

Role of Legislation as an Instrument of Social Change in India

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Abstract: *In jurisprudence, legislation is viewed as a critical instrument for effectuating social change, as it shapes the legal system and societal structures. Jurisprudence, or the philosophy of law, explores the ways in which laws are crafted, interpreted, and applied to bring about justice, equality, and progress within society. Law and society are deeply intertwined, influencing each other in a continuous process of transformation. Legislation plays a pivotal role in driving social change in India by shaping the legal framework that governs societal norms, behaviours, and institutions. This article examines how legal frameworks have jurisprudentially responded to social needs, highlighting landmark legislations in India and their impact. Despite the progressive nature of law, gaps in implementation and lack of timely amendments often hinder its effectiveness in addressing emerging social challenges. The article emphasizes the necessity for inclusive policy - making, public participation, and an independent legislative process to ensure that law remains a true instrument of social progress.*

Keywords: law and society, social change, legislation, legislative reforms, public policy

1. Introduction

Change is the law of nature, what is today shall be different from what it would be tomorrow. The social structure is subject to incessant change. Society is an ever - changing phenomenon, growing, decaying, renewing and accommodating itself to changing conditions and suffering vast modifications in the course of time. For decades now law and society theorists have been preoccupied with attempts to explain the relationship between legal and social change in the context of development of legal institutions. Law is the reflection of the will and wish of the society. It is said that if you want to study any society, you have to study the laws enacted by that society and you come to know whether the society is developed or wild world. The law, though it is the product of the society is responsible for the social transformations. In fact, there are two modes of this aspect. First is, "Law changing the society", which means that the law of the land compels the society to be changed according to it. Secondly, "Society changes the law", as per its needs, means law is made by the society according to its requirement by its democratic institution i. e. Legislative or by adopting custom and usage. When law changes the society, it is the sign of beginning of the development of the society. When society changes law, it is the sign of maturity of the society.

Different Schools on the relation between Law and society

According to *positive law school*, the positivity of law implies the freedom of rational determination through the application and outcome of analyses. Society thus becomes the object of its own legal mechanism; it is reflected in one of its part systems as a whole.¹ Jeremy Bentham going by his Utilitarian principles, wished to test every law to see if it led to the greatest happiness of the greatest number. By positive law, John Austin meant 'laws properly so called' as

distinguished from morals and other laws, which he described as 'laws improperly so called' which lack force or sanction of the State. He defined law as "a rule laid for the guidance of an intelligent being by an intelligent being having power over him". He believed, "the subject - matter of jurisprudence is positive law – law simply and strictly so called; or law set by political superior to political inferiors". The chief characteristics of positive law are command, duty and sanctions, that is, every law is a command, imposing a duty, enforced by sanction. Thus, this clearly shows that he gave superior status to law as it is, and society was never given due importance by him.²

According to *historical school* of Savigny, law is a product of the general consciousness of the people and a manifestation of their popular spirit, termed as *Volksgeist*. He believed that a people's law cannot be made by a drafting committee, but must grow from a people's experience and character, expressing among them a "common feeling of inner necessity". As per him, "Law perfects its language, takes a scientific direction, and as formerly it existed in the consciousness of the community, it now devolves upon the jurists, who thus in this department, represent the community". As per him, law grows with the growth of the society, and gains its strength from the society itself and finally it withers away as the nation loses its nationality. Law should essentially follow and not lead the change. Law, language, customs and government have no separate existence from the people who follow them. Common conviction of the people makes all these as a single whole.³ The main concern of *sociological jurists* is to study the effect of law and society on each other. They treat law as an instrument of social progress. They also lay greater stress on functional aspect of law, rather than its abstract contents. According to Ehrlich, law depends on popular acceptance

² Austin, John, *The Province of Jurisprudence Determined*, Cambridge University Press, 1995, p:9

³ Stone, Julius, *Social Dimensions of Law and Justice*, Maitland Publications Pty. Ltd., 1977, Pp:94-95

