
LAW AS AN INSTRUMENT OF SOCIAL CONTROL AND SOCIAL CHANGE

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ABSTRACT

Law is framed and altered from time to time for the benefit of society which means a set of rules and regulations formed by the legislature where as Social Change is the alteration which has good and bad effect on society depending upon situation. The Relationship between law and society is wider concept. It focuses on the way that the law has been implemented and its effect on society after implementation. This Research Paper trying to brings out the constitutional Amendments, Legislation which were enacted by government to ensure the safety of society and attainment of social changes in a good manner which facilitates society as a whole.

Keywords: Society, Social Change, Law, Constitution, Legislation.

Introduction

Society cannot exist at any time unless there is no conformity with order and law, and individuals live according to a certain set of norms whose selfish impulses are tempered by the welfare needs of society as a whole. To control significant deviations from social norms. “Social Control is the way in which the social order as a whole coherently stands on its own—how it functions as a whole in shifting equilibrium.”¹ Such control is essential at any point in society because it is essential for providing social compatibility, building solidarity and ensuring the continuity of a social group or society. India is a complex country with many distinct ethnic groups residing there. As a result of this diversity and the fact that Indian society has many different traditions, customs, and cultures, the impact of Indian society on its citizens is far greater than in other countries. Both historically and currently, the nation has used the law as a powerful tool to effect social change. Several judgments dealing to social issues have also been rendered by the Indian courts, making people aware of the laws that are in place to shield them from social issues.

In the light of Constitution

The constitutional Makers enacted the Indian Constitution on January 26, 1950, with the intention of transforming India. Part III of the Constitution, which gives citizens certain rights that must be regulated in order to bring about sociological change throughout the entire country, contains a list of fundamental rights that are incorporated in the Constitution. The Constitution was created as a fundamental law to guide the implementation of all other laws in the nation because Indians had been oppressed for a number of years prior to independence.

As drafting committee of constitution- **Dr BR AMBEDKHAR**² has correctly pointed out that “*the Constitution of India can be amended as and when the society calls for it other than the basic structure of the Constitution*”. In *Re Beruberi Case* in 1960, the Supreme Court declared that the Preamble is not a part of the Constitution. But later on in *Keshvanand Bharti v. Union of India* 1973 it was held that Preamble is the part of Constitution.

Social issues like poverty, discrimination, forced labour, untouchability have been deeply rooted in Indian society for several years. After the Constitution was enforced, these social issues were taken into the concern to be resolved and it is indeed true that India has overcome

¹ According to the sociologist McIver

² President of Drafting Committee

several social problems affecting the people and the nation at large. The Indian Constitution majorly had been brought about to maintain a balance between individual freedom and promulgation of social justice in the nation. It can be said that collectively Part III and Part IV of the Constitution together has been a driving force to bring in a social revolution in the country and therefore they formed a conscience for the Constitution.

Necessity of changing the law

Indian judiciary has generally been found to be alive to the needs of social thinking. The courts have brought and their fresh implications and added new dimensions to the law.

As rightly quoted by Justice P N Bhagawati “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”. To show the instrumentality of law on social change, it is necessary to study some special changes that have taken place in India, because nothing is permanent but change is permanent.³

The People who use the Social Reformer to change Society

1. The Raja Ram Mohan Roy -sati system campaign.
2. Ishwar Chandra Vidhyasagar: education for women and widow remarriage
3. Guru Nanak Dev—He promoted harmony, equality, and the oneness of God among Hindus and Muslims.
4. Swami Dayanand Saraswati: Equal access to education for women

Abolition of Slavery and Bonded Labour System

To remove slavery from India in 1843, Indian Slavery Act was passed and it further declared it as an offence by sections 370, 371 of the Indian Penal Code 1860. Art 23 of the constitution of India protects trafficking of human being and forced labour as a part of fundamental rights. Though many attempts had been taken to curb the issue of bonded labour it could be effectively done only through the Act.

³ <https://www.worldwidejournals.com/indian-journal-of-applied-research>

Abolition of Sati System

The widow's life is either burned or interred alongside her husband's body according to the Sati system. Since ancient times, becoming a sati was regarded as a tremendous honour by Hindus. Indian social reformer Raja Ram Mohan Roy began to oppose these customs in 1812. The society was unable to put an end to the practice because it was seen as a part of its traditions and customs. On December 4th, 1829, the law had power over it. Lord William Bentick, the governor of Bengal presidency lands, publicly outlawed the practice by issuing a decree designating the practice of sati, or the burning or burying of Hindu widows, as unlawful and punishable by the criminal justice system.

Sati was not adequately controlled in India after it gained independence. The Commission of Sati Act, 1987, was a serious step taken by the legislature in dealing with those who aid sati and made it an exemplary offence punishable by the death penalty. It is now a system that is forgotten among the majority of India. The laws enacted during colonial rule fell outside the purview of social law. They were only interested in these laws because of the popular sentiment and certain social reformers.

