

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 3

2022

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Law as a Tool for Social Transformation

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ABSTRACT

Law may be defined only as a set of rules and regulation which control or govern the way in which the society works, however law is much more than this. There is always a requirement to preserve a balance between society and the individuals living in it so that they can coexist interdependently, which will, in turn, aid in bringing about social change. This is why a society needs control since there is always a necessity to keep this equilibrium. A society is a diverse community that is home to individuals of varying classes, creeds, colours, genders, and historical and cultural backgrounds. It is vital that there be no difference generated among these people regardless of the identities they bring to the table in order to bring about homogeneity, which is something that can only be accomplished through the topic of law. Change in society is something that every society and its people look forward to since an improvement in any aspect is always something that should be welcomed. The rule of law is an essential component in every movement toward social transformation. In a lawless society, there is no harmony or peace between the members of the community and among themselves. Thus, law proves to be an important tool for societal transformation.

I. INTRODUCTION

Social Change has been defined by Encyclopedia Britannica as “...progress, evolution or transition within a culture or society”², this definition very accurately encapsulates what social change means, social change is the process by which a society or culture evolves and becomes more progressive and accommodating. Social Change may be a result of various sources³, some of which are Economic Development, Education, Technological Innovation, and Law etc.

Among the various sources for social change law is one of the most effective as it makes people bend to its will. While Economic development and technological innovation may take a while to result in concrete changes in the society, law is much faster and more efficient. For a long time, researcher have tried to explain the relation and interplay between law and societal change, I believe law can have tremendous impact on social change and societal development.

¹ Author is a student at Symbiosis Law School, Pune, India.

² Britannica, Social Change, retrieved 14th October, 2021, <https://www.britannica.com/topic/social-change>

³ Sources of Social Change, 15th October, 2021 <https://open.lib.umn.edu/sociology/chapter/20-2-sources-of-social-change/>

Law can be used as a measure to deter and punish unwanted activities, but along with being used as a tool to prevent such activities, law can also bring about positive and progressive societal change if used effectively. Law is not just a set of rules meant to be followed, rather it reflects what a society strives to become, while the laws of a primitive society may focus only on punishment, the laws of an advanced society are much more inclusive conferring certain rights to the people under its jurisdiction and also considering how people's lives will be affected in course of its implementation. Along with being an instrument to maintain societal stability and peace, it is also a very powerful tool for Social Change.

II. ANALYSIS

The ability of law to be used as a tool to bring about tremendous social change has been proved at the national and international level numerous times. There are several instances in India where law was used for the progression of the society. Some of the examples include instances where the judiciary stepped up for the citizens and some are where the legislature rose up to the occasion and came up with statutes which helped the society make advancements in various areas: -

I. Constitution of India

The provisions in the constitution are one of the most prominent examples of law affecting the society positively. Part III of the Indian Constitution describes the fundamental rights of citizens and consists of articles which bestow many unalienable rights to the Indian citizens. For instance,

- Art. 15 which prohibits discrimination on basis of religion, race, caste, sex etc.
- Art. 17 which abolishes untouchability.
- Art. 23 which outlaws bounded/forced labor and human trafficking.

These articles are a testament to what difference legal provisions can make. Even though there isn't complete eradication of discrimination, untouchability, human trafficking or forced labor but the progress made has been immense. Along with outlawing these activities the constitution also confers certain rights like Right to Freedom of Expression (Art.19), Right to Constitutional remedies (Art. 32), Right and illegal arrest (Art. 22) etc., these work in consonance to ensure that the citizens are not exploited by the state and can protect their interests by approaching the judiciary. Further there are various other individual rights provided to the citizens which allow them to live their lives to their fullest. While Part III of the constitution deals with fundamental rights of an individual, Part IV deals with Directive Principles of State Policy and social

welfare. These together ensure that socio-economic inequalities present in the society are eliminated.

III. JUDICIAL ACTIVISM

Even though the job of the judiciary is to settle disputes between parties, there have been instances where judiciary used its power in such a way to ensure maximum benefit to the citizens. The implied rights under Art. 21 are a fantastic example of this. The judiciary has interpreted Art. 21 in various cases to include implied rights such as Right to Live with Dignity⁴, Right to Privacy⁵, right to a clean Environment⁶, Right to clean water⁷, Right to Sleep⁸ etc. Although these were not expressly mentioned in the text of the constitution, the judiciary has found it necessary to bring these under the ambit of Art. 21 to ensure proper implementation of “Protection of life and personal liberty” as mentioned in the constitution.

Furthermore, Public Interest Litigation is another example of judicial activism. The concept of PIL has been borrowed from the USA, it is an instrument through which an individual can approach a court for redressal in cases where the public at large has been affected. It is not codified in any statute, rather it was slowly developed through the 1970s and 80s by justices like P.N Bhagwati and V.R Krishna Iyer. It was S.P Gupta vs. Union of India⁹ wherein, Justice P.N Bhagwati defined the Public Interest Litigation for the first time. Some of the most influential judgements of the 20th century have been the result of PILs. For example, Hussainara Khatoon vs. State of Bihar¹⁰, in this case there was a PIL filed by prisoners to draw attention to the situation of undertrials in Bihar, this led to the court ordering for a speedy trial and free legal aid, along with this the court also ordered for the general release of about 40,000 undertrials who had been in detention for much more than the maximum period. This is considered by many to be the first case of public interest litigation in India. In addition to this case there have been many other milestone judgements which were a result of PILs, such as Vishakha vs State of Rajasthan¹¹ (Guidelines regarding workplace sexual harassment, Vishakha Guidelines), M.C Mehta vs Union of India¹² (Ganga Pollution Case) etc.

