



Social Justice in Social Stratification: Human Rights, Law and PILs

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ABSTRACT

Human rights are the born rights with human dignity equal rights for men and women. Constitutional rights, directive principles and human rights protect and safe guard people social, economic, cultural, educational and political wise. These rights do justice for all people and act as weapons for their welfare. Public interest litigation cases are excellent examples for social justice. Social stratification in the society that society is divided into layers cast and class. The cast is divided into four according to Manu dharma Shastra (Brahmin, Kshyatriya, Vaisya and Sudra) and the fifth one the Panchamas added. The class is divided into lower class, middle class and upper class. The present paper focuses its attention on social jurisprudence in social stratified society with public interest litigation cases. The paper is based on secondary data.

KEYWORDS :

Introduction

Another type of stratification which is found in the cities is that of Classes. We find lower class- which falls below the poverty line. Then there is the middle class which comprises of the significant part of the society and is a major pillar of society. The middle class is made up of three parts- the lower middle class, the middle class and the upper middle class. And ultimately we have the elites who are the elites of the society. According to Marx they may be called the bourgeoisie or the capitalists who control the forces of market and power in the political institutions. M.N. Srinivas was a popular social anthropologist of India who developed the concept of 'Sanskritization' during his fieldwork. According to his view the caste system in India is not as rigid as has been pointed out by Dumont according to his principle of hierarchy. Cultural mobility exists between the castes and it is an open structure. According to Srinivas sanskritization is a process by which the lower castes move from impurity to purity by imitating the higher echelons, their life-styles and ideology of the twice born so that they can become like them through cultural mobility. (Prakhar Bisht, Mar. 2015)

Jurisprudence

In the words of Salmond: 'That branch of legal philosophy which is termed historical jurisprudence is the general portion of legal history. Historical jurisprudence is the history of the first principles and conceptions of legal system' (Jurisprudence, 11th edition, PP. 5-6). About the nature and functions of the Historical School of Law, G.G. Lee writes: "Historical Jurisprudence deals with law as it appears in its various forms at its several stages of development. It holds fast the thread which binds together the modern and the primitive conception of law, and seeks to trace through all the tangled mazes which separate the two, the line of connection between them. (V.D. Mahajan, 1987, P. 557).

The view of Savigny was that the *Volksgeist* formulates only the rudimentary principles of a legal system and could not provide all the necessary details (V.D. Mahajan, 1987, P. 557). There was another weakness of the thesis of Savigny. According to him, the only persons who talked of the *Volksgeist* were academic jurists who were not versed in the practical problems of legal administration (V.D. Mahajan, 1987, P. 557). The view of Savigny was that legislation was subordinate to custom and at all times it should conform to the *Volksgeist*. Savigny did not oppose legislation or reform by codification at some appropriate time in the future but his attitude was generally that of pessimism (V.D. Mahajan, 1987, P. 557).

Public Interest Litigation Cases

In the present scenario the society is though stratified into number of divisions the social justice is equal for all no discrimination against class and caste or religion anything. All are equal before law (Article 14, 15 and 16). The following are the PILs which shows social justices

and empowerment and equilibrium in Indian society

Case 1

A PIL has been moved in Delhi High Court seeking directions to the Centre and Delhi government to make it mandatory to play the national anthem in cinema halls before the start of every movie. As a bench of Chief Justice G Rohini and Justice Sangita Dhingra Sehgal before which the petition was listed, did not sit today, the matter was listed for hearing on October 17.

The plea has been moved by a law graduate who is currently pursuing a career in Bollywood.

The petitioner, Harsh Nagar, has claimed that the practice of playing the national anthem existed in Maharashtra and some southern states. He has contended that till a few decades ago, playing of the national anthem was mandatory after the screening of movies, but the "ritual" was stopped as people used to rush out of theatres immediately after the film was over. He said that he had written letters the Centre and Delhi government to make it mandatory to play national anthem before a movie starts, but has received no response till date (PIL in HC to Play National Anthem in Halls Before Film Starts Press Trust Of India , <http://www.news18.com>)

Case 2

Judiciary Spurred into action and laws were strengthened for sex offenders. Four out of the five accused in the horrific gang-rape case of Nirbhaya were convicted and given the death sentence. The case also resulted in the introduction of the Criminal Law (Amendment) Act, 2013 which provides for the amendment of the definition of rape under Indian Penal Code, 1860; Code of Criminal Procedures, 1973; the Indian Evidence Act, 1872 and the Protection of Children from Sexual Offences Act, 2012.

Case 3

Illegalising convicted MPs and MLAs (Lily Thomas V Union of India)- July 2013. Effected much-needed cleansing of legislative bodies. The Supreme Court of India, in this judgment, ruled that any member of Parliament (MP), member of the legislative assembly (MLA) or member of a legislative council (MLC) who was convicted of a crime and awarded a minimum of two-year imprisonment, would lose membership of the House with immediate effect. (<http://www.dailyo.in>)

Case 4

Meagre closure for controversial Ayodhya (Ayodhya Ram Mandir Babri Masjid case)-September 2010. Ruled that the land was to be divided into three parts. The high court of Allahabad had ruled that the disputed land in Ayodhya where the Babri Masjid was situated before it was demolished in 1992 shall be divided into three parts.

Two-thirds of the land was to be awarded to the Hindu plaintiffs and one-third to the Sunni muslim Waqf board. (<http://www.dailyo.in>)

Case 5

Foundation for a female workforce (Vishaka v State of Rajasthan)-1997. Definition of sexual harassment and guidelines to deal with it laid down. In this case Vishakha and other women groups filed a Public Interest Litigation (PIL) against State of Rajasthan and Union of India to enforce fundamental rights for working women under Articles 14, 19 and 21 of the Constitution. This resulted in the introduction of Vishaka Guidelines. The judgment of August 1997 also provided basic definitions of sexual harassment at the workplace and provided guidelines to deal with it. Hence the importance of the case as a landmark judgment (<http://www.dailyo.in>).

Case 6

Parliament limited by itself (Minerva Mills v Union of India)-1980. In this landmark judgment, the Supreme Court of India in 1980 strengthened the doctrine of the basic structure which was propounded earlier in the Keshavananda Bharti Case. Two changes which were made earlier by the 42nd Amendment Act were declared as null and void by the Supreme Court in this particular case (<http://www.dailyo.in>)

Case 7

Constitutional validity of individual rights upheld (Waman Rao v Union of India)-1981. SC ruled that parliament had transgressed its power of constitutional amendment. This case was a landmark decision in the constitutional jurisprudence of India. This case has helped in determining a satisfactory method of addressing grievances pertaining to the violation of fundamental rights by creating a fine line of determination between the Acts prior to and after the Keshavananda Bharati case (<http://www.dailyo.in>).

Case 8

Maintenance lawsuit sets precedent (Mohd Ahmed Khan v Shah Bano Begum)-1985. Shah Bano won the right to get alimony from her husband. The petitioner challenged the Muslim personal law. The Supreme Court ruled in favour of Shah Bano and granted her alimony. Most favoured it as a secular judgment but it also invoked a strong reaction from the Muslim community, which felt that the judgment was an encroachment on Muslim Sharia law and hence led to the formation of the All India Muslim Personal Law Board in 1973 (<http://www.dailyo.in>).

Conclusion

Either the king or ordinary people all are equal before law. Social justice is equal for any social stratified low or middle or higher caste or class. The case illustration given above belongs to fundamental rights and amendments are fair proceedings and land marks of social justice in Indian legal history.

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