

Law and Social Transformation - A Study with Special Reference to India

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ABSTRACT: Law is a dynamic instrument fashioned by society to achieve the harmonious adjustment of human relations by elimination of social tension and conflicts. Social changes are necessary for the development of the society. These changes can be facilitated by the tool of law, otherwise, it will be very difficult to clear the hurdle of custom and usage. The objectives of this paper are to understand the meanings of the terms “law” and “social transformation,” which studies the social problems of societies and their solutions through a legal approach. The law of any civilized country is not definite, but changes according to the needs of society. The path of social change in India has been charted out by the constitutional provisions of the preamble, fundamental rights, directives principles and Article 368. In this paper, we aim to demonstrate that the instrumentality of law and social change is necessary to study some special changes that have taken place in India, through judicial interpretation and amendment of law for social transformation. These changes includes the abolition of Sati System, prohibition of child marriage, maintenance laws, free education, right to information, registration of marriage, recognition of live-in relationships, juvenile justice, protection of LGBTQ rights, and protection of rights of Muslim women in marriage.

KEYWORDS: dynamic, social transformation, preamble, fundamental rights, custom and usages

Introduction

Since the existence of society, there has been a rule that good is always accepted and bad is prohibited. This rule exists and will be there till the end of civilization. In our society, each person’s act is either good or bad. In the ancient period, our society was governed by the customs and morality. But, when society was replaced by State, morality was also replaced by the law. If we want to change any existing custom in our society, it is to be changed by the law only. Social transformation is a unique subject that requires change in the fabric of society. The problems of the societies and their solutions can be found through a legal approach. In fact there are two modes of change:

- i) Law changes the society
- ii) Society changes the law

Law of the land compels the society to be changed according to the law. Whenever any question of law arises before the judiciary, the judiciary on the basis of the law of the land forces the society to be changed accordingly. Secondly, society changes the law means that law is made by society for its governance through legislature or the customs and usages. The legislature enacts the law according to the needs of the society because law is for the governance/desire of the society. When any custom or usage set by the society has been held valid by the court of law, it is said that the society has changed the law. On the other hand, if the Court found that custom or usage are immoral, or unconstitutional, then the society has to be changed according to the law. So, if we say the both modes of changing the law, it shows that there is transformation of society. Change is the rule of Nature, and it is said that law is a dynamic concept. The law of any civilized country shall not be static but shall change according to the needs of the society. If the law is definite, we cannot think about the development of the country. The concept of ‘law as an instrument of social change’ treats law as an independent variable that influences or causes changes in society. One approach is to focus on formal law, in the form of statutes, landmark judicial opinions, Constitutions, and the like, to investigate how changes in formal law may bring about social change. A second approach follows the legal realist traditions expanding on the conception of ‘law’ to include

the law in practice in courts, bureaucratic settings, and other settings. In this view, the law includes not only the formal language of the statute, but also how that language is implemented, interpreted, and understood by institutional actors in the state or by individuals in everyday life (Albiston and Leachman 2015).

Objective of the Research Paper

Law is a dynamic instrument fashioned by society for the purposes of achieving harmonious adjustment of human relations by elimination of social tension and conflicts. Social changes are necessary within society, for development of society. It can be made by the tool of law otherwise it will be very difficult to clear the hurdle of custom and usages. The objective of this paper is to understand the meaning of term Law and social transformation, which studies the social problems of societies and their solutions through a legal approach. Law of any civilized country is not definite, but changes according to the needs of the society. By keeping into mind the needs of the society and the development of the nation as whole in light of Constitutional provisions which had been inserted by the framers of our Constitution. The path of social change in India has been charted out by the Constitutional provisions of the preamble, the Fundamental rights and the Directives Principles. By giving due consideration to social transformation, Article 368 had been part of the Indian Constitution. In this paper, we aim to demonstrate that the instrumentality of law and social change, it is necessary to study some special changes that have taken place in India through judicial interpretation and amendments of laws for social transformation i.e., Abolition of Sati system, Prohibition of child marriage, Maintenance rights to Muslim women, Free education as fundamental right, Right to Information, Public interest litigation, Registration of marriage, Recognition of live-in relationship, the Criminal law (Amendment) Act 2013, Juvenile Justice Amendment Act 2015, the recent Criminal law (Amendment) Act 2018, the recent decision on LGBT by the Supreme Court of India and Protection of Rights on Marriage Act 2019.

