

Legislation and social change

Gurpreet Kaur Brar

¹ Assistant Professor, PURC, MUKTSAR, Punjab, India

Abstract

Legislation becomes necessary to ensure order in the society. Society is changeful and dynamic. Social advancement of the nation largely depends upon the personal law therefore parliament thought of enacting laws in the field of family law. The Constitution of India gave a new voice to them, despite its limitations social legislation can be a powerful and effective tool in the hands of the law makers to fulfil their commitment to the weaker and the marginalised sections of the society. In modern period social changes are the product of new thinking on various matters where people feel social changes are need of the hour to meet the requirements of emergent situations.

Keywords: law, social change, enactment, society

Introduction

Law is binding because most people in society consider it to be. Some consider the content of the law to command obedience, which in turn, is seen as a compelling obligation. In modern societies laws are made to control the behaviour of the individuals and institutions whereas, as observed by Vidya Bhushan and D.R. Sachdeva, ^[1] "In primitive societies the folkways, mores and customs suffice to control the individual behaviour since there is unquestioned compliance with them but in modern civilized societies customs tend to loosen their hold with the result that laws are enacted by the State to control the individual. The transition from custom to law is just a part of the general rationalisation in modern society." Thus, law becomes necessary to ensure order in the society. Law controls and regulates actions of human beings in society. Laws are to be made for men and the law makers and its executors are to take into consideration the human and social aspect while making or executing it.

Past system of Indian society: Indian society was divided into four categories since time immemorial and the same system was and is well known as "Chaturvarna system ^[2]." During the nineteenth century, "evolutionary" theory and "stages of growth" models borrowed from the natural sciences ^[3] attracted an impressive following of some of the leading social scientists of this period ^[4]. Although there are many competing views today in both the natural ^[5] and the social sciences, ^[6] many models of development still incorporate elements of the "stages of growth" theories. In order to create a society which is free from caste prejudice and hatred, various social legislations were brought into force, few before independence and a couple of them after independence. But the part played by the provisions of Indian Constitution really outshined all other social activities done by social organizations or social movements. For the first time legal remedies for the wrongs committed against downtrodden people were made available to them in a perfect codified manner guaranteeing their honour and upliftment and at the same time providing for punishment to people who used to indulge in caste-based discrimination and outrageous conduct, humiliating and degrading the so

called low caste people of India. The new demands elevate the interests of "requirements" of the comparatively poor or underprivileged as contrasted with those who are "at home" with law; they pit the interest of "society" or of "humanity" against "excessive respect for individual rights and powers, especially proprietorial rights and powers; they tend to see men as social products and not as free moral agents, as people to be cured or helped rather than judged ^[7]. It reflected the basic features of the Indian social organisation; it was based on the principle of "inter-structural autonomy" ^[8]. The three basic components of the social system in India, the polity the system of stratification, and the cultural norms, were relatively autonomous and unique. In the studies of many scholars who have commented upon the indigenous legal system in India ^[9] one finds the focus on the diversity, and not the integrative principle, of the system. It may well be, as Bernard S. Cohn suggests, that' in the eighteenth century, Indian social relations operated in a "multiplex" manner, "a relationship in which a person tends to occupy the same position relative to the same set of other persons in all networks of purposive ties—economic, political, procreative, religious, and educational." ^[10] Customary law as used here is thus by no means limited to primitive societies ^[11]. Rather, all societies have customary law, a portion of which happens to be codified. By contrast, in a market economy, one would expect contract law and a more formal adjudicative system, both operating within the bounds of customary law, to prevail ^[12]. In a mixed economy, enacted law should be found operating side-by-side with a more restricted contract law, and the adjudicative bodies would probably include both courts and administrative or quasi-judicial institutions ^[13]. Finally, a strongly centralized and directed economy should be differentiated from the previous example in that the role of contract law would be greatly reduced and would be more compulsory than volitional ^[14].

Social change by legislation: Processes are ongoing change therefore they bound to change. Society is changeful and dynamic, it can never remain static. It may be said that change is a law of society. Unchanging society is a myth ^[15]. Percy Cohen (1979) has said that one might also distinguish

between minor changes and major or fundamental changes in a society ^[16]. For example Manu the Hindu law giver has given both positive and negative statement about the status of women in particular family and in society as a whole. He considered woman to be submissive to man in her entire life ^[17]. Laws are forms of social change emanating from political agencies. They are directed social change. Social legislations can be an effective means of social change only when the existing social norm is given a legal sanction. Unaided social legislation can hardly bring about social change. Law must bring about social change by influencing people's behaviour, beliefs and values. A number of social legislations were made in India with a view to bring about visible social change.

