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# Law as an Instrument of Social Engineering: The Indian Perspective

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PRABHAT KUMAR<sup>1</sup> AND NIDHI JAIN<sup>2</sup>

## ABSTRACT

*Laws are established for the purpose of governance, with the goal of protecting people's rights on one side and controlling their actions on the other. A human being, a social animal, is a consequence of the society in which he lives and is regulated by the desires that he wants to assert during his lifetime. Rights and interests seem to clash with each other, and what the concept of social engineering postulates is the method of balancing these interests and rights with each other in order to ensure optimal gain for all. In order to balance the needs of society to offer maximum value to the maximum number under the welfare state regime, social engineering was put forward by Roscoe Pound. In the context of the social engineering phase in India, this article analyzes constitutional provisions, laws and judicial decisions. The authors briefly address Roscoe Pound's theory of Social Engineering and relate its application to the Indian legal system as a tool of justice.*

## I. INTRODUCTION

Under the British Raj, India's legal system was far from being sociological. During the colonial era, society was dominated by the analytical approach of laws as commands without any correlation between law and society. Although the law was independent of any social needs, the function of the judiciary was often restricted to mere logical interpretation of the laws. The back seat of social justice was where laws were instruments of repression and exploitation. The need to move towards a more holistic social approach has therefore been well recognized.

Thus, on the basis of social, economic and political justice, it was post-independence that free India was created. The new approach paved the way for the common good and a new social order, but a pluralist state such as India desperately needed a model of reconciliation to sustain peaceful social reforms through legislation. Being initially a victim of exploitative rule and left at the juncture of religious-based division and rule, India was torn between numerous challenges. A necessity for a balanced approach focused on social needs was felt important for the legal theory to exist. The implementation of the sociological school of thought clearly reflects the post-Indian strategy of harmonizing interests in order to meet the shared goals and

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<sup>1</sup> Author is a LLM student at National University of Study and Research in Law, Ranchi, India.

<sup>2</sup> Author is a Assistant Professor at Jaipur National University, India.

social needs. Along with numerous laws and progressive judicial pronouncements, the Indian Constitution demonstrates the presence of social engineering being implemented to protect interests in this diverse modern society. This is the key area of examination of this paper.

### **(A) Hypothesis**

In the Indian legal system, the theory of Social Engineering has been a fruitful tool for resolving conflicting interests.

### **(B) Research OBJECTIVE**

The goal of the research is to examine the applicability and effect of the theory of social engineering on India's laws, constitutional provisions and case laws.

### **(C) Research Methodology**

In order to investigate the nature of the social engineering method in the Indian legal system, this review is a doctrinal analysis focused on the judgments of the courts, book, academic studies, journals and theories by philosophers.

## **II. THEORY OF SOCIAL ENGINEERING**

*“Law is social engineering which means a balance between the competing interests in the society”*

*-Dean Roscoe Pound (1870-1964)*

The sociological, liberal, utilitarian, pluralist, philosopher and father of Modern American Sociological Jurisprudence, Roscoe Pound, has contributed greatly to the field of legal jurisprudence. Unlike a self-justified order from the sovereign, the sociological school theorized law as one that derives from historical and cultural processes. It arose from the previous analytical approach to interpreting law more pragmatically and functionally as a means of achieving social goals. They concentrated on how the law would actually work rather than what the law should be. The sociological approach literally revolved around the social realities, norms and issues that the legislation aims to address and provide a social setting for common good and full gain for all as an instrument of social regulation. Law, therefore, is not idealistic or dogmatic, but a practical instrument that governs according to the social problems in order to achieve social stability, justice and equilibrium in society. This is because the essence and intent of an effective law lies in the social relations it attempts to regulate.

The most prominent and unique contribution to this understanding of law was advocated by Roscoe Pound in the form of the ‘Theory of Social Engineering’, based on society’s behavior, patterns, cultures, attitudes etc.

**Based on Social needs**

"Social" refers to a community of people who form a society and the word "Engineering" refers to the way an engineer works by means of a system or instrument based on continuous experiments and practice in order to make a specific finished product. Similarly, the principle of social engineering is to accomplish social objectives by means of a law based on social circumstances. Therefore, law is based on the society it seeks to govern. It is an instrument of social regulation focused on the need, goal-oriented and purposive in nature with society at the very center of its formulation as well as application.

