
RECENT JUDGEMENTS UPHOLDING SOCIOLOGICAL JURISPRUDENCE

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ABSTRACT

Law is an important tool of social transformation. It is often described as the vehicle of social change. This is the basic idea upon which the Sociological school of jurisprudence rests upon. The sociological approach to study is concerned with how law affects the society and vice-versa. It focuses on the study relating to how social developments affects legal institutions, law as a form of social control, the interaction between legal cultures and how law drives social change. As far as India is considered, the Sociological school of jurisprudence has much relevance in terms of realizing the social and economic goals. In each field of life, reforms are brought about by the law makers of the Country. To the same the judiciary in India had contributed a lot. Judicial activism in India has done a tremendous job in bringing about positive changes in the various spheres of life. The author through this article intends to analyse some of the recent judgements wherein the judiciary has upheld the Sociological approach to law.

Keywords: Law, Social change, Judiciary, Judicial activism, Recent judgements

INTRODUCTION

Jurisprudence is defined as the research or philosophy of law. The legal system prevailing at a particular time is reflected in the discussions by the jurists of the political circumstances existing at that time. Likewise, there are different schools of jurisprudence namely, the analytical, philosophical, historical, sociological and realist schools of jurisprudence.

The Sociological school of jurisprudence is concerned with how law affects society and vice-versa. It is based upon the notion that law is an important tool of social transformation. This approach discusses about the interdependence between law and society. The important contributions of this school were the theories of Social Solidarity and Social Engineering.

The theory of Social Solidarity propounded by Leon Duguit explains the interdependence of man on his other fellow man. No one can survive without the depending on other men. Hence the social interdependence and cooperation are very important for human existence. The objective of the law is to promote Social solidarity between individuals. And Leon Duguit considered that law as bad law which does not promote social solidarity. Further, he also said that every man had the right and duty to promote social solidarity.

Roscoe Pound gave the theory of Social Engineering in which he compared lawyers with the Engineers. Engineers are required to use their engineering skill to manufacture new products. Similarly, social engineers are required to build that type of structure in the society which provides maximum happiness and minimum friction. Social Engineering is the balancing the conflicting interest of Individual and the state with the help of law.

As far as India is considered, Sociological approach to law is of much relevance because it has helped a lot in the realisation of the social and economic goals set by the Constitution. Nowadays we can see in all aspects of life, reforms are brought about by the legislative and judicial persons.

ROLE OF JUDICIARY

Through its liberal and pro-active interpretation of the constitutional provisions, the Supreme Court has been a crucial institution for social transformation. According to sociological legal theory, the Supreme Court of India has contributed significantly to social change by making justice accessible to the general public. Judiciary through the tool of judicial activism has

brought about many changes in the lives of people, which in turn resulted in a social transformation.¹

Judges at several times have played the role of social engineers. In the *Kesavananda Bharti v. State of Kerala*² it was quoted that “A modern state has to usher in and deal with large schemes having social and economic content. It has to undertake the challenging task of what has been called social engineering, the essential aim of which is the eradication of the poverty, uplift of the downtrodden, the raising of the standards of the vast mass of people and the narrowing of the gulf between the rich and the poor... often when the individual rights clash with the larger interests of the society, the state acquires the power to subordinate the individual rights to the larger interests of society as a step towards social justice.”³

In several other instances, judiciary has acted as a catalyst in bringing social changes. The Indian judiciary rejected the British concept of dictatorship in the legal framework and evolved new devices to balance the conflicting needs of the society. This movement was largely possible due to the efforts of the Indian judges like Krishna Iyer, P.N. Bhagwati and others who rejected the Anglo-Saxon jurisprudence as being anti-people, draconian, and cancerous.⁴

In the words of Justice Bhagwati, “Today a vast revolution is taking place in the judicial process, the theatre of law is fast changing and the problems of the poor are coming to the forefront. The court has to innovate new methods and devise new strategies for the purpose of providing access to justice to large masses of the people who are denied their basic human rights and for whom, freedom and liberty have no meaning. Thus, a new sociological jurisprudential approach wherein law is committed to the service of the people, law as a vehicle of social transformation and above all with social objectives, is geared to remove the social disabilities, discrimination and inequalities. The courts have by now acquired a firm social philosophy founded on humanism, socialism and secularism of the Constitution. The emergence of anti-poverty and egalitarian jurisprudence in India seems to have resurrected judicial conscience as the contemporary judicial process is more in tune with the social philosophy of the founding fathers of the Constitution rather than with the erstwhile British colonial rulers. It is now people oriented, social justice oriented, effect and result oriented and

¹ Prabhat Kumar & Nidhi Jain, Law as an Instrument of Social Engineering: The Indian Perspective, 5 INT’L J.L. MGMT. & HUMAN. 814 (2022).

