

HOW DOES LAW CREATE SOCIAL CHANGE?

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ABSTRACT

This paper aims to explore the intertwined relationship between law and society, one that is vital and cannot be discarded easily. Together, law and society have introduced us to many remarkable judgements and kept us on par with the changing circumstances. As standalone subjects, they impact society in their ways. However, they need to be studied together to bring social progress to the nation which is analyzed with the help of cases, examples and illustrations. They are two ends of a spectrum, which requires the other to function properly and cannot feign ignorance.

KEYWORDS: Law, Social Change, Indian Constitution, Social Progress

INTRODUCTION

When we think about it, society is in a natural state of equilibrium.¹ The emergence of new paths leads to changes in people and their way of thinking over time, resulting in a shift in society. Changes also occur due to environmental, societal, and economic causes such as overcrowding, climate change, and technological advancements, which are some of the many repercussions we confront. Without evolution, the world would be locked in time, wreaking havoc on itself. Society will face disaster if it does not expand in tandem with the components that comprise it. In an ever-changing world, change allows us to rebuild, reinvent, and recreate ourselves. Everyone wants to be stable, to be on par with the system and the economy, yet staying static when everything around us changes is difficult and our greatest enemy. Law as a subject cannot be confined to merely one definition as in the eyes of the people, it is viewed differently. Law is a social science that grows in unison with society's progress and improvement and governs every facet of society. Innovations, threats, and crimes emerge regularly, as do laws designed to protect people from them. The law serves as a tool for the well-being of society by establishing norms that must be followed for control and balance between members of a community to prevail. As a result, the existence of societal change is

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¹ Legalserviceindia.com. 2020. Understanding the law as a means of social change. [online] Available at: <<https://www.legalserviceindia.com/legal/article-4883-understanding-the-law-as-a-means-of-social-change.html>> [Accessed 18 July 2022].

highlighted. Society is a group of people belonging to various religions, castes and colours that need to co-exist together as equals. Social change is welcomed with open hands as it contributes to living a harmonious life. The law that governs us, speaks about our society and helps eliminate the problems that society faces with the existence of statutes and legislation, contributing to making a better future.

WHAT IS SOCIAL CHANGE?

Social change is a transformation happening in our society, across various fields. Examples would be: industrialization, breaking from the feudal system and globalization. Social change is an indicator of changes in human relationships, which affect how social institutions function. It is defined by Lundberg as "any change in established patterns of inter-human relationship and standards of conduct."²

There is quite a difference between the revolutionary and evolutionary social transformation. Inequalities of many kinds and the consequent tensions that create political action, both within and beyond the recognized political institutions, tend to drive revolutionary social transformation. As people develop and cultures become more complex evolutionary change occurs naturally. Changes in the structure or functioning of forms or processes are part of social change. A transformation in social structure is referred to as social change. Social structure can be found in nature, social behavior, social relations, social organizations, and a group of individuals.

What causes social change? Many factors contribute to it, such as changes in technology, economic policies, political nature, demographic, and ideological shifts. Law cannot be permanent because the needs of society are constantly changing, and laws to cope with the protection of the environment must also change. It is best to say, social change is consistent throughout.

GLOBAL PERSPECTIVE

The ever-changing nature of the population necessitates that the legal system is capable of dealing with present concerns to effect critical social change as time passes. Racial

² Ccsuniversity.ac.in. [online] Available at: <[https://ccsuniversity.ac.in/bridge-library/pdf/LL.M.%20II%20SEM%20\(LAW%20AND%20SOCIAL%20TRANSFORMATION\)%20L-2003%20TOPIC-%20Law%20as%20an%20instrument%20of%20social%20change%20new.pdf](https://ccsuniversity.ac.in/bridge-library/pdf/LL.M.%20II%20SEM%20(LAW%20AND%20SOCIAL%20TRANSFORMATION)%20L-2003%20TOPIC-%20Law%20as%20an%20instrument%20of%20social%20change%20new.pdf)> [Accessed 17 July 2022].