**Harmonizing competing interests**

*"I venture to think, would represent the social order as an organized human endeavor to satisfy a maximum of human wants with a minimum of sacrifice of other wants. It would represent the legal order as that part of the whole process which is or may be achieved by the force of politically organized society. It would picture elimination of friction and waste, economizing of social effort, conservation of social assets, and adjustment of the struggle of individual human beings to satisfy their overlapping individual claims in life in civilized society, so that if each may not get all that he demands, he may at least obtain all that is reasonably practicable in a wise social engineering."*<sup>3</sup>

Here, Roscoe Pound clearly ventures the harmonizing of interests while maximizing interest and minimizing sacrifice. Clearly, social engineering can be understood as formulating a structure of society which requires the satisfaction of the maximum of wants with the minimum friction or waste or sacrifice. By this means, one must get what is reasonable which can be affected by harmonizing or balancing the conflicting or competing interests, desires, claims, and wants.<sup>4</sup> He proposed that the study of law should be balanced by social aspects in order to become more successful for this reason of balancing the conflicting interests of society in order to achieve maximum satisfaction of the maximum need of individuals. Spencer and Bentham have extended laws directly or indirectly to men as part of the society.

**Laws goal/purpose oriented**

The need for a purposeful definition of law is based on the idea that law is a form of social regulation that can only be regulated when set objectives are defined. In addition, Pound was a

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<sup>3</sup>Pound Roscoe. "The Theory of Judicial Decision. III. A Theory of Judicial Decision for Today." Harvard Law Review, vol. 36, no. 8, 1923, pp. 940–959. JSTOR, [www.jstor.org/stable/1329692](http://www.jstor.org/stable/1329692).

<sup>4</sup> Pound, Roscoe, "The Spirit of the Common Law", Transaction Publishers, 1999, At P.196, Interests", "desires", "claims", "wants" - for the most part the words are used interchangeably in Pound's writings, although "interests" sometimes serves as the inclusive term.

child of his time, a period of industrial revolution and increasing commercial and technological regimes in which wealth distribution was a challenge. Thus, Pound propounded a definition of law to serve the purpose of solving a social problem like that of equal distribution of wealth. While law, without any goal or purpose, was regarded by him as an abstract notion.

Just like an engineer working on his product, in order to devise successful rules, a jurist must analyze, examine, experiment, study the factual aspects, and enlist the intent and means. In this regard he postulates the following points of consideration for harmonizing the competing interests:

- a) Factual study
- b) Social investigation
- c) Sociological, psychological and philosophical study
- d) Presume possibility of a just and reasonable solution
- e) Have a separate department of law
- f) Achieve the purpose so defined

Therefore, we can conclude that laws are not merely rules or formulas in Pound's understanding, but experience, doctrines, reasoning, presumptions, perceptions that influence the task of balancing interests. The institution of laws can be classified in five categories as follow:

- a) Laws as rules- laying down the standard of conduct and decision
- b) Laws as principles- Authoritative points
- c) Laws as conceptions- Defining the classes and situation of application
- d) Laws as doctrines- A union of rules principles and conceptions
- e) Laws as standards- Notions prescribing the permissible limits of conduct

Pound also states that a jurist would always face adverse conditions which he or she needs to overcome and friction or waste represents the sacrifice to achieve the reasonable solution through technical and methodical care. The engineering analogy stands out as both graphic and timely.<sup>5</sup>

### ***Functional School of Thought***

The theory of Pound is also considered a functional school of thought, because the theory so formulated is to describe law as serving the function of social engineering. The role of law, according to Pound, is to achieve the common good by reconciling the conflicting or competitive interests of individuals in a society. Therefore, with the intention of striking a

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<sup>5</sup> Douglas, Some Functional Aspects of Bankruptcy (1932) 41 YALE L. J. 329, 331.

balance in the social order, the laws are realistic, target driven, purposeful and practical in nature.

