

LAW AS AN INSTRUMENT OF SOCIAL CHANGE — A BLOODLESS REVOLUTION

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Introduction

Revolutions have occurred throughout human history and they vary widely in terms of method, duration and motivating ideology; and their results include major changes in culture, economy and socio-political life of a nation. History abounds with examples when laws have acted as catalysts in bringing about far-reaching changes and starting a chain of human reactions often leading to revolutions. Changes may be patent or latent which can be seen or felt as the case may be. They can be swift or slow or gradual. While the legacy of the past has indelible impact upon the present, undergoing a great change for benevolent future is bestowed within its destiny.

The very fabric of human existence is full of warring elements trying to overthrow each other. Society is the human effort to organize life in such a way that every living being is allowed to grow in a balanced way so that they grow together and live together. Law therefore play a vital role in bringing about social change or transformation.

Law and Social Change

Law, far from being a reflection of social reality, is a powerful means of accomplishing reality that is, fashioning it or making it. Law and especially legislation is a vehicle through which a programmed social evolution can be brought about. It is a known fact that social change takes place due to various cultural, religious and socio-economic factors. In India, which is essentially a conservative society, laws have attempted to initiate social change, to mould social attitude and behavior. A law imported from a foreign land cannot work successfully in Indian soil and therefore the Parliament and various state legislatures have passed legislations to bring about social change.

The path of social change in India has been charted-out by the constitutional provisions - the preamble,

the Fundamental Rights and the Directive Principles. The preamble of the Constitution secures to all citizens Justice - social, economic and political, liberty, equality and fraternity. Our constitution thus guarantees, as a fundamental right to every citizen, equality before law and equal protection of law.

Law and Non-Discrimination Norm

Even before framing the constitution, our social reformers made endeavors to restore justice for women and to do away with social evils like child marriage and to encourage widow remarriage. The Hindu Widows' Remarriage Act (1856) legalised the marriage of widows and declared issues from such marriages as legitimate. In ancient times practicing 'sati' was deemed to be a great honour among the Hindus. But in 1871, *Lord Bentinck* declared this practice, as an offence. Between 1980 and 1983, some instances of Sati were reported from U.P, M.P and Rajasthan and the latest is *Roopa Kanwar's* case. Now, the legislation has taken serious steps by introducing a special law to punish those who abet Sati to death sentence under Commission of Sati (Prevention) Act, 1987. As a result sati system is almost unheard of in India.

Social Hierarchy and Legal Weapons

The practice of untouchability was deep rooted and practiced from centuries. After the Constitution of India came into force it was totally unacceptable. Therefore, Article 17 of the Constitution abolished untouchability and forbids its practice in any form by a special Law which was enacted in the year 1955 "The Untouchability (Offences) Act, 1955. The title was changed by an Amendment in 1976. The Act is now called "The Protection of Civil Rights Act, 1955." The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was passed by Parliament providing safeguards for the protection of the Scheduled Castes and the Scheduled Tribes. This Act does

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not repeal the Protection of Civil Rights Act, 1955 and therefore both the Acts are now in force for the protection of the rights of Scheduled Castes and the Scheduled Tribes in India.

The Indian society at the time of independence was mainly dependent on agriculture. However, agricultural lands were in the hands of few landlords, Zamindars, who were actually not cultivating the lands. Therefore, the first step taken by the free Indian State was to bring in the Agrarian reforms. By stroke of a pen, the Zamindari system was abolished. Similarly, Inams were abolished and the rights of the tiller of the land was recognized and an attempt was made to grant land to the tiller of the land. Accordingly, the agricultural land was distributed among the landless, tenants and tillers of the land.

Freedom to Work

Similarly, several legislations were passed to improve the working conditions of the working class/labour class. Various legislations like Industrial Disputes Act, 1947, Factories Act, 1948 were promulgated, which protected the tenure of service of labourers and also it improved their working conditions.

By stroke of a pen, the Parliament abolished bonded labour system by enacting The Bonded Labour System (Abolition) Act, 1976. From the date of commencement of the said Act, every bonded labourer stood free and discharged from any obligation to render any bonded labour. The liability to repay debt stood extinguished and the property was free from mortgage etc.,

Similarly, since the problem of urban and rural indebtedness from sources other than Government and institutional agencies assumed serious dimension and exorbitant rates of interest were being charged and the lenders indulged in mal-practices resulting in agriculturists with small holding, landless agricultural labourers and the weaker sections of the community's exploitation, to provide adequate relief to the said category of persons, Debt Relief Act was enacted declaring that the that debts owed by the aforesaid categories stood discharged.