discrimination is a global issue that has persisted for decades. People's skin color or ethnicity caused disparity among them, resulting in a system of hierarchy in society. In 2020, the phrase "**Black Lives Matter**" has expanded significantly to highlight the disparity black people face due to what happened to George Floyd, who police shot. Although many countries have passed anti-racist legislation, there is still a long way to go until racial discrimination is eradicated. Climate change could endanger life on Earth if it is not mitigated soon, but how can and has law assisted with this? Some species and animals have died due to the social dilemma of constantly changing climatic circumstances. Law disguised as conventions and treaties work together to combat this issue. The Paris Agreement, signed by 196 nations is an international treaty that is legally binding and aims to limit global warming to well below 2, preferably to 1.5 degrees Celsius.³ Plastic, a harmful substance that contributes to global warming and pollution has been said no to in many countries. Suppression of women is a global issue since men are perceived to be more authoritative, strong, and preferred in the job. Gender inequality can be seen everywhere, from the individual's home, where a set of norms are expected to be followed by the female stating 'how she should be to fit the mentality of the community, to one's workplace, where males are given higher pay, higher job status, and are seen as the better option against a female worker without taking her credentials or the work into account. The stigma around women being at home and only being a mom or a wife is slowly being opposed as more powerful women enter the labor force. Implementation of laws cannot destroy the thought that has persisted through generations. However, it can account for progress. The Democratic Republic of the Congo has a law which declares the husband the head of the house and the wife must obey him.⁴ Laws of similar pretext hinder gender equality and must be abolished for the world to experience social change. Only through the help of law and lawmakers can a change be brought for everyone to see and move to a less problematic and more harmonious society.

INDIAN PERSPECTIVE

The Constitution, the best precedent for sociological jurisprudence, was born in August 1947 as a result of Indian Independence, when the law in India began to meet the country's societal needs, which are highlighted in Part III, which discusses fundamental rights, and Part IV, which

³ Unfccc.int. [online] Available at: <<https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>> [Accessed 17 July 2022].

⁴ Global Citizen. 11 Laws That Stand in the Way of Global Gender Equality. [online] Available at: <<https://www.globalcitizen.org/en/content/11-laws-from-around-the-world-that-stand-in-the-wa/>> [Accessed 17 July 2022].

discusses directive principles intending to achieve social justice and encourage individual freedom, as sought through the Preamble. With the ever-changing social system, the legislature passed several legislations, including the abolition of the Zamindari system, the removal of our country's deficient financial infrastructure, and others. The first amendment, which dealt with agrarian reforms, was ratified in 1951. Law should not be static but should evolve to meet the needs and requirements of society. With this foresight in mind, Dr Bhima Rao Ambedkar, the father of the Indian Constitution, inserted Art 368 into the constitution, which states that "any part of the constitution may be amended by adopting appropriate procedure except by destroying the fundamental structure of the constitution." It acknowledges the need to change the law when the situation calls for it.

State of Madras vs Champkan Dorairajan⁵, a landmark case which gave rise to the first amendment to the constitution addresses the topic of reservations and aided in abolishing caste-based reservation in the state of India. To incorporate the norms of today, Section 311 of the IPC was deemed unconstitutional after numerous petitions from the LGBTQ+ community poured in to declare the criminalization of same-sex relations void of consensual relationships of adults of the same gender. The Supreme Court also overturned the triple talaq, a Muslim law that leads to instant divorce unconstitutional and revoked the ban on women who fall under the category of menstruating age from going to Sabrimala. The government was obligated to heed the public's sentiments and established a commission to provide recommendations and enforce the proper punishment for gang rape. The incident on the 16th of December 2013 in New Delhi was the key motivation behind the Nirbhaya Act, also known as the Criminal Law (Amendment) Act 2013. The happening demonstrated the necessity for rapid rape legislation reform. These small progressive wins portray the changing views of the Indian judiciary and aim to achieve the goals of the preamble of the constitution.

The following are a few examples of laws that have been enacted by the Indian judiciary to have the Indian society experience social change and transform according to the norms of today.

1. Public Interest Litigation also referred to as PIL was introduced for the welfare of the people by the Supreme Court. It is used as a tool where a representative of a group can proceed towards

⁵ State of Madras vs Champkan Dorairajan, AIR 1951 SC 226

the court based on preventing further damage from a problem they are currently facing.⁶ This paved the way for the citizens to be able to use their right to locus standi without stalling.

