had not reported a single violation of the Act. Since it came into force according to former Health Minister Harshvardhan, "It is clear that the focus of the providers of the sex selection services has not worked through 20 years, we need to go into the root cause and build up a social movement.

In India Doctors are in a powerful and unique position and they have capability to disrupt the structural violence against women by refusing female feticide. Because of PC PNDT Act female to male ratio of 2011 has improved as compare to 2001 according to National Census of India 2011.

10. Right to Information – for effective governance

Right to Information Act was passed on June 2005 and came fully into force on 12th October 2005. Right to Information Act is a revolution because it makes the Government Offices reply to every citizen's questions¹². So, it is the best and landmark instrument of law regarding social change when honorable Supreme Court upheld the freedom of speech and expression and includes the right to know every act of public which is done in a public way by their public functionaries. Right to Information

⁸ Chakraborty Uma Gendering Caste Through a feminist lens.

⁹ Kevin Bales : New slavery, A reference Handbook.

¹⁰ Provisions of the Constitution of India.

¹¹ PC-PNDT Act 1994

¹² Noronha Fredrick (2010) Access to knowledge : A Guide for everyone.

Act 2005 has proved to be a strong legislation with good teeth because of effective implementation of the Act.

11. Public Interest Litigation (PIL)

The Public Interest Litigation is the concept of 'Locus Standi' that the whole society is not standing before the Court but some Jurists or social workers file the litigation behalf of society or public. Thus Public Interest Litigation is the use of the law to advance Human Rights, equality and also raised issues of broad public concern. Most important fact regarding Public Interest Litigation is that any of public-spirited person can approach the constitutional Courts and could bring to the court notice of blatant violations of fundamental rights of people who are incapable of being approaching the court themselves. PIL is the most important instrument to provide a platform to the vulnerable people to protect and practice their rights.

12. Maintenance and Protection of Muslim Women

The Parliament of India passed the Landmark legislation in 1986¹³ named 'The Muslim Women Act'. To protect the rights of Muslim women this act was passed by the Rajeev Gandhi Government to nullify the decision in the case of Shah Bano¹⁴. According to this case, when a Muslim divorced women is unable to support herself after the Iddah period that she must observe after the death of her husband or after a divorce during which she may not marry another man, the court is empowered to make an order for the payment of maintenance by her relatives who would be entitled to inherit her property on her death. The amount of maintenance shall be purely the discretion of the court. So under the Muslim Law a husband is obliged to maintain his wife and family.

13. Conclusion

Honorable Supreme Court has played a pivotal role for social change. Transformation of social system according to the need of the time in accordance with the mores and modes of the people is a matter of necessity. So only through the instrument of law social changes can be effectively brought out. Sociological problems are inter-connected rather than unreachable and law is a mirror to know how people are related to one another. Effective implementation of law as an instrument or device of social change should work in tandem with social and cultural life of Indian people. Transformation of social organization according to the need of the times and in accordance with the modes and civilization of the people is a matter of necessity. An outstanding balance between instrumentality of folkways and Law and mores of the people would really pave way for real justice in action and thus leads to empowerment of the society.

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¹³ Muslim Women Act 1986 with Rules Bare Act.

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