In addition of protecting interests, the object of law is to make 'interest' the main subject of law. He invented an interest theory for this reason, classifying interests into three distinct categories for the laws to be formulated and applied in such manner that those interests are realized. The interest theory, however, is beyond the purview of this paper.

### **III. MANIFESTATION IN THE CONSTITUTION**

The principles laid down in the Preamble gave the legislature, the judiciary and the executive great confidence to ensure their application in the true sense. The pluralistic essence of the Indian State as a home to diverse cultures and religions with deep-rooted traditions marked by caste and gender biases were the main goals to be overcome during the framing of the Constitution of India. Prevailing disparities were exorbitant. This initiated the need for social reform in the society. Therefore, to form part of the Constitution, also known as a living social text, a synthesis of all the rights fundamental to a person's well-being was examined and expressed. The process of engineering such rights was through investigation of the social needs of the society and the objective to achieve particular rights.

These were included in the preamble as “We, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation.”<sup>6</sup>

While the constitutional provisions relating to secularism aim to bring harmony and integration between religions, the prohibition of discrimination aim to eradicate discrimination based on religion, race, caste, sex, place of birth or any of them, subject to specified exceptions.<sup>7</sup> The aim thus formulated was to break free into a just and humane living condition from the oppressive and biased system of social order. A similar goal was also developed under Article 16 of the Constitution to eliminate discrimination, with an emphasis on areas of public employment. Another, example is that of Article 19 which provides various freedoms viz. freedom of speech and expression, to move around freely, to practice any profession, etc. while balancing it with reasonable restrictions. The right to religion under Articles 25 and 26 have also been subjected

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<sup>6</sup>Preamble, The Constitution of India, 1950

<sup>7</sup>Article 15, The Constitution of India

to certain restrictions on the grounds of “public order, morality and health”. The provisions referred to herein before are aimed at effectively balancing the various conflicting interests in the society which amounts to what Roscoe Pound termed as “Social Engineering”.

The fundamental rights specified in Part III are all equally essential and there is no single right over the other. Nevertheless, while framing the Constitution, the ambiguities that could arise in the society were envisaged and integrated in the document.

### ***Articles 14, 15 and 16***

While Article 14 provides equality before law and equal protection of law, Article 15 (3) and later additions of 15(4) and (5) provide special treatment to Schedule castes, schedule tribes and women. This was based on the notion of positive rights and positive discrimination in the form of reservations to uplift the deprived which was also upheld by the Supreme Court in *Indra Sawhney v. Union of India*<sup>8</sup>.

Part IV of the Constitution offers detailed directives to the State to ensure social order, national development, adequate livelihoods, fair pay, eradication of inequality, etc. by its policies, so that social justice can permeate all institutions of national life. Hence, Part IV of the Constitution aims to deliver social justice and promote welfare of the people.

### ***Balancing Article 19(1)(a) with Article 19(2)***

The conflict between these two articles of the Indian Constitution is a fitting example of the conflict between the rights of individuals and that of the public at large, effectively designed by the framers of the Constitution. The courts have also clarified the same thing as protecting the social interest of everyone.

Article 19(1)(a) grants every citizen of India the fundamental right to freedom of speech and expression. At the same time, however, absolute freedom is as dangerous as the absence of freedom of speech and expression, enacted by the framers of Article 19(2) of the Constitution, which safeguards the rights of other persons, of society as a whole and of the state.

This was achieved by way of social engineering, where different factors were taken into account and balanced against each other. The sub-clause (2) lays down that reasonable restrictions on the count of security and sovereignty of India, public order, decency or morality, contempt of court, defamation and incitement to any offence, can be imposed on the right conferred by Article 19(1)(a).

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<sup>8</sup> *Indra Sawhney v. Union of India*, AIR 1993 SC 447.

***Balancing Article 19(1)(g) with Article 21***

There has been an incongruity in the rights provided for in Article 19(1)(g) of the Constitution, which guarantees to every person to freedom of trade and profession, and Article 21, which, inter alia, guarantees the right to a clean environment for society. The rights of industries polluting the environment have been curtailed. Though there is no conflict per se between the two rights, the task of comprehending social justice in the society oversaw the Supreme Court in ruling that the primacy has to be given to people's right to clean environment.

