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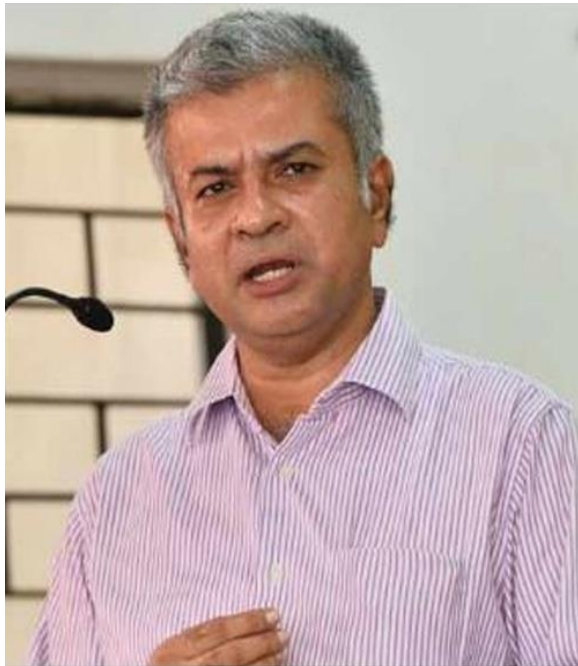
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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ROLE OF LAW IN BRINGING SOCIAL CHANGE

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Abstract

Change is a natural law. Change is imminent and nothing remains stagnant. Societies also evolve from traditional to modern in this process of continuous change. Social change is a wide and complex subject in which we study the fundamental changes which take place in society. The world is changing rapidly in this period of liberation, privatization, and globalization. Some changes take time, while some are rapid. Some changes are visible and predictable, while some are invisible and unpredictable. We participate in the process of change deliberately and unconsciously many times. Some changes are imposed against our will and we remain silent spectators. In social change, the role of law is most important. Law is a mirror of society's will and desires. The law, though it is the product of the society is responsible for the social transformation. The law has the potential to be a powerful vehicle for social change. Law induces a new pattern of social behavior more conducive to the prosperity of society. Law must influence people's behavior, beliefs, and values to effect societal change. Examining the role of legislation in social development would reveal two things. First, the state and society use legislation to align legal standards with existing social norms, and then legislators are used to improve social norms based on new legal norms. The shape of the law changes in response to the needs of society, or the law changes in response to the enactment of statutes. The beginning of civilization's evolution occurs when the law changes society. When a civilization modifies its laws, it demonstrates its maturity. An attempt is made in this paper to emphasize the role of law in bringing social change.

KEYWORDS: Social Change, Law, Social Transformation, Society, Legislation

Role Of Law In Bringing Social Change

1 **INTRODUCTION:** Social change is a change in the norms and conducts of the people towards society. Society has decided what to do (goodness, dharma, or satya) and what not to do (evil, adharma, or asatya) since its inception. This regulation is still in effect and will be until the end of civilization. Previously, society was traditionally founded on values. Morality, on the other hand, is replaced by the law when society is superseded by the state. If we want to change any current custom or practice in society, we should do so through the use of the legal system.¹

Law and social transformation is a unique discipline that investigates societal socioeconomic problems and possible remedies using a legal framework. The law can be changed in one of two ways. To begin with, "law alters society," which means that the law of the land forces society to change in accordance with it. When a dispute involving a legal issue is brought before the courts, the rule of law-based judiciary pushes society to reform either its existing customs or its laws. Second, "society alters the law," which indicates that the law is created by society in accordance with the requirements of its democratic system, i.e., by legislative function or through the adoption of customary practices. The fundamental role of a lawmaker is to pass laws that address societal demands. When an issue about the validity of an existing law arises in a court of law, the court holds the law legitimate if it is found to be constitutional, moral, and just; if not, the court considers the legislation invalid and unconstitutional.²

When a law is made by society in the form of a custom, the law is changed by society. If, on the other hand, a law is immoral, unjust, or unconstitutional, society must be modified to reflect the valid law. The law, it is argued, has altered society. The transition has occurred in both directions.³

2 **LAW:** Law has been defined as the rules of human action. Law establishes not only acceptable norms for a specific community but also norms that the society should adopt in the interests of its own well-being. A society's standards or code of behavior is fashioned into law via experience for the reasons of uniformity, consistency, stability, and sanction. As a result, an acceptable norm

¹ Dr. Krishna Pal Malik and Dr. Kauskhi C. Rawal, *Law And Social Transformation In India*, 1 (Allahabad Law Agency, Faridabad (Haryana), 4th Edition, 2014)

² Ibid

³ Dr. Krishna Pal Malik and Dr. Kauskhi C. Rawal, *Law And Social Transformation In India*, 2 (Allahabad Law Agency, Faridabad (Haryana), 4th Edition, 2014)

becomes law, any deviation from it is punished under criminal law, but civil law becomes a code of conduct that governs society.