¹ Friedman, W., *Law in a Changing Society*, Universal Book Traders, 1996, p:228

and that each group creates its own "living law" which alone has creative force. All that the judge does is to make precise and definite the raw material thus furnished by the community. He believed that law need not be necessarily created by the State or applied by the courts or has a coercive legal compulsion behind it, but it is created by life of groups living within the society. Law governs matters that 'at least in the opinion of the group in which it has its origin' are 'of great importance, of basic significance.'⁴ According to Duguit, every individual has his existence owing to his membership of the society. Each individual cannot procure the necessities of life by himself. Therefore, each in his turn has to depend on other for his needs. The ultimate end of all human activities is to ensure the interdependence of men or social solidarity. State exists for performing the functions which promote "social solidarity" and not for the exercise of sovereignty. He believed that law is an embodiment of duties which an individual is supposed to perform as a part of the social organization for furtherance of social solidarity.⁵ According to theory of 'social engineering' of Roscoe Pound, the end of law is to satisfy a maximum of wants with a minimum of friction or confrontation. He stated that the function of law is to reconcile the confronting interests of individuals in the community and harmonise their inter- relations. Law secures social cohesion and orderly social change by balancing conflicting interests – individual (the private interests of individual citizens), social (arising from the common conditions of social life) and public (specifically the interests of the State). In order to evaluate the conflicting interests in due order of priority, he suggested that every society has certain basic assumptions (which he terms as Jural Postulates) upon which its ordering rests, though for most of the time they may be implicit rather than expressly formulated.⁶ The *realists* contend that law has emanated from Judges; therefore, law is what courts do and not what they say. For them, Judges are the law - makers. They also believe that judicial decisions are not based on abstract formal law but the human aspect of the Judge and the lawyer also has an impact on court's decisions. The exponents of this school laid greater stress on psychological approach to the proper understanding of law as it is concerned with human behaviour and convictions of the lawyers and Judges. They believe that there can be no certainty about law as its predictability depends upon the set of facts which are before the court for decision. They preferred to evaluate any part of law in terms of its effects.⁷ The rule of precedent should however, be abandoned if it is inconsistent with the notion of justice or derogatory to social welfare policy. Frank He made 'fact - finding' by the Court as the central theme of his realism in which the personality of the Judge and his past experience play a dominant role in moulding the law and giving it a concrete shape. He exploded the myth that law is continuous, uniform, certain and invariable, and asserted that the Judges do not make law but instead, they discover it. According to him, the individual decision of the Judge is law par excellence. He reiterated that law consists of decisions and the personal

convictions, likes and dislikes emotions. Therefore, in the journey of evolution of law from the point of view of Natural law school to Realist school i. e from uncodified law in the form of people's will/wish, custom and test of morality to the concept of judicial activism law has always proved as an instrument of social change.

Judicial pronouncement on independence of legislation

In Supreme Court Advocates on Record Association vs Union of India, S. Ratnavel Pandian, J. states "The Inevitable truth is that law is not static and immutable but ever increasingly dynamic and grows with the ongoing passage of the time."⁸ In *Shri Sitaram Sugar Co. Ltd. & Anr. vs. Union of India & Ors.*⁹, the question arose; whether fixation of price for sugar under Section 3 (3 - C) of the Essential Commodities Act, 1955 was an administrative or legislative function and whether the Court could interfere in fixation of price thereof? A Constitution Bench of this Court had held that price fixation is legislative function. In paragraph 57, it was held that judicial review is not concerned with matters of economic policy. The Court does not substitute its judgment for that of the Legislature or its agents as to matters within the province of either. The Court does not supplant the "feel of the expert" by its own views. When the Legislature acts within the sphere of its authority and delegates power to its agent, it may empower the agent to make findings of fact which are conclusive provided such findings satisfy the test of reasonableness. In all such cases, judicial inquiry is confined to the question whether the findings of fact are reasonably based on evidence and whether such findings are sustainable at law of the land. Judicial function in respect of such matters is exhausted when the court finds rational basis to the conclusion reached by the authority. In the matters of policy and planning, it should adopt one or other system of control in the best economic interest of the sugar industry and the general public grouping sugar factories on geographical - cum - agro - economic factors to determine the price. It was held that the fixation of price to the sugar was not amenable to judicial review. In *Peerless General Finance & Investment Co. Ltd. & Anr. Vs. Reserve Bank of India*¹⁰, K. Ramaswamy, J., in a separate but concurrent judgment held in paragraph 69 that it is well settled law that the court is not tribunal from the crudities and inequities of complicated experimental economic legislation. The discretion in evolving economic measures rests with the policy makers and not with the judiciary. Indian social order is beset with social and economic inequalities and of status, and in our socialist secular, democratic republic; inequality is an anathema to social and economic justice. In *Sheikriammada Nalla Koya v. Administrator, Union Territory of Laccadives*,¹¹ K. K. Methew. J., held that customs which are immoral are opposed to public policy, In *Peerless General Finance & Investment Co. Ltd. & Anr. VS. Reserve Bank of India* [(1992) 2 SCC 343], one of us, K. Ramaswamy, J., in a separate but concurrent judgment held in paragraph 69 that it is well settled law that the court is not tribunal from the crudities and inequities of complicated

⁴ Cotterrell, Roger, *The Sociology of Law*, Oxford University Press, 2007, p:38

⁵ Paranjape, N.V., *Studies in Jurisprudence Legal Theory*, Central Law Agency, 2006, p:93

⁶ Supra, n.5, pg: 64.

⁷ Supra, n.5, Pp:73-74.

⁸ (1993)4 SCC 441

⁹ (1990) 3 SCC 223

¹⁰ (1992)2 SCC 343.