² Kesavananda Bharti v. State of Kerala, AIR 1973 SC 1461

³ ibid

⁴ Tarun Jain, Sociological Jurisprudence and Social Change: Tracing the Role of Supreme Court of India, 5 HIGH CT. Q. REV. 86 (2009).

above all human rights oriented leaning more on Swadeshi values by ridding of the alien, abstract, legalistic and individualistic slant from Indian law. The fundamental thing for the Indian judges and jurists to remember is that law must work in order to deliver the much-needed results or desired goals.”⁵

Cases where Judiciary has upheld Social Jurisprudence:

In the case of *Sarla Mudgal vs Union of India*⁶ the Supreme Court embracing the concept of sociological jurisprudence said that marriage celebrated under one personal law cannot be dissolved by the application of any other law. This observation matches up with the concept of Pound wherein he said that in case of conflict between interests, the interest of the same plane will be weighed together.

*Shayara Bano v. Union of India*⁷ case the Supreme court of India struck down the Muslim practice of triple talaq having a majority of 3:2. The majority opinion of the court was that the triple talaq was a sinful practice under the Muslim religion which violated the fundamental rights of the women. The minority were of the opinion that although the practice was theologically arbitrary and sinful, it was a part of the personal law governed by the Shia sect.

In this case, we can see the different approach of the judiciary whereby the majority adopted the social approach upholding the rights of the women, and erasing the long-existing discrimination in the patriarchal society. On the other hand, the minor ones applied the traditional approach of interpreting it to be untouched as it comes under the personal laws. So, the Social jurisprudential approach of the Apex court upheld the fundamental right of the women striking down the arbitrary practice of triple talaq under the Muslim personal law.

The Supreme Court in *Navtej Singh Johar v. Union of India*⁸ unanimously held that section 377 of the Indian Penal Code is unconstitutional because it violates fundamental rights incorporated under Articles 14, 15, 19, and 21 of the Indian Constitution. The Apex court while deciding the constitutionality of Section 377 a colonial-era law applied the sociological approach of jurisprudence instead of the traditional jurisprudential approach.

⁵ Ibid

⁶ Sarla Mudgal vs Union of India, AIR 1995 SC 1531

⁷ Shayara Bano v. Union of India, (2017) 9 SCC 1

⁸ Navtej Singh Johar v. Union of India, (2018) 10 SCC 1

In *Joseph Shine v. Union of India*⁹ the Supreme Court decided on the constitutional legality of Section 497 of the Indian Penal Code, which criminalized adultery. The court stated that any system that treats a woman with indignity, unfairness, inequality, or discrimination invokes the wrath of the Constitution. Here also we can see the sociological mindset.

Recent cases upholding Sociological approach

Migrant Crisis in the Covid-19 pandemic¹⁰ is one of the recent examples wherein the judiciary showcased its sociological approach. The COVID-19 pandemic revealed the failure of the government towards protecting the rights of the migrant labourer's going back to their homeplace. The news media, print media were flooded with the images of the labourer's travelling back to their homeplaces on foot. The Madras High Court and Andhra Pradesh High Court took cognizance of the similar matter and notified their respective State government as well as the Central Government regarding the arrangements to be made for the labourers sending them back to their respective places in a dignified manner. The Sociological approach of the courts made the government bend accessing the subsistence rights of the migrants.

Buddhadeva Karmaskar vs. State of West Bengal¹¹ is a landmark judgment that paved the way for securing the rights of sex workers. This landmark judgment is a startling example of how sex workers are mistreated and murdered at the hands of demonic people who treat them as mere commodity. It conveys the social message that one should not be tolerant of such inhumane acts in a civilized society. This case highlights the miserable condition of the sex workers, that the work they do, is not because they enjoy doing it, but because poverty drives them to do so. Since their profession is attached to a social stigma, it doesn't mean that they do not have the right to live with dignity.

Unless and until prostitution will not be recognized as a profession in the eyes of law, sex workers will continue to be exploited at the hands of people who look down upon them. To facilitate the prevention of such heinous crimes, the Supreme Court took a Suo moto cognizance of this case and framed guidelines for safeguarding the rights of sex workers.

⁹ Joseph Shine v. Union of India (2018) 2 SCC 189

¹⁰ Jesline, J., Romate, J., Rajkumar, E. et al. The plight of migrants during COVID-19 and the impact of circular migration in India: a systematic review. Humanit Soc Sci Commun 8, 231 (2021)

¹¹ Buddhadeva Karmaskar vs. State of West Bengal, 2022 SCC OnLine SC 704

This judgment did not just shake the conscience of the general public but also inspired and brought social change.