3 SOCIAL CHANGE: Social change is defined as any change, difference, or modification that occurs through time in a situation or an object. The word "social change" refers to changes in human interactions and relationships. Because society is a "network of social interactions," "social change" refers to a shift in the social relationship system. Social processes, social interactions, and social organization are all used to describe social relationships. As a result, beneficial improvements in social interaction, social processes, and social organization are referred to as "social transformation." Changes in society's structure and functioning are included.⁴

4 Difference Between Social Change And Social Transformation:

According to Roger Cottrell, "Social change takes place only when the social structure changes, i.e., there is a change in the patterns of social relations, established social norms and social rules. When massive or structural or for reaching social change occurs, it is called social transformation."⁵

5 RELATION BETWEEN LAW AND SOCIAL TRANSFORMATION: According to Roger Cottrell, "Law is the most dependable instrument to bring and plan orderly changes even amidst complain or critical situations, because law has the ability to restructure various relations."⁶

Justice Subbarao Opinion: He believes there is a mutual and multi-linear relationship between law and social transformation. He is come up with five possible connections between law and social change:

1. Law has no bearing on social change;
2. In defiance of the law, social transformation occurs;
3. The law promotes social change;

⁴ CN Shankar Rao, *Sociology Principles Of Sociology With An Introduction To Sociological Thought* (S Chand And Company Limited, Ram Nagar, New Delhi, 7th Edition, 2019)

⁵ Dr. Ajaymeet Singh, *Simplified Approach To Jurisprudence*, 234 (Shree Ram Law House, Chandigarh, 1st Edition, 2019)

⁶ Dr. Ajaymeet Singh, *Simplified Approach To Jurisprudence*, 235 (Shree Ram Law House, Chandigarh, 1st Edition, 2019)

4. Law is a catalyst for social change; and
5. Law and social change interact with one another.

In the first two scenarios, the law is not a driving force for societal transformation. However, legislation has an active role in initiating, managing, and monitoring social change in the last three scenarios.⁷

6 NECESSITY OF CHANGING THE LAW: The Indian judiciary has been considered to be responsive to the needs of social thinking in general. Courts have brought out new implications and added new aspects to the law by paying fair weight to them while interpreting statutes in specific circumstances. New social interests are promoted and defended in the process. The subjectmatter and the judiciary's reactions to changing facts or social life influence the recognition and evolution of new legislation.⁸

The Preamble, Fundamental Rights, and Directive Principles of the Constitution have laid the road for India's socio-economic growth. The Constitution's conscience was developed by "we the people of India" before it was stated in the Constitution's trilogy.

The Constitution's preamble guaranteed all citizens social, economic, and political justice, as well as liberty, equality, and brotherhood. The Directive Principles of State Policy, found in Part IV of the Constitution, are a set of ideas that represent modern liberal thinking on the welfare state. Pragmatism and democratic socialism are their foundations. Although Directive Principles of State Policy are unreasonable, they should never be treated as second-class citizens by the government. The Directive Principles of State Policy are intended to direct the state to pursue poverty, disease, backwardness, economic inequities, and social biases with vigor. Its mission is to achieve social justice without using violence or class warfare.⁹

7 FRAMERS OF THE INDIAN CONSTITUTION FORESIGHT: The legislation should be written in such a way that it offers delight to a greater number of people in society. The Constituent

⁷ Ibid

⁸ Dr. Krishna Pal Malik and Dr. Kauskhi C. Rawal, *Law And Social Transformation In India*, 5 (Allahabad Law Agency, Faridabad (Haryana), 4th Edition, 2014)

⁹ Ibid

Assembly included Article 368 when discussing the Constitution's flexibility. It indicates a willingness to adapt the legislation, even the law of the land, to changing conditions.

8 LAW AS AN INSTRUMENT OF SOCIAL CHANGE: Only when the current social norm is given legal support then social law be an effective tool for social change. No law can ever completely replace one set of rules with another. It is unlikely to alter social norms. Social policy alone is unlikely to bring about social change. However, with public backing, it might lead to a shift in social norms and, as a result, a shift in social behavior. Some examples of Indian social policy will assist us in comprehending this concept.¹⁰

8.1 *BEFORE INDEPENDENCE LEGISLATION:* In pre-Independent India, they were in sync with the trends and tides of the period, social legislations were able to succeed and pave the way for societal transformations.

