

## SOCIAL CHANGE AND LEGAL REFORM IN INDIA

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### ABSTRACT

The relationship between law and society in India has been shaped by historical events throughout the transition from colonial rule to nationalism. Throughout this passage, the frameworks of both the social and legal systems have changed. This process shows a clear mark of historicity; however, considering our observations of analogous interactions between law and society in the industrially developed western nations, a certain degree of shared experiences on a universal level is undeniable. Currently, the legal and social change processes in India, although largely distinct, exhibit certain similarities with industrially developed countries concerning the dilemmas and contradictions within the frameworks of law and society.

**Keywords:** Hindu Law, Indian Constitution, Special Law, Social Welfare, Social Legislation, Equality to all, Social Policy, Law

### INTRODUCTION

The Constitution of India guarantees that all citizens receive equal legal protection. Consequently, we must ensure not only that laws are fair but also that they are administered and enforced justly. Frequently, the legal systems are inaccessible for the impoverished and vulnerable groups. Nevertheless, in the pursuit of justice and welfare, it is essential to implement special measures to safeguard these vulnerable and marginalized groups, and one such approach is the creation of specific laws designed exclusively for social welfare, commonly known as social legislation. Due to a range of technological, economic, social, and political influences, personal and social disorganization manifests in various ways within our society. To address the effects of the disorganizations, these individuals, groups, and institutions require tailored strategies, initiatives, and interventions, with legislation being one such strategy. We possess particular laws concerning the care, safeguarding, and treatment of neglected, delinquent, and victimized children, the regulation and elimination of begging, welfare services for sex workers, adult offenders, and marginalized and underprivileged groups, among others. Social issues such as unethical trafficking and youth crime stem from our system, and social workers are the individuals who tackle these issues comprehensively. Social workers possess expertise and abilities to access resources that enable them to advocate for those whose needs are often neglected. Social workers can utilize law as an effective tool. In this process, social workers can significantly contribute to the administration of justice, particularly for marginalized groups. Social work can collaborate with the legal system to promote social justice for youth, rehabilitate prisoners, support sex workers, and assist marginalized communities, including SC/ST individuals and the economically disadvantaged, who require legal aid. Infact, social worker can carve out a meaningful and constructive role for themselves in the area of social legislation.

### Elements of Social Change:

The word "social change" is used in history, politics, economics and sociology. Social change is also an issue in social work, political science, history, sociology, anthropology, and in many social

sciences. Social change is being created by revolution, protest, politics, communities, and by direct action. Elements of social change can be separated as follows.

1. Physical or geographical
2. Biological
3. Economic
4. Cultural
5. Psychological
6. Technical
7. Population.

## **SOCIAL LEGISLATION A TOOL OF SOCIAL CHANGE?**

### **It's Potential for Change**

The British rule in India for the first time established the supreme authority of law in social matters, ensuring uniformity in law and social order which India did not have till then.

In the last century, we have had a series of legislation intended for bringing about significant changes in the status of women, children, scheduled castes and other such vulnerable groups on the one hand, whereas there were legislation for bringing reform in social institutions like family, marriage etc. on the other.

Since Independence a number of social legislations have been passed. We know many of the evil practices such as *sati pratha*, child marriage etc. may have still persisted, had they not been curtailed by timely suitable legislations. Social legislation, beset as it may be with drawbacks, has nevertheless helped us to shelve many of our outmoded traditional customs and practices.

### **Change in Status of Women**

For instance law has been instrumental in bringing about a change in the status of women. Equality of sexes has been ensured by our constitution and law has endowed many rights on women at par with men.

- ❖ A woman can acquire, hold and transfer absolute property in addition to Stridhana under the Hindu Succession Act 1956. The Act further gives the women the right of succession equal to that of male heirs.
- ❖ The Dowry Prohibition Act of 1961 requires the dowry amount to be transferred to the bride within three months from the time of the solemnization of the marriage. This property is her absolute property.
- ❖ The reforms in the marriage laws of Hindus have removed many disabilities traditionally imposed on women. It has abolished bigamy and divorce can now be legally claimed by a wife.
- ❖ Child Marriage Restraint Act 1929 has restrained child marriage.
- ❖ In matters of employment, a woman is entitled for equal pay as her male counterparts.
- ❖ A daughter can be given and taken in adoption under the Hindu Adoption and Maintenance Act 1956.