***Balancing Article 25 with 26***

Although Article 25 guarantees the right to religion, Article 26 gives religious minorities the right to the management and administration of religion. There has been a tension between people's rights to practice their faith and the customs and practices imposed by religious denominations. However, the same is still unsettled and waiting to be balanced by social engineering in the case of *Kantaru Rajaveeri v. Indian Young Lawyers Association*.<sup>9</sup>

***Article 51A***

In addition to numerous provisions guaranteeing rights, the constitutional framers balanced the same with the fundamental duties that every person must perform, as provided for in Article 51A.

***Balancing Fundamental Rights with Directive Principles of State Policy (DPSP)***

The debate whether Fundamental rights take precedence over the DPSP or vice versa was a long drawn one which finally came to rest in the case of *Minerva Mills v. Union of India*<sup>10</sup>, wherein courts while recognizing the 'Principle of Harmonious construction', balanced and harmonized the two parts of the Constitution. In case of a political threat to fundamental rights, the latter has been preferred by the Apex Court, while in situations where rights are violated by social and economic institutions the Supreme Court has gone ahead with the defense of the DPSP. In order to preserve both individual fundamental rights and the DPSP's governing popular social order, the consciousness of the Judiciary must harmonize the rights as necessary. Therefore, the law of social engineering, as Roscoe Pound explained, is a constant process of balancing according to social change.

**IV. LEGISLATIONS BASED ON SOCIAL NEEDS**

*"It [the legal order] may well be thought of as a task or as a great series of tasks of social en-*

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<sup>9</sup> *Kantaru Rajaveeri v. Indian Young Lawyers Association*, (2020) 3 SCC 52.

<sup>10</sup> *Minerva Mills v. Union of India*, (1980) 3 SCC 625.

*gineering; as an elimination of friction and precluding of waste, so far as possible, in the satisfaction of infinite human desires out of a relatively finite store of the material goods of existence."*<sup>11</sup>

Pound describes legal orders as tools of social change created to govern people's actions to harmonize interests. After Independence, a number of social reforms were introduced in India through law. The legislations were enacted to achieve the ethos enshrined in the Constitution. Social laws affect a social objective, economic aim or social justice in line with the changing times and needs of individuals.

Social justice and national security are envisaged by preserving, protecting and extending the reach of justice, equality and freedom on the lines of the theory adumbrated in the Preamble under "We the people of India." This has contributed to the implementation of different new policies while getting rid of age-old procedures or policies that impede the development process.

The newly enacted Muslim Women (Protection of Rights on Marriage) Act, 2019 is an Act of the Parliament of India which criminalized the practice of triple talaq after the Supreme Court of India in August 2017 declared triple talaq, which enables Muslim men to instantly divorce their wives through merely pronouncing talaq thrice, as unconstitutional.<sup>12</sup> While giving effect to the engineering procedure carried out by the court, the act seeks to promote social change in society; thus, making its enactment an instrument for ensuring gender justice among the Muslim women.

The codification of Hindu law has led to the country's positive social framework. The Acts, such as the Hindu Marriage Act, 1955, the Hindu Minority and Guardianship Act, 1956, and the Hindu Adoption and Maintenance Act, 1956, have brought about this. To produce efficient means of social regulation, the provisions of these Acts are determined. Before the passage of the Act, the prohibition of polygamy under Section 12 was widespread in culture. The new labor regulations, such as the Wages Code, 2019, combine the earlier industrial laws to strengthen the condition of workers in trade and industry. Such laws have had a large influence on the social system.

## **V. JUDGES AS SOCIAL ENGINEERS**

As quoted in *Kesavananda Bharti v. State of Kerala*,<sup>13</sup>

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<sup>11</sup> Pound, Roscoe, "Interpretations of Legal History", Harvard University Press, 1946, At P.160.

<sup>12</sup> Shayara Bano v. Union of India, (2017) 9 SCC 1.

<sup>13</sup> Keswanand Bharti v. State of Kerala, AIR 1973 SC 1461.