Social advancement of the nation largely depends upon the personal law therefore parliament thought of enacting laws in the field of family law and enactment like Hindu Marriage Act, 1955, Hindu Succession Act, 1956, Hindu Adoption and Maintenance Act, 1956, Hindu Minority and Guardianship Act, 1956 was passed. Further, in order to improve position of female, Hindu Succession Act was amended twice, First in 1976 and secondly in 2005. to remove social evils and disabilities prevailing in society. Legislation like Dowry prohibition Act 1961 (1986), Family Court Act, 1984, Domestic Violence Act, 2005, The SC and ST (Prevention of Atrocities) Act 1989, The Right of Children to Free and Compulsory Education Act 2009, Prevention of Corruption Act, 1988, the Information Technology Act, 2000, The Protection of Women from Domestic Violence Act, 2005, The Right to Information Act, 2005 etc. are evident proof of legal concern towards social transformation. The vast majority of people, especially women, are not aware of their inherent human rights that are being snatched away from them in the name of religion and culture. There is widespread silence towards many culturally sanctioned forms of violence and no worthwhile debate exists on such issues. It is an aspect of our patriarchal society that outweighs egalitarian laws. Such customs or traditions are used to perpetuate the status quo, and for men to dominate women. Lack of legal awareness among the majority of people, not just in the rural areas, but also in the urban areas has remained an impediment towards development and empowerment. The British rule in India for the first time established the supreme authority of law in social matters, ensuring uniformity in law and social order which India did not have till then. The legislation has the fast, radical, sudden and revolutionary effect which might even take place by surprise, has wide scope, affecting almost all people in a society. The social change by the instrument of law comes in urgency mode. The Constitution of India gave a new voice to them which kindled the hope for a dignified existence to them. Article 17 ^[18] of the Constitution abolished untouchability and forbidden its practice in any form by a special Law which was enacted in the year 1955. It was named as "The Untouchability (Offences) Act, 1955, (22 of 1955). The title of the Act was changed by the Parliament by an Amendment Act in 1976. The Act is now called "The Protection of Civil Rights Act, 1955." The expression 'Civil Right' is defined as 'any right accruing to a person by reason of the abolition of untouchability by Article 17 of the Constitution.' The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act No.33 of 1989) [11th September, 1989] was passed by Parliament providing stringent

punishments and more safeguards for the protection of the Scheduled Castes and the Scheduled Tribes. The Act was enforced i.e. from 30th January, 1990 vide S.O. 106 (E) dated 29th January, 1990. This Act does not repeal the Protection of Civil Rights Act, 1955. Both these Acts are now in force for the protection of the rights of Scheduled Castes and the Scheduled Tribes in India. Change is the rule of society. Society forms its own code of conduct, its norms to be followed by its members. Despite its limitations social legislation can be a powerful and effective tool in the hands of the law makers to fulfil their commitment to the weaker and the marginalised sections of the society. In modern period social changes are the product of new thinking on various matters where people feel social changes are need of the hour to meet the requirements of emergent situations.

Legislation for women empowerment: In pre-independent India education was restricted to males of upper strata, in the sense, male members of the Brahmin community. Even the Brahmin females were deprived of the opportunity of education. At present the change of scenario can be seen due to presence of social legislation. When girl child take birth the members of the society suggest the parent to provide her with level best education. That is why even the government facilitating the parents of girl child with bhagya laxmi scheme, mid-day meals provision of free books and uniform etc, now people are more interested to give education to their female children also ^[19]. The word 'empowerment' itself signifies the presence of 'power'. Women empowerment is nothing but enhancement of their position in power structure of the society ^[20]. Political empowerment of women has been defined by Datta as the "acquisition of the capacity as well as the adoption of needed strategy by women in order to exercise their powers more effectively and professionally, for their own development in particular and of the society in general" ^[21]. Significant changes occurred in the social, economic and political status of women during the 19th century in India ^[22]. There is also an irony that higher percentage voting women belong to the rural and poor background, when compared to the percentage urban and educated background women are less ^[23]. In Indian constitution, the concept of equality has been introduced through various provisions such as laws concerning marriage, divorce, widow remarriage, prohibition of sati, dowry, child marriage, etc., has helped in the foundation of present status of women. It has also improved higher education, economic status, empowerment and employment of women. A woman can acquire, hold and transfer absolute property in addition to Stridhana under the Hindu Succession Act 1956. The Act further gives the women the right of succession equal to that of male heirs. The Dowry Prohibition Act of 1961 requires the dowry amount to be transferred to the bride within three months from the time of the solemnization of the marriage. This property is her absolute property. The reforms in the marriage laws of Hindus have removed many disabilities traditionally imposed on women. It has abolished bigamy and divorce can now be legally claimed by a wife. Child Marriage Restraint Act 1929 has restrained child marriage. In matters of employment, a woman is entitled for equal pay as her male counterparts. A daughter can be given and taken in adoption under the Hindu Adoption and Maintenance Act 1956. Law is framed as the standards and rules to be followed for the peaceful living of the people in the society,