### **Abolishing the Caste System**

- Law also has been instrumental in bringing about structural transformation by abolishing the caste system.
- Both under the constitutional and statutory law birth into any caste is no longer a barrier to occupational choice.
- Abolition of untouchability by the Protection of Civil Rights has paved the way for social mobility.
- Many more such instances can be cited where the changes and reforms are brought through social legislations.

## **SOME LEGISLATION FOR SOCIAL CHANGE**

### **1. Scheduled castes welfare**

- a) The Protection of Civil Rights( PCR) Act, 1955
- b) The Protection of Civil Rights( PCR) Rules, 1977
- c) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
- d) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995

### **2. Empowerment of persons with disabilities**

- Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995
  - Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Rules, 1996.(External website that opens in a new window)
  - National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation
  - The National Trust Rules, 2000 and The National Trust Regulations, 2001.
- i. Rehabilitation Council of India Act, 1992.
  - ii. Rehabilitation Council of India Rules and Regulations, 1997(External website that opens in a new window)

## **Social Legislation in India before and after Independence**

A number of social legislations were made in India both before and after independence with a view to bring about social change. Some of these could achieve success while a few others still remain as dead letters. The legislations that secured public support and the support of social norms could become a great success.

For example, the Hindu Marriage Act was passed in 1955 enforcing monogamy and permitting judicial separation and divorce. Though polygamy was permitted among the Hindus, majority of the people practised monogamy only. Public opinion was in favour of monogamy.

### **Hindu Marriage Acts**

For a long time social reformers agitated that Hindu marriage should be monogamous. The Hindu women also resented the second marriage by a man when the first one was alive. Those who opposed

monogamy were branded as conservative, orthodox and selfish. When the Hindu Marriage Act was passed in 1955 it could get the support of the people and the opposition gradually died down.

The Hindu Marriage Act of 1955 could bring about a number of social changes. The Act abolished all caste restrictions as a necessary requirement for marriage. The Hindus of all castes have the same rights with respect to marriage. Intercaste marriages are now allowed. The Act provides for a secular outlook with respect to marriage and enables the registration of marriage. It enforces monogamy making both the sexes equal in marital affairs. It provides equal rights for both to get judicial separation and divorce on legal grounds. It treats various sects of people such as Jains, Buddhists, Sikhs, Veera Shaivas, Harijans, Girijans and many others as 'Hindus'. Thus, it paved the way for bringing about a uniform Civil Code for all the citizens of India.

### **The Hindu Succession Act 1956**

In the same way, the Hindu Succession Act of 1956 could attain success. The Act confers for the first time absolute rights over the property possessed by a Hindu woman. Both sons and daughters get the right of inheritance of property because of this Act. The Act removes the prejudice against women getting the property of the father. Since public opinion is in favour of women enjoying equal rights and opportunities, the Act could be enforced easily.

### **The Hindu Adoption and Maintenance Act of 1956**

It has been a step toward the upliftment of the status of women. It permits the adoption of a son or a daughter. It makes the consent of the wife necessary for adopting a child. It has also given the right to the widows to adopt. The Legislative Acts mentioned above could bring about changes in some areas of our life because they are backed by public opinion and current social norms and values. Whenever the social norms are ahead of the legal codes, it becomes necessary to bring the legal code into conformity with the prevalent social values.

Sometimes dominant minority groups may cherish some 'advanced' values and may bring pressure upon the legislative bodies to make legislations to enforce such values on masses. Such legislations become an active social force only when they are internalised by the people.

### **Social Legislation and Social Change**

Laws become legislation when they are made and put into force by law making body or authority. There are two views regarding the functions of the laws:-

- One view opines that law is the formal social control agency. Its aim is to design legal sanctions to minimize deviance and maintain social solidarity and social order
- Second view stresses on the dynamic role of the law. It insists that law must bring about social change by influencing people's behavior, beliefs and values.

### **Social change and the constitution of India**

Preamble is a key to open the statute and consists of source and objectives of the statute. Literally preamble means preliminary statement in writing or in speech or an introductory part of the statute. The word "Pre " means "before". " Amble" means "walk". Thus , it is known the word " preamble" means before walk.

The preambular declaration provides that we the people of India having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and Justice: Social, economic and political Liberty of thought, expression , belief, faith and worship. Equality of status and of

opportunity and to promote among them all. Fraternity assuring the dignity of the individual and the unity and integrity of the nation.

The Supreme Court of India in *Beru Bari's case*, 1969 observed that preamble is not part of the constitution and hence the parliament has no power to amend the preamble. Later, in *Kesavananda Bharati vs State of Kerala*, 1973 the Court held that there is no wrong in treating preamble as part of constitution.

