

CLASS- LL.M. IIND SEMESTER

SUBJECT: LAW AND SOCIAL TRANSFORMATION

TOPIC: LAW AS AN INSTRUMENT OF SOCIAL CHANGE

Law not only lays down the norms which are acceptable to a given society, it also lays down the norms, which the society should adopt in the interest of its own welfare. The rules or code of conduct which a society develops by experience shapes into law for the sake of uniformity, consistency, performance and sanction. An acceptable norm thus becomes a law.

DEFINITIONS OF LAW:

B.N. Cardozo says "Law is a principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the Courts if its authority is challenged."

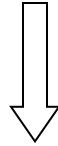
Max Weber- feels that "Law is an order, the validity of which is guaranteed by the probability that deviation will be met by physical or psychic sanction by a staff specially empowered to carryout this Sanction"

According to Roscoe Pound, "Law is an authoritative canon of value laid down by the force of politically organised society."

Austin defined law as "the Command of sovereign, having sanction behind it.

WHAT IS CHANGE?

CHANGE



a difference in anything observed over some period of time.

Change is the rule of society. Society forms its own code of conduct, its norms to be followed by its members and at times and at many times expects wholehearted compliance and submission to societal norms as set by the society or its various groups or sub-groups.

DEFINITIONS OF SOCIAL CHANGE:

Lundberg and others "Social Change refers to any modification in established patterns of inter-human relationship and standards of conduct.

Vidya Bhushan and D.R. Sachdeva observed, "Change is the law of nature what is to-day 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.

According to Mazumdar, H.T.- "Social change may be defined as a new fashion or mode, either modifying or replacing the old, in the life of a people, or in the operation of a Society.

According to Davis, "Social change is meant only for such alterations as occur in social Organisation, that is, structure and functions of Society."

M.D. Jenson, "Social change may be defined as modification in ways of doing and thinking of people."

Anderson and Parker, "Social Change involves alteration in the structure or functioning of social forms or processes themselves."

The changes in technology, agriculture, dairy, farming, science etc. may not be included in the term "social change." Social change is limited to alterations in the field of social relationships. Social relationships are social processes, social patterns and social interactions.

Social change can be (1) modifications or (2) replacements.

For example our ideas about untouchability, women's rights, religion, marriage, sex, government and same may undergo further modification or replacement in future.

PERSONS WHO MAKE A CHANGE IN SOCIETY THROUGH THE SOCIAL REVOLUTION

1. Raja Ram Mohan Roy- fight for sati system
2. Ishwar Chandra Vidhyasagar- widow remarriage and women education
3. Guru Nanak Dev- He advocated Hindu Muslim unity, equality, brotherhood and oneness of God etc
4. Swami Dayanand Saraswati – women education in equal terms

SOCIAL CHANGE THROUGH LAW

1. Abolition of slavery and bonded labour system:

To remove slavery from India , there are few legislation who make slavery an offence. Sections 370 of the IPC- Whoever imports, exports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Section 371 of the Indian Penal Code, 1860- Whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Moreover, Art 23 of the constitution of India protects individuals from the trafficking and forbid the bonded labour in India. As well as Government of India enacted the Bonded Labour System (Abolition) Act, 1976 to prohibit the bonded labour in India ,

Though many attempts had been taken to curb the issue of bonded labour it could be effectively done only through the Act.

2. Disallowance Of Child Marriage:

This routine with regards to tyke marriage was passionately found in Indian culture crosswise over different religious groups. Extreme endeavors were made by numerous reformers it turned worthless until the point that a law was ordered. The Hindu Child Marriage Restraint Act was substituted by the restriction of Child Marriage Act 2006. It introduction duced youngster marriage restriction officer and expanded the energy of family court to choose the issue under the Act. The demonstration likewise improved the discipline upto two years thorough detainment or with fine up to Rs 2 lakhs or with both.