The case of **MC. Mehta vs Union of India**⁷ where the Supreme Court was requested to provide people with a free and healthy environment in terms of water, air, and surroundings, and it was decided that these necessities fell under the purview of Article 21 of the Constitution.

However, a coin has two sides to it. The judiciary, which has long been chastised for being inaccessible to poor and oppressed populations, has further isolated itself by enabling the use of PILs for pre-planned agendas. A recent decision by a local court in Varanasi to seal a section of a mosque is proof of this.

2. To abolish slavery, the Indian Slavery Act was passed in 1843, and it is considered an offence under sections 370 and 371 of the Indian Penal Code. Human trafficking and forced labor are protected as fundamental rights under Article 23 of India's constitution.⁸ Despite numerous attempts, the Act was the only way to effectively address the issue of bonded labor.

3. In Indian society, child marriage was a strongly opposed discipline that affected people of all religious backgrounds. The Child Marriage Prohibition Act, 2006 took the place of The Hindu Child Marriage Restraint Act. It gave the family court the authority to rule on the matter and emphasized forbidding child marriage. The penalty was upgraded to a fine of Rs 2 Lakhs or/and imprisonment of two years.

4. The practice of Sati means burning a married woman as soon as her husband faces death. The custom passed on through generations could not come to an end. As a result, on December 4, 1829, an ordinance outlawed the practice of 'Sati.' Despite the national liberation movement and anti-caste focus, this tradition persisted in some Indian provinces, as evidenced by the death of Roop Kanwar.⁹

⁶ Worldwidejournals.com. 2015 [online] Available at: <[https://www.worldwidejournals.com/indian-journal-of-applied-research-\(IJAR\)/special_issues_pdf/December_2015_1453448341_45.pdf](https://www.worldwidejournals.com/indian-journal-of-applied-research-(IJAR)/special_issues_pdf/December_2015_1453448341_45.pdf)> [Accessed 17 July 2022].

⁷ MC. Mehta vs Union of India, AIR 1987 965

⁸ Supra Note 5

⁹ Nytimes.com. 1987. INDIA SEIZES FOUR AFTER IMMOLATION (Published 1987). [online] Available at: <<https://www.nytimes.com/1987/09/20/world/india-seizes-four-after-immolation.html>> [Accessed 18 July 2022].

Under the Commission of Sati Act, 1987, a special law was enforced for the treatment of those who aid and abet sati, deeming a punishable sentence up to death row. As a result of public opinion, these laws were enforced for the well-being of the community.

5. The ban on recruiting children who are under the age of 7 is the main goal of the Factories Act of 1881. Many laws were enacted, leading to the Child Labor Act of 1986, which sets the boundary of children's age to 14 years, to help them avoid falling into the trap of child labor. In Schedules A and B, the Act also lists 17 prohibited occupations and 65 processes.

Socio-economic problems such as untouchability, racial and other kinds of discrimination, impoverishment, and forceful working have been the concern of the people of India since the beginning. With the implementation of the constitution, these problems have been eradicated slowly, moving towards the goal of the preamble while the fundamental rights and directive principles act as a conscience.

CONCLUSION

Social problems are intertwined with each other and should be viewed to deem an effective solution. Law and society go hand in hand, following each other to bring a change. There are times when after the implementation of the law, society has adjusted to the rules causing the issue at hand to disappear while it has also happened and vice versa. In a positive light, the law has been an immense guiding light to administering drawbacks yet it has not been able to completely eradicate the issue.

For example, the existence of rape laws has not contributed to the number of cases of rapes decreasing because it is not strong enough to bring social change. Even today, many citizens face ethnicity and racial discrimination despite numerous attempts at protests and awareness. The LGBTQ+ after facing so many hurdles are slowly striving to be accepted in the world of norms that are rooted in ancient times yet they have a long way ahead. To abolish the stigma in people's thoughts requires more than vigorous laws. The legal system has a vital role to play in creating a prosperous society or state. To conclude, in light of the changing realities of the social and economic status, to strive towards the main goal of social welfare, amendments in the constitution by the legislation and the judicial body are very vital for society to experience a long-term change in accordance to the evolving norms of today along with the cooperation of the people for it to be impacted widely.

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