



LAW AS AN INSTRUMENT OF SOCIAL CHANGE AND FOR EMPOWERMENT OF THE MASSES

KEYWORDS

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ABSTRACT

Law and social transformation is a very unique concept which highlights the studies and changes in social problems and their solutions through legal approach. Here "law changes the society" which means that the law of the land compels the society to be changed according to the law. When dispute arises the matter is brought before the judiciary, which applies the rule of law principle to change either the existing custom or law. Secondly society changes the law it means that the law is made by the society according to the requirement of the democratic institution. It can be brought out either by legislating function or by adopting customs and practices¹. Law has always been seen as an instrument that could bring out social change. An attempt is made in this paper to emphasize that though there are several devices to bring about a change and transformation in our society but for law none can be considered as the most effective and safest method.

Introduction

Interpretation of the word 'LAW'

According to Blackstone, "Law is a 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 the society for the governance of human conduct". Law of any civilized country is not definite, but changes according to the demand and circumstances of the society. Roger Cotter views "Social change is held to occur only when social structure - patterns of social relations established social norms and social roles changes".

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 interest of its own welfare. The rules or code of conduct which a society develops by experience shapes into law for the sake of uniformity, consistency, performance and sanction. An acceptable norm thus becomes a law. The departure there from is condemned as crime in criminal law but civil law becomes a code of conduct regulating the society.

REASONS ATTRIBUTED FOR SOCIAL TRANSFORMATION

Social transformation occurs due to several factors such as changes in technology, demography and ideology, changes in political life and economic policy and in legal principles or institutions.

American Judge Benjamin Cordozo said that the "Final cause of law is the welfare of society". Law should not be definite but must be transformable according to the requirement and necessity of the society. The law cannot remain immutable. The researcher is of the view that in a changing society law should march in tune with the changed ideas and ideologies. Social life has undergone changes because of communication revolution. Hence to keep in pace with the technological development, Law has to be competent for detection of various crimes and prevention of the same also. New acts like Information Technology Act has been brought, rules of evidence has been amended to recognize electronic transaction. Methods of providing remedies have undergone tremendous change with the growth of electronic commerce, cyber crime and internet.

Artificial insemination, test tube babies, surrogate motherhood and cloning, prenatal detection technique and abortion have challenged the values of family life. Apart from these, law plays a pivotal role in protecting the environment. The technological growth has created great pressure on the degradation of environment. As a consequence of this the legal system had to alter its legal strategies and introduce new principles, doctrines, mechanisms etc to protect the environment, human habitation and the civic life. Technology is a blessing and curse, to which law and society have to respond aptly. Apart from society and environment transformation also happens in the economics sector, culture religion morality social outlook and very many areas. Here again law weaves its way through economic life creating possibilities for economic development and placing constraints on the form of development through very many statutes, Ex: Intellectual Property Rights.

Interaction between law and social transformation

The researcher is of the opinion that law is the most effective instrument of social change but at times social changes becomes law. In India there are two main institutions which makes change in law, namely the legislature where new laws are enacted or amendments are done to the old acts to suit the need of the hour. The second institution is our judiciary, where interpretation of the rule of land and law of land coexist.

Foresight of framers of Indian constitution

Law should not be definite but must transform according to the requirement and necessity of the society arising out of passing of time. It is this foresight in mind father and main architect of the Indian Constitution Dr.Bhima Rao Ambedkar inserted Art 368 to the constitution which provides that "Any part of the constitution may be amended by adopting appropriate procedure except destroying the basic structure of the constitution". It reflects the acceptance of the need of changing the law even the law of the land when situation warrants.

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 Bhagwati "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.

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.

Abolition of Sati System

Sati' – meaning burning or burying live of widow along with the corpse of her husband. It was considered to be a great honor among Hindus to become a sati since ancient times. In 1812 Raja Ram Mohan Roy the Indian social reformer started against these practices. The practice could not be stopped by the society as it was considered as part of their customs and traditions. It was law which could control it on 4th Dec 1829. The practice was formally banned in Bengal presidency lands by governor lord William Bentick by a regulation for declaring the practice of sati or of burning or burying hindu widows as illegal and punishable by the criminal courts. In post independent India – sati was not curbed effectively. Legislature took serious steps by introducing a special law for the treatment of persons who abet sati and made it exemplary punishable upto death sentence under Commission of Sati Act, 1987. Now in most areas of India it is a forgotten system. These laws relating to sati, widow remarriage, child marriage were enacted due to public opinion. The laws made during colonial administration was out of ambit of sociological jurisprudence. They were interested in these legislations only due to various social reformers and public opinion.