Definition of Law

It is very difficult to define law but not impossible. The law regulates the behavior of the individual in society. Law is a system of rules which a particular country or community recognizes for regulating the actions of its members and which it may enforce by imposition of penalties. The most commonly accepted definition of law is given by Blackstone as,

“Law as rule of conduct, prescribed by the supreme power in the State, commanding which is right and prohibiting what is wrong. Jurisprudentially, law consists of rules prescribed by society for the governance of human conduct.”

Law not only lays down the norms which are acceptable to a given society, it also lays down the norms, which the society should adopt in the interests of its own welfare. Customs or usages that develop within a society over time are shaped into law for its governance. An acceptable custom thus become law, and anyone who defy such customs or norms may commits a crime or an act against the code of conduct in society. In a leading American case of *Marbury v. Maddison*, it was observed that the Constitution is the fundamental and paramount law of the nation, and it is the duty of the Court to say what the law is. Furthermore it was held that a law repugnant to the Constitution is void. If there was a conflict between a law made by Congress and the provisions in the Constitution, it was the duty of the Court to enforce the Constitution and disregard the law. In the case of *State of M.P. v. Ghanshyam Singh*, it has been observed by the Supreme Court that the law regulates the social interest and arbitrates conflicting claims and demands. So, the law as a cornerstone of the edifice of order, should meet the challenges confronting the society. In *Keshwananda Bharti v. State of Kerala* it has been observed that the law in order to be legitimate and legal, must also satisfy the mandates of the Constitution of India. The Constitution precedents cannot be permitted to be transformed into weapons for defeating the hopes and aspirations of our teeming millions, half-clad, half-starved, half-educated. These hopes and aspirations

representing the will of the peoples can only become articulate through the voice of their elected representatives.

The Constitution not only designed to meet the needs of the day when it is enacted but also the needs of the altering conditions of the future. The law in order to be legitimate and legal, must also satisfy the mandate of the Constitution of India.

Necessity of Changing Law

If the law fails to respond to the needs of changing society, then either it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore constantly be on the move adapting itself to the fast-changing society and not lag behind. The progress of every society is dependent upon the proper application of law according to the needs of the society. Mere enactment of particular legislation cannot solve the problems of the society unless the judges interpret and apply the law to ensure that the benefit of law shall reach the right persons in the society. It the judge, who infuses life-blood into the dry Skelton provided by the legislature and creates a living organism appropriate and adequate to meet the needs of the society (Malik and Raval 2012). In the case of ***Keshvananda Bharti v. State of Kerala***, the Supreme Court observed that,

“no generation has monopoly of wisdom nor has it a right to place fetters on future generations to mould the machinery of Government according to their requirements. If no provisions were made for the amendment of the Constitution, the people would have recourse to extra Constitutional method like revolution to the change of the Constitution.”

While accepting the need of amendment to the Constitution according to circumstances Dr. B.R. Ambedkar in the Constituent Assembly has remarked that,

“One can therefore safely say that the Indian federation will not suffer from the faults of rigidity of legalism. Its distinguishing feature is that it is a flexible federation.”

In the same debate Pt. Jawahar Lal Nehru, said,

“While we want this Constitution as solid and permanent as we can make it, there is nothing permanent in the Constitution. There should be certain flexibility. If you can make anything rigid and permanent, you are stopping the growth of the nation. In any event we could not make this Constitution so rigid that it cannot be adapted to changing condition. When the world is in period of transition what we may do today may not be wholly applicable tomorrow.”