3. Right To Free And Compulsory Education:

In 1992 the good Supreme Court proclaimed the privilege to free and mandatory instruction as a key right in the ambit of 'Ideal to Life' under Art 21 of the constitution. In 2002 the constitution was changed by embeddings Article 21A to execute the privilege to free and mandatory instruction of each kid matured between 6–14 years and embedded principal obligations of parent. In 2010 The Right of Children to Free and Compulsory Education Act 2009 was placed in drive with impact from first April to give free and mandatory instruction from 1 to eighth standard to each tyke. Along these lines it can be seen that law genius texts the life of the youngsters.

4. Public Interest Litigation:

The Honorable Supreme Court has received the more extensive approach of the manage of locus standi to use the activity and arrangement people in general vivacious people to move the courts to represent the general or gathering interest despite the fact that they may not be specifically harmed in their rights. The most imperative truth in regards to PIL is that of unwinding the locus standi idea, any open vivacious per-child can approach the established courts and could convey to the courts notice of obtrusive infringement of Fundamental Rights of individuals who are not fit for being moving toward the courts themselves. PIL is an idea went for expanding the accessibility to equity and structures a piece of sacred law in India.

5. Laws For Rape Victims:

The administration passed the statute on April 21 following across the board dissents after endeavors by a few pioneers and supporters of the decision Bharatiya Janata Party (BJP) to safeguard Hindu culprits of the kidnapping, abuse, assault, and murder of a 8-year-old Muslim tyke in Jammu and Kashmir state. The Criminal Law (Amendment) Act, 2013, included new classes of offenses with respect to savagery against ladies and young ladies and made discipline more stringent, including capital punishment for rehash guilty parties. Compensatory system is also introduced by the Government for the rape victims,

6. Abolition of Sati System

Sati' – meaning burning or burying live of widow along with the corpse of her husband. It was considered to be a great honor among Hindus to become a sati since ancient times. In 1812 Raja Ram Mohan Roy the Indian social reformer started against these practices. The practice could not be stopped by the society as it was considered as part of their customs and traditions. It was law which could control it on 4th Dec 1829. The practice was formally banned in Bengal presidency lands by governor lord William Bentick by a regulation for declaring the practice of sati or of burning or burying hindu widows as illegal and punishable by the criminal courts. In post independent India – sati was not curbed effectively. Legislature took serious steps by introducing a special law for the treatment of persons who abet sati and made it exemplary punishable upto death sentence under Commission of Sati Act, 1987. Now in most areas of India it is a forgotten system. These laws relating to sati, widow remarriage, child marriage were enacted due to public opinion.

7. Widows Remarriage

The Hindu society prevented remarriage of widows in order to protect their family's honour and property. It was the efforts of Ishwar Chandra vidyasagar who

urged British to pass a legislation allowing Hindu women to remarry. In pursuance of this The Hindu Widow Remarriage Act was passed in 1856. Legalising the remarriage of Hindu widows and to provide legal safeguards against loss of certain forms of inheritance for remarrying a Hindu widow. Thus it empowered a Hindu widow to live a life.

8. Elimination of Child Labour

Preventing a child from enjoying his childhood is a grave crime. The Factories Act 1881 was the _rst one of its kind to prohibit employment of child below the age of 7years and working hours were limited. we have Child Labour (Prohibition and Regulation) Act 1986 which generalizes the age of child upto 14 years for the purpose of prohibition of child labour.

9. Right to Information – For Effective Governance

It is best and landmark instruments of law regarding social change which started in 1975, when the honorable Supreme Court upheld that freedom of speech and expression includes the right to know every public act done in a public way by their public functionaries. Right to know is implicit in right of free speech and expression and disclosure of information regarding functioning of the government must be the rule. The Right to Information Act of 2005 has proved to be a strong legislation with good teeth because of effective implementation of the Act.

10. Female Infanticide

To save the life of girls in India GOI enacted the Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994. The act banned prenatal sex determination.

Effective implementation of law as an instrument or device of social change should work in tandem with social and cultural life of people of India. Transformation of

social system according to the need of the times and in accordance with the modes and mores of the people is a matter of necessity.

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