Widows Remarriage

The Hindu society prevented remarriage of widows in order to protect their family's honour and property. It was the efforts of Ishwar Chandra vidyasagar who urged British to pass a legislation allowing Hindu women to remarry. In pursuance of this The Hindu Widow Remarriage Act was passed in 1856. Legalising the remarriage of Hindu widows and to provide legal safeguards against loss of certain forms of inheritance for remarrying a Hindu widow. Thus it empowered a Hindu widow to live a life.

Prohibition of Child Marriage

This practice of child marriage was vehemently seen in Indian society across various religious communities. Tough attempts were made by many reformers it turned futile until a law was enacted. The Hindu Child Marriage Restraint Act was substituted by the prohibition of Child Marriage Act 2006. It introduced child marriage prohibition officer and extended the power of family court to decide the matter under the Act. The act also enhanced the punishment upto two years rigorous imprisonment or with fine up to Rs 2 lakhs or with both

Elimination of Child Labour

Preventing a child from enjoying his childhood is a grave crime. The Factories Act 1881 was the first one of its kind to prohibit employment of child below the age of 7 years and working hours were limited. Very many legislations were made and finally we have Child Labour (Prohibition and Regulation) Act 1986 which generalizes the age of child upto 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 The 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 blatant 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.

Right to Information – For Effective Governance

It is best and landmark instruments of law regarding social change which started in 1975, when the honorable Supreme Court upheld that freedom of speech and expression includes the right to know every public act done in a public way by their public functionaries. Right to know is implicit in right of free speech and expression and disclosure of information regarding functioning of the government must be the rule. The Right to Information Act of 2005 has proved to be a strong legislation with good teeth because of effective implementation of the Act.

Female Infanticide

A study on the implementation of the Infanticide Act demonstrates that this particular legislation was a purposive legislation which has positive and negative sanctions, along with effective administrative mechanism, which led to substantial decrease in female infanticide practice. This could very well being understood as use of law as an instrument of social control.

The Supreme Court has also played a pivotal role as an institution of social change by the liberal and proactive interpretation of the constitutional provisions. From the sociological jurisprudence Supreme Court of India has played an important role in the social transformation with providing access to justice being made available to the masses. To conclude the researcher is of the opinion that it is only through the instrument of law the social changes can be effectively brought out and implemented thus empowering the masses.

Conclusions & Suggestions

The researcher concludes that social problems are interconnected rather than isolated and law is a mirror to know how people are related to one another. 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 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.

REFERENCE

1. Malik & Raval "Law and Social Transformation in India, Allahabad Law Agency, Fourth Edition 2014.
2. Sir William Blackstone, commentaries on the Laws of England, 9th Edition, Printed for W. Strahan, T. Cadwell in strand, and D. Prince, Oxford, 1783 pages 38-62.
3. Roger Cotterell, The sociology of law (2nd Edition Butterworths, London 1992) at pages 47-48.
4. Ibid pg 1-3.
5. Benjamin Cordozo, The Nature of Judicial Process, 1921.
6. W. Friedman, Legal Theory (5th Edition, Universal New Delhi, 1960 reprint 2003 at PP 60-68.
7. Ishwar Bhatt.P, " Law and Social Transformation , Eastern Book Company, First Edition, 2009 , Page 18.
8. Ibid Pg-5.
9. Chief Justice (then) P.N. Bhangawati held in his lordship address on the domestic application of Human Rights norms.
10. State of U.P V Raj Narain (1975) 4 SCC 428.
11. S.P. Gupta V UOI (1981) Suppl. Sec 87 at 273.
12. Devaprasad "Law and Social Transformation in India through the lens of Sociological Jurisprudence