*“A modern state has to usher in and deal with large schemes having social and economic content. It has to undertake the challenging task of what has been called social engineering, the essential aim of which is the eradication of the poverty, uplift of the downtrodden, the raising of the standards of the vast mass of people and the narrowing of the gulf between the rich and the poor...often when the individual rights clash with the larger interests of the society, the state acquires the power to subordinate the individual rights to the larger interests of society as a step towards social justice.”*

The importance of social engineering was accordingly a requirement to contend with the complexities of contemporary society and was sincerely accepted by this country's courts when providing justice. Under Article 32 and Article 226, the Constitution empowers the Supreme Court and the High Courts to ensure constitutional rights, established on the values of justice, liberty, equality and democracy; to eliminate the caste and gender biases that prevail in society and to lead a way forward in an egalitarian society. The role of ensuring that these rights are implemented, however, has led the judges to serve as social engineers in balancing the needs of individuals with those of the public interest. The Supreme Court, which is the guardian of the rights of the citizens of this country, shall interpret the Constitution in its true meaning with insight of social values and evolving social needs, upholding the fundamental framework of the Constitution for the preservation of social, economic and political justice as well as equal status and opportunity.

Sociological jurists emphasize on the balancing of the conflicting interests of the individual, and the society through the process of ‘social engineering’ which has also been affirmed in the actions of the Supreme Court. In *Delhi Transport Corpn. v. D.T.C. Mazdoor Congress*<sup>14</sup>, it was held that law is a tool of social engineering to remove the existing imbalance and to further the progress, serving the needs of the Socialist Democratic Bharat under rule of law. It is necessary to recognize the social circumstances and realities of life when judging whether or not the challenged legislation will fulfil the intent of society. Therefore, arbitrary discretion has no meaning and the courts must take account of the facts of life.

In the case of *Bandhua Mukti Morcha v. Union of India*,<sup>15</sup> the Apex court while addressing the violation of fundamental rights in a case, observed that courts should skip from applying the Laissez-Faire approach and adhere to the new techniques of acting freely like the “activist judges” to secure the fundamental rights of the Citizens.

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<sup>14</sup> Delhi Transport Corporation. v. D.T.C. Mazdoor Congres, 1991 Supp (1) SCC 600.

<sup>15</sup> Bandhua Mukti Morcha v. Union of India, AIR (1991) 4 SC 117.

In *State of Madras v. Champakam Dorairajan*<sup>16</sup>, the Apex Court held that the Directive Principles and the Fundamental rights should be in harmony and balance. As recognized in *Minerva Mills v. Union of India*<sup>17</sup>, it was reiterated as the fundamental framework of the Constitution. The Court further claimed that Article 46, which is the Directive Principle, cannot override the fundamental rights.

In *Vellore Citizen's Welfare Forum v. The Union of India*,<sup>18</sup> also known as the Tanneries' case, the Supreme Court observed that a person's right to fresh air, clean water and pollution-free environment, are a part of right engraved in Article 21. The Court further observed, "Our legal system having been founded on the British Common Law, the right of a person to pollution-free environment is part of the basic jurisprudence of the land". Thus, the Court balanced the claim by prioritizing public interest over individual interest.

In *B. Venkatamma v. State of Madras*<sup>19</sup>, a communal order passed by the Government allotting certain vacant posts in government services in fixed proportions to Muslims, Christians, Harijans, Backward Hindus, Hindus, Non-Brahmin Hindus, and Brahmins was held to be a violation of Article 16(1) of the Constitution.

The Apex court while recognizing the scope of Social engineering held that the absence of a precedence shall not restrict the court and if it did so, that shall be the death of social engineering as every new norm or measure was formulated for the first time at some time in the history.<sup>20</sup> This highlighted the need for social engineering to be applied even in places which lacked laws. Thus, the past few decades have witnessed great judicial activism in this regard. While the understanding of Article 14 was widened to strike at anti-arbitrariness<sup>21</sup>; the ambit of Article 21 also swept in various rights under the interpretation of life as a decent life and not merely an animal existence.<sup>22</sup> This also led to the recognition of right to livelihood<sup>23</sup>, food, education<sup>24</sup> and many more as fundamental rights to life. The Supreme Court has also held that any kind of interpretation that hampers the growth or social development is to be discarded by the courts.<sup>25</sup>

In *Sarla Mudgal v. Union of India*,<sup>26</sup> the Apex court while deciding on "marriage" stated that

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<sup>16</sup>State of Madras v. Champakam Dorairajan, AIR 1951 SCR 525.