while social change is the alteration in the society which may have either good or bad impact in the society. Extreme endeavours were made by numerous reformers it turned worthless until the point that a law was ordered. The Hindu Child Marriage Restraint Act was substituted by the restriction of Child Marriage Act 2006. It introduced youngster marriage restriction officer and expanded the energy of family court to choose the issue under the Act. In 2002 the constitution was changed by embeddings Article 21A to execute the privilege to free and mandatory instruction of each kid matured between 6–14 years and embedded principal obligations of parent and gatekeeper³. In 2010 The Right of Children to Free and Compulsory Education Act 2009 was placed in drive to give free and mandatory instruction from 1 to eighth standard to each child.

Law brings change: There is a long-standing controversy over whether law leads change or follows change, i.e. embodies change which has already occurred ^[24]. Thus, some practitioners believe in the efficacy of rationally-construed reforming laws whereas others believe that only when popular custom has fully evolved could and should the legislators take action ^[25]. History provides numerous examples to support both positions. For instance, the legal concept of "limited liability" is an example of a law which clearly led change ^[26]. Such ideas lend perspective to the dilemma of the Indian middle class with regard to the challenges of modern national building on the one hand and the rhetoric of indigenization on the other. Studies have shown that the dualism of the two traditions has been functionally well adapted in the Indian legal system. Both historical and cultural factors may influence the way that law is viewed by society ^[27]. In a changing society. Law should walk tuned in to the changed thoughts and philosophies. Artificial insemination, unnaturally conceived children, surrogate parenthood and cloning, pre-birth location system and foetus removal have tested the estimations of family life. Aside from these, law assumes a critical part in ensuring the earth. The innovative development has made awesome weight on the corruption of environment. As an outcome of this the legitimate framework is needed to change its lawful techniques and present new standards, regulations, systems and so on to secure nature, human home and the urban life. Innovation is a gift and revile, to which law and society need to react appropriately. Aside from society and condition, change additionally occurs in the financial aspects sector, culture, religion, profound quality, social viewpoint and a lot of regions. Here again law weaves its way through monetary life making potential outcomes for financial advancement and setting imperatives on the type of improvement through a lot of statutes, Ex: Intellectual Property Rights.

Suggestions: The provision of legal advice can also play a crucial role in enabling people to claim their rights, identifying the pivotal legal issues affecting people. Those issues can ultimately end up becoming the basis for strategic litigation cases. In the last century, we have had a series of legislation intended for bringing about significant changes in the status of women, children, scheduled castes and other such vulnerable groups on the one hand, whereas there was legislation for bringing reform in social institutions like family, marriage etc. on the other. Law alone, cannot truly effective unless it is supplemented and supported by public opinion and administrative reforms. The most

imperative truth in regards to PIL is that of unwinding the locus standi idea, any open vivacious per-child can approach the established courts and can convey to the courts notice of obtrusive infringement of fundamental rights of individuals who are not fit for being moving toward the courts themselves⁴. PIL is an idea went for expanding the accessibility to equity and structures a piece of sacred law in India. Social issues are interconnected as opposed to separated and law is a mirror to know how people are identified with each other. Successful execution of law as an instrument or gadget of social change should work in tandem with social and social existence of individuals of India. Change of social framework as per the need of the circumstances and as per the modes and mores of the people involves need. A striking harmony between instruct-attitude of law and folkways and mores of the general population would truly clear route for genuine equity in real life and in this manner prompts empowerment of the society.

Conclusion: To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen. In the absence of accountability and lack of faith in the institutions Public Interest Litigation can bring justice within the reach of the oppressed or the poor masses. By doing so, the Judiciary can play a vital role in establishing the writ of law in the state. The State and the institutions should carry out broad based awareness and education campaign regarding legal rights of women and children. It is important to utilize various forms of local, folk or popular media to sensitize general public in a culturally competent way. For the decision makers and stakeholders, advocacy through electronic and print media should be done in a way that the campaign is sustainable. Television talk shows on the issue should be arranged to generate dialogue. The NGO's working for social transformation should impart the issues in its advocacy and awareness raising programs at various levels. Law is deeply implicated in our economic, political, and social worlds, pursuit of social change invariably involves an engagement with law. Social legislation, beset as it may be with drawbacks, has nevertheless helped us to shelve many of our outmoded traditional customs and practices.