While the Constituent Assembly was discussing on the point of the flexibility of the Constitution, it had also inserted Article 368 to the Constitution, which states that any part of the Constitution may be amended by adopting the appropriate procedure, except destroying the basic structure of the Constitution. It shows the acceptance of the need of changing the law, even the law of the land, according to the needs of the society. In our society there are many conflicting interests. The law is a very important mechanism that brings balance in our society. The important function of law is to reconcile such conflicting interests in our society. India has adopted the principles of social engineering so as to make a balance between the individual interest and social order, so as the progress of the society is insured. Law is a dynamic concept; it must be changed according to the needs of the society.

“Law is not a mausoleum. It is not an antique to be taken down, dusted, admired and put back on the shelf. It is like an old but still vigorous tree, having roots in history, yet continuously taking new grafts and putting out new sprouts and occasionally dropping dead wood. It is essentially a social process, the end product of which is justice and hence it must change with changing social values. Otherwise there will be estrangement between law and justice and law will cease to have legitimacy.” (Justice P.N. Bhagwati, *Motilal Padmapat v. State of Uttar Pradesh*, AIR 1979 SC 621)

There are two kinds of society one is static, which fails to evolve law from certain stage and another is progressive society, which always go developing laws by new methods.

Path of Social Change in India

The Constitution, unlike other Acts, is intended to provide an enduring paramount law and a basic design of the structure and the power of the State and rights and duties of the citizens to serve the society through a long lapse of ages. It is not only designed to meet the needs of the day when it is enacted but also the needs of the altering conditions of the future. It contains a framework or mechanism for resolution of constitutional disputes. It also embeds its ideal of establishing an egalitarian social order to accord socio-economic and political justice to all the sections of the society assuring dignity of person and to integrate a united social order assuring every citizen fundamental right assured in the part III and part IV of the Constitution. In the interpretation of the Constitution, words of width are both a framework of concepts and means to achieve the goal in the preamble. The path of social change has been charted out by the constitutional provisions of the Preamble, the fundamental Rights, and the Directive Principles. This trilogy is the conscience of the Constitution.

The Preamble is a guiding light in the interpretation of the Constitution. It embodies and expresses the hopes and aspirations of the peoples. The preamble aims at securing to all citizens social, economic, and political justice, liberty of thought, expression, belief, faith and worship and equality of status and opportunity. It further aims to promote fraternity among all of them, assuring dignity of individuals and unity of the nation. According to Article 13(2),

“The State shall not make any law, which takes away or abridges the rights conferred by Part-III and any law made in contravention of this clause shall, to the extent of the contravention, be void.”

Further the Directive Principles of State policy embodied in part IV of the Constitution reflects the modern liberal thinking about the welfare State. The Directive Principles of the State policy are the guiding mirror for in a democratic socialism State. According to Article 38,

“The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.”

In the case of ***Minerva Mills v. Union of India***, The Supreme Court observed that,

“The dynamic provisions of the Directive Principles of the State Policy fertilize the static provision of the Fundamental Rights because it is the Directive Principles of the State Policy that nourish the roots of Democracy.”

Social Change Through Law

Law cannot stand still; it must change with the changing social concepts and values. If the law fails to respond to the needs of the changing society, then either it will stifle the growth of the society and choke its progress, or if the society is vigorous enough, it will cast away the law which stands away from its growth. Law must therefore constantly be on the move adapting itself to the fast-changing society and not lag behind (*National Textile workers Union v. P.R. Ramakrishnan* 1983). Law should not be like old antique piece, which are dusted and kept on the shelf but it must be like a vigorous tree, firmly rooted in history but still putting out new grafts, where old branches fall down and the new branches take their place. This process has been going on and will continue to be going on. Indian Constitution provided the wide scope for the change of law to meet the changing requirements of the society. The progress of society dependent upon the proper application of law according to the needs of the society. A society cannot remain static. It keeps on moving with all economic, scientific, and technological developments. Therefore, the law to meet the changing requirements of society should keep on evolving itself. Law shall be a flexible instrument of social order. Social changes are necessary within society, for the development. But this change can be made by the tool of law otherwise it is very difficult to clear

the hurdle of custom and usage. In every society social change are necessary and possible if it takes place by the instrument of law. There is no value of morality in the eyes of law (Malik and Raval 2012). To show the instrumentally of law of social change, it is necessary to study some special changes that take place in India, because change is the rule of nature and nothing is permanent, but change is permanent.