<sup>17</sup> Minerva Mills v. Union of India, AIR 1980 SC 1789.

<sup>18</sup> Vellore Citizen's Welfare Forum v. The Union of India, AIR 1999 SC 2715.

<sup>19</sup> B. Venkatamma v. State of Madras, AIR 1964 SC 572.

<sup>20</sup> D.S. Nakara v. Union of India, (1983) 1 SCC 305.

<sup>21</sup> E.P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555.

<sup>22</sup> Francis Coralie v. Union Territory of Delhi, AIR SC

<sup>23</sup> Olega Tellis v. Bombay Municipal Corporation, AIR 1986 SC

<sup>24</sup> In Unni Krishnan v. State of AP., (1993) 1 SCC

<sup>25</sup> Ashok Kr Gupta & others vs State of Uttar Pradesh

<sup>26</sup> Sarla Mudgal v. Union of India, (1995) 3 SCC 635.

such subjects are governed under the personal laws and one's personal law can't be overridden by another's personal laws. The Court applied the social jurisprudential approach in this case in the manner similar to what Pound has interpreted to weigh competing factors together to pave a balanced solution.

One cannot ignore the recent cases of de-criminalisation of Section- 377<sup>27</sup> or de-criminalising Adultery<sup>28</sup> after balancing the rights and interests of people to derive their own sexual identity. The Public Interest Litigation (PIL) that urged to protect the interests of the underprivileged who are not informed or trained enough to be able to enter the courts to assert their rights has become another social engineering tool established by the judiciary. The foundation of PIL is based on judicial activism and the credit goes to eminent Judges like P.N Bhagwati, Krishna Iyer, Chinappa Reddy. The new definition of 'locus standi' has been put forward and, the human rights and the Directive Principle of State Policy are harmoniously understood. The court has interpreted socio-economic rights in the light of the Directive principles and has ensured that people follow the direction of the welfare state. The rights to livelihood and speedy trial are protected by Article 21 of the Constitution. Similarly, such rights should be guaranteed in a fair and equitable manner under Article 14 of the Constitution of India. India's Supreme Court has been allowed to cross-check the laws of the Parliament if it is arbitrary and or in derogation to the "basic structure" of the Constitution. Thus, by securing the civil liberties and socio-economic rights of people, the Supreme Court of India has created a new jurisprudence.

## VI. CONCLUSION

We may infer that the law understood by Roscoe Pound is the expression of social needs, and the purpose of law enforcement is to meet the needs of society by achieving the highest degree of social satisfaction. This is achieved by causing minimal dissatisfaction through the method of balancing the society's conflicting interests. Interests, particularly conflicting interests, are the subject of social engineering. Social engineering is based on the idea that laws are used as a way of influencing society and regulating the actions of individuals. With the assistance of law and stable social order, it is an effort to regulate human behavior. It can be argued that the process of balancing conflicting interests in times of dispute and paving a path forward for the common good has been successfully adopted and applied in the Indian legal system on the basis of constitutional provisions, judgments pronounced by the courts and legislations formulated. The old notions of mere interpretation of the law as it is, has also been departed by the Hon'ble

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<sup>27</sup> Navtej Singh Johar and Ors. v. Union of India and Ors., (2018) 10 SCC 1.

<sup>28</sup> Joseph Shine v. Union of India, (2019) 3 SC 3.

Supreme Court in the light of securing justice to maximum number as the paramount goal.

In a pluralistic society like India, however, the balance of interests is at risk, where a decision cannot always be drawn without more than minimal waste/friction/sacrifice to one group. Even so, since the beginning of independence, social engineering in India has been prevalent in various constitutional provisions, laws formulated by the state and often through the decisions of the court.

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