

Law as an Instrument of Social Change

POINTS TO DEVELOP

Society changes; contrasts within it.

One of the factors responsible for change is government support through legislation.

What is law?

Law's necessity.

How law has influenced social change in various periods in India.

Laws to reform society conspicuous under British rule.

Impact of laws on economic status of certain sections of Indian society.

Post-independence era: some laws having impact on society.

Laws have limited impact; the impulse to change must come from within society.

Yet, some laws are of vital social interest, and these need to be enforced; in the long-term laws need to be reinforced with mass education, spread of awareness.

Eighteenth century India and today's India; what a contrast! On the one hand, we have a stagnating traditional culture and society, in fact, in a state of decadence not witnessed before, a decadence condemned by most modern Indians from Rammohun Roy onwards. On the other hand, we have a still traditional society in the throes of a creative excitement, of modernizing itself, of emerging as a new nation, remaining thoroughly its own and rooted in its culture, yet taking its place in the contemporary world. The intervening nineteenth century was pivotal in that it saw the initiation of this process that brought about an enormous transformation in the religious, social, economic, political and cultural spheres of Indian society. Many inter-related factors were involved in this transformation.

The British Raj influenced Indian life through many channels; administration, legislation, trade, new systems of communication, incipient industrialization and urbanization, all had great influence on the society as a whole, because every measure in some way interfered with some traditional patterns of life. The sum total of these influences on the life and ideas of the people forced them to adjust their patterns of life to the new circumstances, thus effecting a continuum of social change. The socioreligious reformers of India and the scholars, educators and missionaries of the West also contributed to

this transformation of society. But they often needed the support of the government, the sole authority to enact or repeal laws.

Law is generally defined as the set of principles and regulations established by a government and applicable to a people, whether in the form of legislation or of custom and policies recognized and enforced by judicial decision. It includes under the authority of the state or nation, or by the people in its constitution.

In the light of the above broad connotation of 'law', it can be argued that no society or civilization can exist and grow without a certain corpus of law. It was by and large an egalitarian society with sufficient equality between men and women. There was last hierarchical division of society men and very little class or caste exclusiveness. In the later Vedic period, when the Dharmashastras (law-books) appeared, women's status vis-à-vis men declined, the society witnessed hierarchical divisions; the fourfold divisions along the varna-lines crystallized, kingship became the exclusive preserve of the kshatriyas, the Brahmin supremacy over others castes was established. All got the sanction of the Dharmashastras with the support of the ruling authorities. Later Dharmashastras and governments further consolidated these changes. Manu imposed still more restrictions and deprecations on women and the shudras. He also prescribed different rites, rituals and norms on the occasions like birth, marriage, death, etc. the entire society followed them. Gradually, Indian society got a feudal character because of the law-givers during the Gupta and the post Gupta periods, when plurality of the society became pronounced.

With the introduction of Muslim customs and traditions, though they more or less left the Hindu society untouched, the rigidity of the Muslim law helped introduce certain degree of social rigidity amongst the Hindus and led to further impositions upon the women. The rule of conversion in the Shari'at offered many a deprived section of Hindu Society an opportunity to improve their lot by joining the ruling religious community. With the Muslim in the society dipped rather low, especially during the reigns of Firuz Tughlaq, Sikandar Lodi and Aurangzeb. The imposition, discontinuation and reimposition of the Jizya on the jimmies, according to Islamic law, was the determining factor in the relationship between the Hindus and the Muslims. However, the Law of Escheat in the Mughal period encouraged social mobility.

On the whole, however, in ancient and medieval times, law was a declaration of age-old customs, a codification of practices rather than an instrument of social change. Law and social reform became linked with the

emergence of concepts of liberal socialism and the welfare state in political philosophy.

During British rule, several laws effected far-reaching changes in Indian society. The Charter Act of 1833 removed the legal barrier on the European colonization of India. Section 87 of this Act altogether abolished the concept of any governing caste, sect or sex, i.e., discriminations of various sorts in public appointments were removed. By act V of 1843 slavery was abolished in India. The Proclamation of British Crown (1858) brought the entire Indian subject on equal footing irrespective of caste, sect or sex. The principles of the rule of law and equality before law, as introduced by the British, gave a jolt to various divisions and sub-divisions in the society. This led to the formation of larger, social solidarity and people began to feel as a nation. Obviously, the practice of casteism got mitigated, though to a small extent.