Personal Laws and Individual Liberties

Then serious inroads were made into the personal laws of Hindus, by enacting (1) Hindu Marriage Act, 1955, (2) Hindu Succession Act, 1956 (3) Hindu Adoption and Maintenance Act, 1956 and (4) Hindu Minority and Guardianship Act, 1956. The Hindu Marriage Act provided for the first time the provisions relating to divorce. Provisions were made for payment of maintenance during pendency of the proceedings to the spouses as well as children. The Hindu Succession for the first time gave equal rights to women with men in the self acquired properties of father and mother. An attempt was also made to give equal rights to the female heirs in the property belonging to the coparcener dying intestate before partition. In fact, radical changes were brought about in 2005, treating the daughter as a coparcener and giving equal rights to her in the coparcenary property along with sons. Similarly laws were enacted providing maintenance to Muslim women and children.

Children Empowerment and Right to Education

Constitution was amended providing for right to education as a fundamental right to the children up to the age of 14 years. In order to give effect to the said Constitutional mandate, Right of Children to Free and Compulsory Education Act, 2009 was enacted conferring on every child a full time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

Women Empowerment and Reproductive Rights

Gone are the days when Indians emphasized on growth of population for welfare of the society. The acute shortage of material resources, unprecedented exploitation of natural resources, shrinking space for shelter have changed Indians to change their attitude towards age-old universal desire to have a large family. The incidents of abortion have shown their ugly face in recent times in the form of large scale female foeticide. It is in the background of this change in the social attitude and behaviour that the Medical

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Termination of Pregnancy Act 1971, was enacted to check 'backstreet' abortions which heavily outnumbered the legal ones.

Dowry and Legal Restrictions

Yet another serious challenge was faced by the society was dowry system, which was posing an enormous and deep rooted problem that has plagued our society for centuries. To curb this menace, Dowry Prohibition Act, 1961 was enacted but as the same could not achieve desired results, it was amended by Dowry Prohibition (Amendment) Act, 1984. Consequently, the Indian Penal Code was amended making demand for dowry an offence.

In order to suppress immoral traffic in persons and exploitation of prostitution of others, Immoral Traffic (Prevention) Act, 1956 was passed to give effect to International Convention signed at New York on 9th May, 1950.

As family disputes rose in numbers, Family Courts were set up for the family disputes with emphasis on conciliation and achieve socially desirable results and adhering to rigid rules and procedure and evidence was eliminated. Therefore, Family Courts Act, 1984 was enacted providing special forum for speedy disposal of disputes relating to marriage and family affairs and other matters connected therewith.

The Parliament also enacted the Protection of Women from Domestic Violence Act 2005 to provide for effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

Similarly, the Parliament enacted Protection of Children from Sexual Offence Act, 2012 to protect the children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences.

The Parliament also enacted the law relating to Narcotic Drugs and Psychotropic Substances for its control and regulation, or use in illicit traffic by enacting the Narcotic Drugs and Psychotropic Substances Act, 1985.

These are the few legislations, which are enacted by the Parliament for social change. There are innumerable legislations. For the purpose of this essay, what is mentioned is sufficient. Keeping in mind the interest of the society to find a solution to the mischief which is prevailing in the society, these enactments were passed with the avowed object of bringing about a change in the society and for the citizen of this country who are helpless, who are without any support and who are exploited. None of these legislations resulted in any blood shed or violence. On the contrary, those who felt aggrieved by these legislations, adopted constitutional method of challenging these laws in the High Court or Supreme Court. Most of the laws were upheld. In some cases, some modifications were made. By and large, all these laws were accepted by the Courts, the society and the Government. Nearly, in the last 60 years, we could see the effect of these legislations on the society and its people. A bloodless revolution, a silent revolution has resulted with these laws in place through out the length and breadth of this country.

The Power of Law

According to Roscoe Pound "Law must be stable and yet cannot stand still." In other words, Law should not be definite, but must be transformable according to the requirement and necessity of the society and time, as it exists to serve the needs of the society. If the law is to play its allotted role of serving the needs of the society, it must reflect the ideas and ideologies of such society. Law as noticed above is often used as an instrument of social change without any bloodshed. Social changes are necessary within the society for its all-round development. If law prohibits any act, then it has to make it punishable. Even if laws themselves cannot effect social changes they can provide protection to those who endeavour to make positive changes in the society or provide legality and validity to those beneficial changes.

Conclusion

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 could not be wiped out. Thus the utility of law in reforming the society depends on the machinery to implement it and if there is enough political will, progressive laws can bring about social changes. In such cases, we cannot wait for the im-

pulse for change to come from society at larger. The enlightened must seek to educate and spread awareness among the masses. Unless ignorance is dispelled, law will remain in the statute books and no change worth its name will take place.