Abolition of Sati System

Sati was a practice among Hindu communities where a widowed woman, either voluntarily or by force, immolates herself on her deceased husband's pyre. The woman who immolates herself is, hence, called a *sati* which is also interpreted as a 'holy woman' or a 'good and devoted wife'. The first formal British ban was imposed in 1798, in the city of Calcutta only. The Indian reformer **Raja Ram Mohan Roy** started his own campaign against the practice. On 4th December, 1829, the practice was formally banned in the Bengal presidency land, by the 1st Governor General of British-ruled India, **lord William Bentinck**, by passing a regulation XVII of 1829. This Act was challenged by orthodox Hindus in Privy Council in London but was upheld in 1932, saying *sati* was a flagrant offence against society. In fact, the *sati* is a cold-blooded murder. During the years 1980 to 1983, many cases were reported from U.P., M.P., and Rajasthan. After the famous case of Devrala Village of Rajasthan, the legislature have taken serious steps, by introducing a special law for the abetment of Sati i.e. Commission of Sati (Prevention) Act, 1987. After the passing of this Act, there was a transformation in society, and now the Sati System has been forgotten.

Free Education as a Fundamental Right

Free and Compulsory Education made its way into the Constitution as a Directive Principle of State Policy under former Article 45. In the case of **Ms. Mohini Jain v. State of Karnataka**, the Hon'ble Supreme Court held that the right to education is a fundamental right under Article 21 of the constitution as it directly flows from "right to life". Article 21 A was inserted in Constitution via 86th amendment Act i.e. free and compulsory education for children of the age 6 to 14 years. On the other hand Article 51A (k), imposes the duty on every parent or guardian to provide opportunities for education to his child or ward between the age of 6-14 years.

Maintenance to Muslim Woman

In **Mohd. Ahmed Khan v. Shah Bano Begum**, case the Interpretation of Section 125 was in question. Maintenance "beyond the period of Iddat" was in question. Conflict of Laws: Muslim Law versus Secular Law of Maintenance which is reflected in the provision of Section 125 of the Criminal Procedure Code, (Divorced) Muslim Women can resort to Section 125 of the Criminal Procedure Code. Prior to the landmark judgment of Supreme Court in Shah Bano case, Divorced Muslim women did not have right to maintenance. This in the point of fact handicapped the situation of Muslim women as the husband according to Muslim law possesses the Authority to divorce from his wife whenever he wants whereas the woman lack this right. Hence, the said case led to the enactment of Muslim women (protection of rights on divorce) Act, 1986 which enables a divorced Muslim to have a reasonable and fair provision of maintenance from her husband and from the relatives who are entitled her property after her death after Iddat. The conflict regarding award of maintenance to divorced Muslim women between various High Courts was finally settled in case of **Daniel Latifi v. U.O.I.**

Right to Information

Right to information started in 1975 when the Supreme Court upheld that freedom of speech and expression includes the right to know every public act. This had been affirmed by the Supreme Court in case of **S.P. Gupta v. Union of India** that right to know is implicit in right to free speech

and expression and disclosure of information regarding functioning must be the rule. The RTI Act was enacted by the Parliament on 15.06.2005 and notified in the Gazette of India dated 21.06.2005. Right to information Act of 2005, is an Act to provide for setting out the practical regime of Right to Information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

Information means any material in any form, including records, documents, memos, e-mails, opinions, advice, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