¹¹ AIR 1967 Kerala 259.

experimental economic legislation. The discretion in evolving economic measures rests with the policy makers and not with the judiciary. Indian social order is beset with social and economic inequalities and of status, and in our socialist secular, democratic republic; inequality is an anathema to social and economic justice. *The Reserve Bank of India Act* assigned the power to the Reserve Bank of India to regulate monetary system and the experimentation of the economic legislation, can best be left to the executive unless it is found to be unrealistic or manifestly arbitrary. The court has to see whether the scheme, measure or regulation adopted is relevant or appropriate to the power exercised by the authority. In that case, the directions issued by the Reserve Bank of India for regulating the money circulation were held valid.

Legislations in India based on social change or vice-versa since independence

Since independence, various legislations have been passed in India¹² which reflect the need/wish of the society which are Hindu Widow's Remarriage Act 1856, Indian Divorce Act 1869, Christian Marriage Act 1872, Indian Majority Act 1875, The Guardians and Wards Act 1890, Workman's Compensation Act 1923, Indian Succession Act 1925, Child Marriage Restraints Act 1929, Payment of Wages Act 1936, Muslim Marriage Act 1939, Industrial Disputes Act 1947, Factories Act 1948, Minimum Wages Act 1948, Fundamental Rights and Directive Principles of state policy enshrined in Indian Constitution, Employee Provident Fund Act 1952, Special Marriage Act 1954, Hindu Marriage Act 1955, Hindu Adoption and Maintenance Act 1956, Hindu Succession Act 1956, Prevention of Immoral Traffic Act 1956, Wealth Tax Act 1957, Gift Tax Act 1958, Children's Act 1960, Dowry Prohibition Act 1961, Maternity Benefit Act 1961, Income Tax Act 1961, Medical Termination of Pregnancy Act 1971, Indian Penal Code (relevant section regarding rape and sexual abuse), 1972, Payment of Gratuity Act 1972, Indian Criminal Procedure Code (relevant section pertaining to women, children, destitute and handicapped) 1973, Protection of Civil Rights Act, 1976, Interstate Migrant Workers Act 1979, Child Labour Act 1986, Juvenile Justice Act 1986, Mental Health Act 1986, Consumer Protection Act 1986, The Arbitration and Conciliation Act 1996, The Right to Information Act 2005, The Protection of Women from Domestic Violence Act 2005, The Prohibition of Child Marriage Act 2006, Maintenance and Welfare of Parents and Senior Citizen Act 2007, The Right of Children to Free and Compulsory Education Act 2009, Protection of Children From Sexual Offences Act 2012, Prevention of Sexual Harassment of Women at Workplace Act 2013, The Muslim Women (Protection of Right on Marriage) Act 2019, abolition of triple talaq, increasing age of marriage to 21 year from 18 years for Hindu girls etc. Abolition of Section 124A, section 377, section 309 and section 497 IPC and inclusion of "community service" as a mode of punishment under section 4 (f) in *Bhartiya Nayaya Sahinta* 2023, Inclusion of "audio video electronic means" for recording evidence under section 2 (a) under *Bhartiya Nagrik Surakhsha Sanhita* and inclusion of electronic evidence as primary evidence under

Bhartiya Sakhshya Adhiniyam 2023. But many of these legislations are not being effectively implemented due lack of binding force of sanction behind them.

Gap between Social issues and legislation

In India, half of the social legislation already framed is either ineffective or has cease to operate in letter and spirit because of lack of time - to - time amendments in the same inconsonance with social needs. Justice P. N. Bhagwati held in the case of *National Textile Worker's Union V. P. R. Ramakrishna*¹³, "law cannot stand still and it must change with the changing social concepts & values. If the law fails to respond to the needs of changing society, then it will stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth." The social issues like Public Health, rights of LGBTQIA (Lesbian, Gay, Bisexual, transgender, queer, intersex, asexual), recognition to marital rape, animal rights, implementation of international laws in India, communal riots management, low economic growth management, housing policies for slum areas, code of conduct for political parties specially the one involved in formulation of legislation, abolition of Khap Panchayats, employment guarantee schemes for educated/skilled population, drug addiction, surrogacy, euthanasia, gender based discrimination, cleaning of environment by solid waste and wet waste management policies, cleanliness of water bodies and many more in the list which are still waiting to be addressed by way of legislation.

2. Conclusion

India is a country of unity in diversity. India's high population, low literacy rate, low economic growth, lack of self - control and discipline and ignorance/lack of awareness of law are the reasons behind the ineffective implementation of law in India. Furthermore, Indian legislation is not reformative in nature and it is also politically motivated. Law making agencies should be independent of politics as judiciary is independent in India. Participation of general masses in formulation of legislation is almost zero. People don't even exercise their right to franchise effectively and those who vote, they vote for personal interests rather than interests of society or nation as a whole. Therefore, in order to be an instrument of social change legislation not only has to adhere to need, wish and welfare of common masses but also has to make them part of policy making.

¹² https://legislative.gov.in/documents/legislative-references/list-of-acts-yearwise?field_acts_yearwise_tid visited on 24.5.23

¹³ (1983)1 SCC 228