References

1. Bhushan Vidya, Sachdeva. An introduction to Sociology, Kitab Mahal, 22-A, Sarojini Naidu Marg, Allhabad, 32nd edition, 1999, p638.
2. Swami Bhaktivendant Prabhupada AC, Bhagavad Gita as it is, Bhaktivedant Book Trust, Mumbai-49, 2000, 238.
3. See e.g. C Darwin. On the Origin of Species, 1859.
4. See e. g WG Friedman. Legal Theory, 1976.
5. One of the most recent critiques of Darwin's evolutionary theories appears in S J. Gould, Ever Since Darwin. Professor Gould argues that geological evidence does not support Darwin's theory of "gradualism" but rather suggests a biological history of relatively long periods of species equilibrium punctuated now and again by the comparatively rapid emergence of a new species or the sudden disappearance of a previously-existing species. A similar process of "change" has been asserted to exist in the physical sciences. See T.S. Kuhn, the Structure of Scientific Revolution (2nd ed. 1970), 1977.
6. ChodakS, Economic and Social Development.

7. See Eugene Kamenka, Alice Arh-Soon Tay. "Socialism, Anarchism and Law" in Robert Brown et al (eds.), *Law and Society: The Crisis in Legal Ideals* 55-51 (1978). It reflected the basic features of the Indian social organisation; it was based on the principle of "inter-structural autonomy".³ The three basic components of the social system in India, the polity the system of stratification, and the cultural norms, were relatively autonomous and unique.
8. See Yogendra Singh, *Modernisation of the Indian Tradition*. Also see an article by the same author "Legal System, Legitimation and Social Change" in S.D. Pillay (ed.), *Aspects of Changing India*, 1973, 381-409.
9. See BS Cohn. "From Indian Status to British Contract" *Jour. Eco. Hist.* 21-613-18 (1961); "Anthropological Notes on Disputes and Law in India" *Am. Anthropologist* Vol. 67, no. 6 (1965); Marc Galanter, "The Aborted Restoration of Indigenous Law in India" *Comparative Studies in Society and History*, vol. 14, no. 1 (1972); id., "The Displacement of Traditional Law in Modern India" *Journal of Social Issues*, vol. 24, no. 4 (1968); P.N. Kane, *Hindu Customs and Modern Law*, 1950.
10. BS Cohn. "From Indian Status to British Contract" id. At, 617.
11. See B. Malinowski, *Crime and Custom in Savage Society*, 1926.
12. See generally "Toward a Social Theory of Law", supra note 10 at 32-34; and "Human Interaction and the Law," supra note 11 at, 13-20.
13. See "Toward a Social Theory of Law," supra note 10, at 32-34. See also A.T. von Mehren, *TA« Civil Law System* 465-820 (1957); and R.B. Schlesinger (ed.). *Formation of Contracts: A Study of the Common Core of Legal Systems*, 1968.
14. See "Toward a Social Theory of Law, supra note 10. See also W.R. La Fave (ed), *Law in the Soviet Society*, 1965.
15. Kumar, *Social Change and Social Control*, Lakshmi Narain Agarwal, Agra, 2011, 38.
16. Cohen Percy S, *Modern Social Theory*, Heinemann Educational Books, London, 1968.
17. Chitkara MG. *Women and Social Transformation*, A.P.H., Publishing Corporation, New Delhi, 2001, 5.
18. Indian constitution, Article 17. "Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.
19. Chaudhary Vishwamitra Prasad. *Society in India*, ABD Publishers, Jaipur, 2011, 66-68.
20. Arunachalam P. *Economic Impact of Political Empowerment of Women in India*, Global Research Publication, New Delhi, 2011.
21. Rao D. Pulla, *Status of Women in Education, Employment and Social Exclusion*, Serials Publications, New Delhi, 2011.
22. Gandhiji CM. Dr. B.R. Ambedkar and women Empowerment, ABD Publishers, Jaipur, India, 2011.
23. Geetanjali. *Social Change in Modern Society*, Centrum Press, New Delhi, 2011, 144.
24. This group includes the "cultural" and "historical" schools as represented by Savigny and Maine as well as the "sociological jurisprudence" school represented by Ehrlich and Pound. Contemporary examples of this approach in the developed countries are the many trends toward decentralization such as the "little city halls" which have become increasingly popular. With respect to the less-developed countries, at least one school of political modernization thinking emphasizes the institutionalization of popular participation techniques. Compare D.E. Apter, *The Politics of Modernization* (1965) with S.P. Huntington, *Political Order in Changing Societies*, 1971.
25. For general theories on change see A. Etzioni and E. Etzioni (eds.), *Social Change* (1964); W. Moore, *Social Change* (1963); W. Moore and R. Cook (eds.), *Readings on Social Change*, 1967.
26. Following the introduction of the legal concept of limited liability, the amount of risk [capital available for business greatly multiplied. See W. Sombart.
27. See "Legal Culture," supra note 19, and J.W. Hurst, *Law and the Conditions of Freedom*, 1956.