Widows Remarriage

Hindu society forbade widows from remarrying in order to preserve the honour and wealth of their family. Ishwar Chandra Vidyasagar spearheaded the campaign to get the British government to establish a law permitting Hindu women to remarry. The Hindu Widow Remarriage Act was enacted in 1856 as a result of this allowing Hindu widows to remarry and creating legal protections against losing specific inheritance rights when a Hindu widow remarries. As a result, it enabled a Hindu widow to lead a life.

Prohibition of Child Marriage

In India, the practice of child marriage was strongly opposed by all religious groups. Numerous reformers made various attempts, but they were ineffective until a law was passed. In 2006 Prohibition of Child Marriage Act replaced the Hindu Child Marriage Restraint Act. It expanded the authority of the family court to make decisions about matters covered by the Act and added a prohibition on underage marriage. The act also increased the penalty to two years of hard labour, a fine of up to Rs. 2 lakh, or both. Child marriage is in one-way exploitation against the girl child. In an age when children should pursue education, they are married in

order to remove responsibilities on the part of the parents and society. The impact of the same on the child is severe. The legal force was necessary in order to remove this social issue from society because society was in need of the same. Therefore legislation was brought in for the society to follow in order to create a social change.⁴

Elimination of Child Labour

Preventing a child from enjoying his childhood is a grave crime. The Factories Act 1881 was the first one to prohibit employment of child below the age of 7 years and working hours were limited. Child Labour (Prohibition and Regulation) Act was passed in the year 1986 which generalizes the age of child up to 14 years for the purpose of prohibition of child labour. The Act has also listed 17 prohibited occupations and 65 processes in Schedules A & B.

Right to free and compulsory education

In 1992 the honorable Supreme Court declared the right to free and compulsory education as a fundamental right in the ambit of 'Right to Life' under Art 21 of the constitution. In 2002 the constitution was amended by inserting Article 21A to implement the right to free and compulsory education of every child aged between 6 – 14 years and inserted fundamental duties of parent and guardian. In 2010 Right of Children to Free and Compulsory Education Act 2009 was put in force with effect from 1st April to provide free and compulsory education from 1 to 8th standard to every child. Thus it can be seen that law protects the life of the children.

Public Interest Litigation

The Honorable Supreme Court has adopted the broader approach of the rule of locus standi to utilize the initiative and deal the public spirited persons to move the courts to act for the general or group interest even though they may not be directly injured in their rights. The most important fact regarding PIL is that of relaxing the locus standi concept, any public spirited person can approach the constitutional courts and could bring to the courts notice of violations of Fundamental Rights of people who are not capable of being approaching the courts themselves. PIL is a concept aimed at increasing the accessibility to justice and forms a part of constitutional jurisprudence in India.

⁴ <https://blog.ipleaders.in/can-law-used-instrument-creating-social-change/>

Right to Information

The best and most important pieces of legislation pertaining to social change date back to 1975, when the Supreme Court declared that the right to freedom of speech and expression includes the right to be informed of every public act carried out by their public servants. The Right to Information Act of 2005 has proved to be a strong legislation with good teeth because of effective implementation of the Act.⁵

Female Infanticide

To save the life of girls in India GOI enacted the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994. The act banned prenatal sex determination. Effective implementation of law as an instrument or device of social change should work in tandem with social and cultural life of people of India. Transformation of social system according to the need of the times and in accordance with the modes and mores of the people is a matter of necessity⁶

Conclusion

As social issues take time to remove, the law should be strong enough to accelerate that change. Rape laws have been laid down but rapes are not decreasing. Every other day in the newspaper there will be a rape incident that has taken place. This clearly states that the laws that are already present are not strong enough to bring about social change. Racial discrimination and caste discrimination are being faced by the world until today. Protests, mass gatherings, everything are failing because the laws that are present are not having a strong root to bring in a social impact. Homosexuality has been brought to the mainstream but not many accept the same as it goes against the social norms. It is, therefore, necessary to address these social issues with stronger law enforcement so that people start taking the laws seriously and carefully.

Thus, social issues are interconnected as opposed to separated and law is a mirror to know how people are identified with each other. Effective implementation of law as an instrument or device of social change should work in tandem with social and cultural life of people of India. Transformation of social system according to the need of the times and in accordance with the modes and mores of the people is a matter of necessity. A striking balance between

⁵ <https://ccsuniversity.ac.in/bridge>

⁶ <https://ccsuniversity.ac.in/bridge>

instrumentality of law and folkways and mores of the people would really pave way for real justice in action and thus leads to empowerment of the society.⁷

⁷ <https://blog.ipleaders.in/can-law-used-instrument-creating-social-change/>