### **Law as an Instrument of Social Change**

To understand the social change through law and legal system, it is pertinent to understand that the working of legal system in the light of political, social, economic perspectives which can be seen in the constitution of India. Law is a mirror to know how people relate to one another, their values, what they consider worth preserving in life, and how they define their own security.

### **Law and public opinion**

The law, which is molded through public opinion is thus the result of state action in accordance with the public opinion. Here it is necessary to remember that when Rajiv Gandhi government waned to bring defamation bill, because of the opposition to the bill in the public, the government dropped the idea. The public opinion is the reflection of the Peoples will. Public opinion becomes law.

## **SOCIAL LEGISLATION IN INDIA: AGE AT MARRIAGE, DOWRY AND DIVORCE**

### **1. Age at Marriage:**

As early as 1891 an Act was passed, under which consummation of marriage was prevented before the age of 12 years for a girl. However, this could not be enforced, and in 1929, the Child Marriage Restraint Act was passed, which is better known as the Sarda Act, after the name of Harbilas Sarda who campaigned for it.

Girls below the age of 14 years and boys below the age of 18 years were banned from marriage. Though such marriages were not invalidated, the Act had provisions for punishment of those responsible for bringing them about. This Act was applicable to all, irrespective of religion.

The Hindu Marriage Act of 1955 raised the minimum age for marriage to 15 years for the girl. But again, marriages violating the Act were only punishable by a 15 days' simple imprisonment, or a fine of up to Rs 1,000. Subsequently, these Acts have been amended further rising the age at marriage for girls to 18 and for boys to 21.

### **Dowry:**

Dowry is defined as any property or valuable security that passes directly or indirectly between the parties to the marriage at, before, or after the marriage as consideration for the marriage. According to the Dowry Prohibition Act of 1961, giving, taking, or even demanding dowry is punishable with imprisonment of up to six months or a fine of up to Rs 5,000, or both.

In case of a dowry death, a dying statement is considered good enough evidence to convict the offender. The 1961 Act has been made stricter. However, the menace of dowry continues to ruin many lives. Some women's groups are actively working for the abolition of the dowry system.

### **Divorce:**

While divorce and widow remarriage were prevalent among the so-called lower castes, these were not allowed among the upper castes. As a result of Sanskritization, many lower caste people also gave up

these practices to climb up in the ritual hierarchy of castes. But with the changing times, these rules have been relaxed.

Under the Hindu law, divorce can be sought by either of the spouses on grounds of adultery, desertion, cruelty, unsound mind, venereal disease, leprosy, mutual consent, and either partner not being heard of as being alive for a period of at least seven years. Additionally, a wife can ask for a divorce if the husband marries a second time (bigamy) or is convicted for rape, sodomy, or bestiality.

### **Social legislation is required for social change**

The main aim of social legislation is to change and reorganise society by improving its social and economic condition. Each individual of the society has to be given equal rights and equal opportunities. Social legislation aims to address social problems through legislative means, and initiates process of social reform and social change based on sound social rules. Since the process of social change in fast social legislation also provides desired direction to changes.

- Protection and promotion of rights,
- Prevention of individual and social disorganisation,
- Proactive action,
- Pioneering social reforms in social institutions and,
- Progressive social values for desired social order.

### **Social Worker and Legal Assistance to Women**

Our Constitutional guarantees equality of sexes in Articles 15 and 16 which grants social favours by exercising positive discrimination. Further, special antidotes through various laws have been given to them so as to make equality of sexes a way of Indian life. However, there is still a great need of legal assistance for women. What we need is a strong lobby of active lawyers, socially concerned persons and groups who can stimulate further legislative action with the help of professional social workers and women welfare organisations. Efforts have to be made to use the judicial process to redress the wrongs done to the women both inside and outside their families even today.

### **Legal assistance to women should include the following:**

- If laws are unsatisfactory, creating a lobby for suitable reforms.
- Filing test cases, class action or public interest action in suitable cases
- Making available free or subsidized legal advice and also services of a lawyer of her choice to a woman litigant in a deserving case.
- Providing financial aid to meet out of pocket expenses of litigation.
- Formulating programme for advice and conciliation in family disputes under which the parties to the dispute can be summoned, their problem discussed by trained family counsellors and reconciliation attempted.
- Creating emergency cell where women in urgent need of help can go and, if necessary, stay for some time and receive legal advice and help e.g. women who are subjected to physical abuse, harassed for money or dowry by their in laws, thrown out of their matrimonial homes and need protection for their children.