The Supreme Court's ruling in the case of *The State of Jharkhand v. Shailendra Kumar Rai*¹² commented that “the so-called two finger test has no scientific basis; it instead re-victimizes and re-traumatizes women. It is patriarchal and sexist to suggest that a woman cannot be believed when she states that she was raped, merely for the reason that she is sexually active.”

*X v. The principal secretary, health and family welfare department*¹³ is the recent judgement declaring that unmarried women also have an equal right to abortion through this, the constitutional rights of all women are protected irrespective of what social conditions they may be from. It is thus a welcoming change to all women to know that the judiciary is protecting the autonomy over their bodies and what they choose to do with it. The transcending form of interpretation is the one required for this day.

*Vineeta Sharma v. Rakesh Sharma*¹⁴ judgment was limited to coparcenary property and not the self-acquired property, therefore dilemma with regards to daughters right over self-acquired property yet prevailed.

Then came *Arunachala Gounder (dead) v. Ponnu Swamy's*¹⁵ case where Supreme Court held that the self-acquired property of a Hindu male dying intestate would devolve by inheritance and not succession and a daughter would be entitled to inherit such property, or property obtained in the partition of a coparcenary or a family property.

Both these judgements do give a new definition to the status and rights of female. Indeed, It has rightly been said that “equality begins from home” and for a democratic country like ours it is very essential that we try every possible method to eradicate such gender discrimination in our country and decisions like these definitely pave the road ahead.

In *Shabnam Jahan & Ors. v. State of Maharashtra*¹⁶ the Bombay High Court set aside an order disallowing a woman from adopting her sister's child on the ground that she was a single

¹² The State of Jharkhand v. Shailendra Kumar Rai, 2022 SCC Online Sc 1494

¹³ X v. The principal secretary, health and family welfare department, 2022 Latest Caselaw 779 SC

¹⁴ Vineeta Sharma v. Rakesh Sharma, (2020) AIR 3717 (SC)

¹⁵ Arunachala Gounder (dead) v. Ponnu Swamy, 2022 SCC Online SC 72

¹⁶ Shabnam Jahan & Ors. v. State of Maharashtra, 2023 LiveLaw (Bom) 192

working woman and wouldn't be able to give personal attention to the child. The judge's views displayed a medieval conservative mindset on family, the High Court said

The court took strong exception to the comparison between a working woman and housewife, and commented that "the comparison done by the Competent Court between the biological mother being a housewife and the prospective adoptive mother (single parent) being a working lady reflects a mindset of the medieval conservative concepts of a family.

When the statute recognizes a single parent to be eligible for being an adoptive parent, the approach of the Competent Court defeats the very object of the statute."

The judiciary has even decided the reservation matters by upholding the sociological jurisprudence. In *Janhit Abhiyan v Union of India*¹⁷ the Supreme Court upheld the Constitutional validity of the 103rd Amendment Act of the Constitution which introduces reservation to the economically weaker sections of the society under Articles 15(6) and 16(6) with a 3:2 majority.

In this case the majority interpreted the amendment in such a way that it fulfils the preambular goal of rendering economic justice to all. Whereas the minority signifies the historical essence of reservation as a reparation to those invariably discriminated by virtue of their caste.

The Supreme Court of India, has begun hearing on the issue of same sex marriage (*Supriyo @ Supriya Chakraborty & Anr. v Union of India*¹⁸). The Court, in various judgements such as have already recognised the rights of the members of LGBTQ+ community. Also, the only impediment which was left i.e., criminalisation of S.377 of Indian Penal Code, 1860 has also been struck down. Therefore, the Supreme Court of India should now provide positive right by granting declaration of marriage equality rights to all people including to the same sex couples. The members of LGBTQ+ shall not be stigmatised and should be assimilated within the society. The assimilation of members of LGBTQ+ will only happen after state accepts the same sex marriage.

CONCLUSION

From the above discussions it can be concluded that the Indian judiciary has great role to play in the process of social change. It is no denying fact that the Supreme Court of India, has been

¹⁷ Janhit Abhiyan v Union of India, 2022 SCC OnLine SC 1540

¹⁸ Case Number: W.P. (C) 1011/2022

instrumental in this regard which is sine qua non for any society. The Supreme Court of India plays a very active role, may be referred 'activist role' by giving landmark judgements in various cases which help the society to achieve its goals.

But sometime this pro-active role of the judiciary crosses its boundaries. The principle of Separation of Power provides the boundary of work for every domain of the State, executive, legislature and, the judiciary. The over interference in the work of each one's domain can create a situation of tension within the state. Sometimes, the Judges while exercising their judicial activism cross the lines supersede the boundary of the legislature by exercising the delegated power of legislation and start making laws. and then it is termed as judicial overreach.

So, the Judges need to put a balance while exercising such an approach and adhere to the judicial restraint so as not to excessively interfere in the domain of the legislature by exercising social jurisprudence.