Compulsory Registration of Marriage

Marriage is governed by personal laws in India, Christen Marriage Act of 1872, and Special Marriage Act of 1954, providing for the compulsory registration of a valid marriage but under Hindu law, registration was optional. Registration of Marriage: Section 8 of the Hindu Marriage Act of 1955 empowers the State Government to make rules for registration of a marriage between two Hindus. Registration enables the parties to prove the marriage in the event of disputes. In *Seema Devi v. Ashwani Kumar*, the Supreme Court held that the marriage of all persons who are citizens of India belonging to various religions should be made compulsorily registerable in their respective states, where the marriage is solemnized. Compulsory registration of marriage, if wisely provided for by means of carefully framed rules, can prevent many social evils such as child marriage and dowry.

Public Interest Litigation

In simple words, means, litigation filed in a court of law, for the protection of "Public Interest", such as pollution, Terrorism, Road safety, constructional hazards etc. Public interest litigation is not defined in any statute or in any Act. It has been interpreted by judges to consider the interest of public at large.

The first reported case of PIL in 1979 focused on the inhuman conditions of prisons and under trial prisoners. In *Hussainara Khatoon v. State of Bihar*, the PIL was filed by an advocate based on the news item published in the Indian Express, highlighting the plight of thousands of under trial prisoners languishing in various jails in Bihar. These proceedings led to the release of more than 40,000 under trial prisoners. Right to speedy justice emerged as a basic fundamental right which had been denied to these prisoners. The same set pattern was adopted in subsequent cases. A new era of the PIL movement was heralded by Justice P.N. Bhagawati in the case of *S.P. Gupta v. Union of India*. In this case it was held that "any member of the public or social action group acting bonafide" can invoke the Writ Jurisdiction of the High Courts or the Supreme Court seeking redressal against violation of a legal or Constitutional rights of persons who, due to social or economic or any other disability cannot approach the Court.

Prohibition of Child Marriage

Child marriage is one of the burning problems in Indian society. In India, despite amended laws advocating 18 as the legal minimum age at marriage for females, a substantial proportion i.e., every third adolescent girl has given birth to a child. Prohibition of child marriage Act of 2006 it applies to all citizens of India irrespective of religion. Age of the parties to the marriage must be at least 21 for boys and 18 for girls. The Act also enhanced the punishment to up to two years rigorous imprisonment, or with fine up to Rs.2,00,000, or with both.

Recognition of Live-in Relationship

Live in Relationships is “an arrangement of living under which the couples which are unmarried live together to conduct a long-going relationship similarly as in marriage”. In a living relationship the man and woman both live together like husband and wife but without getting married legally. The Protection of Women from Domestic Violence Act, 2005 provides for the protection, maintenance and right of alimony to a live-in partner, if she complains. In the case of *Lata Singh v. State of U.P.*, and *S. Khushboo v. Kanniammal & Anr*, the Supreme Court has held that living together is a right to life. The Court held that how can it be illegal if two adults live together cannot be illegal. Further in case of *Nanda Kumar v. The State of Kerala*, the Supreme Court again recognised live-in-relationship and stated that it would not be out of place to mention that ‘live-in relationship’ is now recognized by the Legislature itself which has found its place under the provisions of the Protection of Women from Domestic Violence Act, 2005.

Criminal Law (Amendment) Act, 2013

The gang rape of a 23 year old student in Delhi on 16th December 2012, (famously known as **Nirbhaya’s case**) led to a country wide agitation by women’s groups and feminists all over the country. Following the protests, a committee under the leadership of retired Justice Verma was constituted to come up with recommendations for the amendment to law relating to sexual offences. The committee submitted its report on 23rd January 2013. The Criminal Law (Amendment) Act of 2013 is an Indian legislation passed by the Lok Sabha on 19 March 2013, and by the Rajya Sabha on 21 March 2013, which provides Amendment of Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973 on laws related to sexual offences.