## **Potential for Social Changes**

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Since Independence a number of social legislations have been passed. We know many of the evil practices such as *sati pratha*, child marriage etc. may have still persisted, had they not been curtailed by timely suitable legislations. Social legislation, beset as it may be with drawbacks, has nevertheless helped us to shelve many of our outmoded traditional customs and practices.

## **Problems Plaguing in Indian Society**

The Indian society was plagued with a number of social and religious evils that led to deterioration of the society to magnanimous extent. Some of these problems are:

- Caste intolerance
- Illiteracy
- Female infanticide
- Prohibition of widow remarriage
- Child marriage
- Sati
- Untouchability

## **LEGISLATIONS**

### **Abolition of Sati**

The biggest achievement of the British was the outlawing of the practice of Sati in 1829 A.D. when William Bentick made it a crime to associate in any way, the burning of widow on her husband's pyre; earlier the British rulers were afraid of arising anger of the orthodox Indians.

It was only after Ram Mohan Roy and other enlightened Indians and the missionaries, who tried to reform the society, the government agreed to take this humanitarian step. Many Indians in the past, including Akbar and Aurangzeb etc. had made unsuccessful attempts to suppress this evil practice. But only Bentick succeeded in outlawing this practice.

### **Female Infanticide**

The practice of killing female children at the time of their birth had prevailed among some of the Rajput Clans and other castes, because of the paucity of young men who died in large numbers in warfare. The prevalence of custom of dowry was also a reason for female infanticide.

Laws prohibiting female infanticide had been passed in 1795 A.D. and 1802 A.D., but they were enforced only by Bentick and Hardings. With the ban on this practice, infanticide disappeared gradually.

## **Widow Remarriage**

Child marriage was also a common affair at that time. Many of them had to live their life in isolation in case of death of their husbands.

Ishwar Chand Vidyasagar started a campaign for widow remarriage and in this campaign; Raja Ram Mohan Roy also actively supported him. With their efforts, Widow Remarriage Act was passed in 1956 A.D. Though its practice implications were negligible, but it tried to change the old prevailing dogmatic notion.

## **Education**

It was receiving more attention in 19th century, as it was very powerful tool for changing dogmatism of Indian society. Introduction of printing press revolutionized the educational institution of Indian. This educational atmosphere started the work and this became the basis of modern education. Thus pressure was set on the government to open educational institutions.

All this resulted in the awakening of Indians. Love for independence and patriotism took birth in the mind and heart of Indians.

## **Other Acts**

- In 1929 A.D. Sharda Act was passed which made child marriage illegal.
- In 1872 A.D. inter-caste marriage was made legal.

These reform movements strengthened the stream of National Consciousness. Caste was now considered to be an obstacle to social progress.

The Indian society started getting rid of many evils, though it took time. The social evils were attacked and people adopted a total and collective attitude in attacking these social legislations.

## **UNINTENDED CONSEQUENCES OF LEGISLATIONS**

Legislation or any other governmental agency has its own inability to pre-determine the consequences of politically sponsored changes. Legislation has its own limitations in inducing significant qualitative changes by coercion. Of course, men may be deterred by coercion from doing something that they might like to do. They may be encouraged by the government to work at their trade, pursue their scientific investigations, treat sick patients, etc.

People cannot, however, in the same ways be induced either to want to be creative or to act for long in ways that are contrary to their established cultural attributes. It is for this reason the governmental efforts to increase national birth-rates through legal means having failed. Its efforts to establish racial equality through legislation have failed.

Similarly, no legislation can be made to make a people religious or to deprive them of an established religion; to change their sex morals, to improve domestic harmony, to substitute one custom with another, and so on. Legislations can be made by governments to sanction changes that have already occurred. In fact, in the long run, legislations are made for sanctioning changes. But legislations cannot be made in the social field directly. They cannot fix the course of social changes in a predetermined fashion.

## **CONCLUSION**

India has a recorded legal history starting from the Vedic ages and some sort of civil law system may have been in place during the Bronze Age and the Indus Valley civilization. Law as a matter of

religious prescriptions and philosophical discourse has an illustrious history in India. Emanating from the Vedas, the Upanishads and other religious texts, it was a fertile field enriched by practitioners from different Hindu philosophical schools and later by Jains and Buddhists. Secular law in India varied widely from region to region and from ruler to ruler. Court systems for civil and criminal matters were essential features of many ruling dynasties of ancient India. Excellent secular court systems existed under the Mauryas (321-185 BCE) and the Mughals (16<sup>th</sup> – 19<sup>th</sup> centuries) with the latter giving way to the current common law system.

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