Various laws were passed that improved the conditions of women. In december 1829, the practice of sati was declared illegal and punishable by criminal courts as of sati, though stray cases might have occurred here and there. The Bengal Regulations XXI of 1795 and III of 1804 declared infanticide illegal and equivalent to committing a murder; and an Act of 1870 made it compulsory for parents to register the birth off all babies and provided for verification of female children for some years after birth. These measures put a check on the killing of female babies as practiced among the Bengalis and the Rajputs, though could not eradicate the practice. The Hindu Windows Remarriage Act (1856) legalized marriage of widows and declared issues from such marriages as legitimate. In the long run, this Act profoundly improved the status of women, changed the sacramental nature of the institution of marriage and the structure of family in Hindu society. The Sharda Act (1930) provided for penal action in marriage of boys under 18 and of girls under 14. This provided legal protection to those individuals who resented early marriages. To begin with its impact on the society was negligible. But later on, some individuals set examples by their success in education and career avenues, and Indian society, at least in urban areas, followed the law.

The Permanent Settlement of Bengal (1793) eventually created a new class of zamindars in the money-lenders. The revenue system of the British government impoverished the Indian peasantry and craftsmen, and consequently their position in the social hierarchy declined – form land –owners and entrepreneurs to the agrarian and industrial laborers. Later, the rule that only the English educated people could find a place in public appointments led to the emergence of new middle class in Indian society.

There were many other legislations in the British period that influenced the society some for the better, yet other for worse.

In the post-independence era, the Indian government has taken numerous measures that concern society. The Constitution refuses to recognize the distinctions of religion, sect, caste, sex, etc., in the matter of the opportunities of civil life. It has largely mitigated a number of evils resulting from the pluralistic nature of Indian society with regard to religion and caste. Freedom of belief as a fundamental Right has made religion a personal choice rather than its earlier compulsive and all-pervasive nature for a family or a group. Unsociability has been rendered a criminal offence. Endogamous nature of casteism is now on the wane as intermarriages, even inter-religious ones (The Special Marriage Act, 1954) have been legalized. Reservations in jobs and freedom in the choice of vocations have encouraged vertical mobility of many families, irrespective of their caste or class affiliations.

The Hindu Marriage Act (1955) gave a jolt to the traditional nature of the institution of marriage, i.e., marriage being indissoluble, by incorporating the provision for divorce. The remarkable features of the Hindu Succession Act are recognition of the right of women to inherit property of an intestate equally with men and abolition of the life estate of female heirs. It has also changed the family composition as daughters and sons have been made equal even in the matters of inheritance. The extension of maternity benefits to unmarried women is also gradually changing the meaning of family.

Various labour legislation like the Factories Act (1948) the industrial disputes act (1947), the trade Union Act (1928), etc., improved the status of the working class and brought them at par with the bourgeois class of capitalists.

Some social thinkers opine that the mere enactment of laws and even their enforcement, has limited impact on the society. They say that the rural areas are hardly affected by such legislations, and even in the urban areas these laws are not successful on any substantial scale. According to them, the transformation of society is an evolutionary process, not a revolutionary one. So law may lose its sanctity and endurance because of the non-compliance on the part of the society. What they emphasize is that unless and until a law gets the sanction of the society as a whole it may have no effect. And logically, if the collective psyche is ready for a change, there is no need for a law. During the Mauryan and Mughal periods many laws were promulgated to effect changes in the society. But once the individual ruler or dynasty left the scene, all the laws in respect of society lost their strength. Authoritarian governments are supposed to enforce laws more doggedly, but they also have been seen to have failed in bringing about social

changes. To that extent, even the revolutionary laws brought in by the British India government were made possible only when enlightened Indians felt a need and campaigned for social reforms.

Society always seeks to protect its interest. So, when ever anything is done in its favour, it cheerfully accepts the offer. Unless the law, therefore, reflects the hopes , aspirations and progress of the society it cannot be effective. Hence , a law as per the choice of a small group of ruling individuals , without winning the confidence of the masses, is bound to fail in its objective. We have examples of laws meant to do good to the society having failed. But this happens only when here there is a wide gap between the governing authorities and the people, especially in regard to communication.

If there is enough political will, progressive laws can effect social changes. The European society today greatly owes its form and colour to laws. Sometime back, a British court granted two children the right to leave their parents and live on their own. In the Third World, Turkey is the most revealing example. The modernization of the Turkish society was the result of the will of Mustafa Kamal Pasha who took hundreds of measures in the very first year of his rule. The rule of Castro in Cuba is another such example. And in a previous era, didn't the laws compiled in Shariat change the society from Zahiliya to the Islamic era? However, it may be pointed out that the leaders of such with them. Even if laws themselves cannot effect social changes, they can provide protection to those who Endeavour to make positive changes having already taken place.

The utility of law in reforming society depends on the machinery to implement it. Furthermore, a traditionally diehard society cannot accept change easily. No law can push it into accepting change. Even if we take the laws against child marriage and female infanticide, we notice that these obnoxious practices have not been wiped out. In such cases, we cannot wait for the impasse for change to come from society at large; the enlightened must seek to educate and spread awareness among the masses. In the long run, unless ignorance is dispelled, laws will remain in the statute books and no change worth its name will take place.