Juvenile Justice Amendment Act, 2015

A juvenile or child is any person who is below the age of 18 years. However, the Indian Penal Code specifies that a child cannot be charged for any crime until he has attained seven years of age. The Juvenile Delinquent is a child trying to act like a grown up. It is an expression of unsatisfied desire and urges. Juvenile Delinquency refers to the anti-social acts of children and of young people under age which means the failure of children to meet certain obligations expected of them by the society. Juvenile Justice (Care and Protection of Children Act of 2015) has been passed by Parliament of India amidst intense controversy, debate and protest on many of its provisions by Child Rights fraternity. It replaced, Juvenile Justice (Care and Protection of Children Act of 2000), and allows for juveniles in conflict with Law in the age group of 16–18, involved in Heinous Offences, to be tried as adults. The Act came into force on 15 January 2016.

Criminal Law (Amendment) Act, 2018

The Act came into force on 11 August 2018. An Act further to amend the Indian Penal Code, Indian Evidence Act, 1872, the Code of Criminal Procedure, 1973 and the Protection of Children from Sexual Offences Act, 2012, proposes to enhance punishment for rape of a child.

Salient Features of the Act are:

It stipulates a minimum jail term of 20 years which may go up to life in prison or death sentence, for the rape of a girl under 12 years. While perpetrators involved in the gang rape of a girl below 12 years of age will get life imprisonment or death. Amendment was made to sub-section (1) of S. 376, increasing the term of punishment for perpetrators, from 7 years to 10 years.

The amendment under section 376 additionally makes a provision for the fine to be payable to the victim. Section 439 of the Cr.PC was amended to make it imperative for the Courts in cases of grant of bail to an accused under section. 376(3), section 376 AB, section 376DA or section 376 DB of the IPC to give notice of the application for bail to the Public Prosecutor.

LGBT Rights in India

Lesbian, gay, bisexual, and transgender people in India face legal and social difficulties not experienced by non-LGBT persons. Sexual activity between people of the same gender was illegal under section 377 of Indian Penal Code, 1860. In 2009, the Delhi High Court decision in *Naz Foundation v. Govt. of NCT of Delh*, found Section 377 and other legal prohibitions against private, adult, consensual, and non-commercial same-sex conduct to be in direct violation of fundamental rights provided by the Indian Constitution. On 11 December 2013, the Supreme Court set aside the 2009, Delhi High Court order decriminalising consensual homosexual activity within its jurisdiction.

In the Landmark judgement *Navtej Singh Johar&ors.v. Union of India and others*. The Supreme Court of India has struck down 157-year-old law which criminalizes consensual homo sexual acts between adults. The Five Judge Bench has declared Section 377 IPC Unconstitutional, insofar as it criminalises consensual sexual acts of adults in private.

Muslim Women (Protection of Rights on Marriage) Act, 2019

Every religion has some social practices, such as Tripple Talaq and sometimes these practices are required to be changed by keeping in view the needs of the society. The landmark judgment on the sanctity of instant triple talaq, *ShayaraBano v. Union of India and Others* the Supreme Court observed that “*what has been bad in theology is bad in law too*”, and the right to freedom of religion is the fundamental right available to every citizen of India however such provision should not contravene the right to equality. Held that the practice of instant triple talaq is unconstitutional and hence cannot be allowed to prosper. Muslim Women (Protection of Rights on Marriage) Act, 2019 making instant triple talaq or talaq-e-biddat a punishable offence. The provisions of this Act are:

- Triple talaq will be recognized as a crime only when a woman or her blood relative files a complaint with the police.
- A compromise can be achieved only when the woman is willing and says so to a magistrate. A magistrate can grant bail only after the wife’s consent.
- The custody of children from the marriage will go to the woman.
- The mother is entitled to maintenance determined by a magistrate.

Conclusion

Nothing is permanent, but change is permanent. Law is a dynamic concept. It does not operate in a vacuum. As social norms and values change, laws must also change. The progress of a society depends upon the proper application of law according to the needs of the society. Social changes are necessary within society for the development. To clear the hurdle of custom or usage, which are hindrances for the development of the society, the law must be strict.

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