⁴ Jeeja Ghosh v. Union of India, (2016) 7 SCC 761

⁵ K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1

⁶ Subhash Kumar v. State of Bihar 1991 AIR 420, 1991 SCR (1) 5

⁷ Narmada Bachao Andolan v. Union of India and Others, Writ Petition (C) No. 319 of 1994.

⁸ Ramlila Maidan Incident, In re, (2012) 5 SCC 1

⁹ SP Gupta vs Union of India AIR 1982 SC 149

¹⁰ Hussainara Khatoon v. Home Secretary, State of Bihar: Citation: 1979 AIR 1369, 1979 SCR (3) 532

¹¹ Vishakha vs State of Rajasthan AIR 1997 SC 3011

¹² MC Mehta vs Union Of India [1987] 4 SCC 463

IV. RIGHT TO INFORMATION

Right to Information comes as an implied right under Art. 19 of the constitution. This right was first recognized as a fundamental right in 1976 (Raj Narain vs State of UP). Despite right to information being considered a fundamental right for 29 years, the real impact of this provision was realized after the Right to Information Act, 2005. There have been various scenarios where RTI was used to get information regarding processes that were usually kept behind closed doors, away from the public eye, for instance, Krishak Mukti Sangram Samiti which is Assam based organization filed an RTI application and discovered large scale corruption. With the help of the RTI application filed by Krishak Mukti Sangram Samiti, officials were able to recover more than 9,000 quintals of rice and about 1,800 quintals of sugar, along with this recovery of illegally stored goods, this also resulted in the arrest of many corrupt officials.

V. THE CRIMINALIZATION OF CHILDREN MARRIAGE, CHILD LABOUR, SATI ETC.

The criminalization of child marriage, child labor and other unfair social practices through statutes. Law has been proved as an amazing tool to control these issues at the same time drawing attention to how these unfair practices prevailed in the society for such a long time.

Child Marriage- There had been an attempt by the in 1929 to counter the social evil of child marriage. Child Marriage Restraint Act, 1929 declared the marriage of girls under 15 years and boys under 18 years illegal. This was later amended in 1978 to increase the age for legal marriage to 18 for girls and 21 for boys. Despite this attempt, substantial change was only observed after the Prohibition of Child Marriage Act 2006, according to data by UNICEF, child marriages decreased by 20%, from 47% in 2006 to 27% in 2016¹³.

Child Labour- The Child Labour (Prohibition and Regulation) Act of 1986 defines a child as a person who hasn't completed 14 years of age. This act aimed at prohibition of children from working in hazardous and dangerous industries and to regulate work hours and condition of work. Child labour has seen a substantial decrease since then, according to census data the number of children involved in child labour has decreased from 1.36 crore¹⁴ to 43 lakhs in 2011¹⁵. And the Child Labour (Prohibition and Regulation) Amendment Act, 2016 will only add to this tremendous progress.

¹³ UNICEF, Child Marriage, <http://unicef.in/Whatwedo/30/Child-Marriage>

¹⁴ Government of India, State-wise Distribution of Working Children according to 1971,1981, 1991 and 2001 Census in the age group 5-14 years, Retrieved on 17th October 2021, <https://labour.gov.in/sites/default/files/Census1971to2001.pdf>

¹⁵ Government of India, State wise details of working children in the age group of 5-14 years as per Census 2001 and Census 2011, Retrieved on 17th October 2020 <https://labour.gov.in/sites/default/files/Census-2001&2011.pdf>

Sati- Sati is a historical Hindu practice in which a widow sacrificed herself by sitting atop her deceased husband's funeral pyre. Sati was criminalized by Commission of Sati (Prevention) Act, 1987 this act in conjunction with other legal provisions has almost led to the eradication of this practice.

VI. HOMOSEXUALITY

The people belonging to this community have been treated horrendously by many people. On top of all the horrible treatment of the people of the LGBTQIA+ community have endured from the society; they were further persecuted by the legal system due to the criminalization of homosexuality under Sec. 377 of IPC. However, the momentous judgement of Navtej Sing Johar vs Union of India¹⁶ decriminalized all kinds of consensual sex among adults. It was a very welcoming step by the SC and restored the faith of many people, especially belonging to the queer community, in the judicial system. If this is followed by further legalization of same-sex marriage, this could lead to tremendous amount of change in the India society.

VII. CONCLUSION

Even though law has been used effectively by the Indian judiciary and legislature to bring about positive change, there is still a lot that can be done especially in the field of environment and civil rights. These issues still require a lot of quick change and such change can only be brought about through the use of law.

Legal rules and decisions must be understood in the context that laws are always applicable in a society and can't be applied in a vacuum so, there is a certain amount of interplay between social change and law, and maybe there is an argument to make that social change might even affect the laws. But the power of the law to, bend people to its will, bring attention to necessary issues that are often neglected by the society at large and bring about positive societal development help us reach a conclusion, furthermore the various illustrations presented only add to the conclusion that law and its effective implementation has the power to bring about momentous social change.

¹⁶ Navtej Singh Johar v. Union of India, (2018) 1 SCC 791