8.1.1 Indian Slavery Act, 1843: The Indian Slavery Act was passed in 1843 to abolish slavery in India, and sections 370 and 371 of the Indian Penal Code, 1860, were later added to make slavery illegal. Human trafficking and forced labour are protected as fundamental rights under India's Constitution, according to Article 23.

8.1.2 The Caste Disabilities Removal Act, 1850: Prior to the operation of this Act, if a Hindu renounced his religion, was excluded from the communion of that religion, or was expelled from the caste, such renunciations, exclusion, or expulsion entailed a forfeiture of his rights and property, and deprived him of his right of inheritance. The Caste Disabilities Removal Act, 1850, set aside the provisions of Hindu law which penalized the renunciation of religion or exclusion from caste. The result is, that neither conversion nor degradation from caste can now deprive a person who was once a Hindu of his right of inheritance or other rights. Thus the Act gives every person freedom of religion. The Act is also known as the Freedom of Religion Act, 1850.¹¹

8.1.3 Regulation XVII of 1829 and Commission Of Sati (Prevention) Act, 1987: Raja Ram Mohan Roy, an Indian social reformer, began fighting these practices in 1812. The practice could not be halted by society as it was viewed as part of their rituals and traditions. On December 4th, 1829, the only thing that could restrain it was the law. Governor Lord William Bentinck issued an order

¹⁰ Supra 5

¹¹ Dr. Paras Diwan, *Modern Hindu Law* (Allahabad Law Agency, Faridabad (Haryana), 24th Edition, 2019)

defining the practice of sati, or the burning or burying of Hindu widows, as illegal and punishable by the criminal courts throughout Bengal presidency territory. Sati was not properly curtailed in post-independence India. The legislature took substantial steps by enacting the Commission of Sati (Prevention) Act, 1987, which established a separate legislation for the treatment of those who aid sati and made it an exemplary crime punishable by death. It is now a forgotten system in most parts of India and public opinion, legislation relating to sati, widow remarriage, and child marriage were adopted. The laws enacted during colonial rule were not covered by sociological law. They were only interested in these laws because of social reformers and public opinion.¹²

8.1.4 The Hindu Widows' Remarriage Act, 1856: Prior to the introduction of this Act a Hindu widow was not allowed to re-marry except where it was permitted by custom. This is an enabling Act and it enables a Hindu widow to re-marry. The Act legalizes the remarriage of Hindu widows and declares the issue of such re-marriage to be legitimate.¹³

8.1.5 The Factories Act, 1881: In India, The Factories Act, 1881, was the first time to prohibit employment of child below the age of 7 years and working hours were limited to 9 hours for a child between 7 to 12 years of age, which was amended as the time passed in the subsequent amendments made in the Factories Act.

8.1.6 The Child Marriage Restraint Act, 1929: The Act was passed to prevent child marriages. Child marriage was defined to be a marriage where the bride did not attain the age of 15 years or the bridegroom 18 years. With effect from October 1, 1978, the age has been raised to 18 years in the case of a female and 21 years in the case of a male. The Act was a restraining Act and not invalidating Act. It penalizes a male to marry a female below 18 years. It also provides punishment for parents and guardians who are parties to a marriage below age. But the Act does not affect the validity of a marriage contracted in breach of the provisions of the Act.¹⁴

8.1.7 The Hindu Women's Right to Property Act, 1937: Coparcenary, partition, alienation, inheritance, and adoption all underwent significant alterations as a result of the Act. Prior to the Act, if a deceased Hindu left a male issue, the widow was not entitled to a portion of the property.

¹² Dr. Krishna Pal Malik and Dr. Kauskhi C. Rawal, *Law And Social Transformation In India*, 14 (Allahabad Law Agency, Faridabad (Haryana), 4th Edition, 2014)

¹³ R.K. Agarwal, *Hindu Law* (Central Law Agency, Faridabad (Haryana), 26th Edition, 2019)

¹⁴ Mayank Madhaw, *Family Kaw Part-I* (Singhal Law Publications, Delhi, 7th Edition, 2019-2020)

Even when a man leaves a male issue, the Act grants the widow of a man the right to inherit his property. The widows of his predeceased son and his predeceased son's predeceased son are also granted similar privileges. The widow of a deceased coparcener assumes the role of her late husband in a Mitakshara coparcenary. The rule of survivorship was thus no longer applicable where a coparcener left a widow.¹⁵

8.2 AFTER INDEPENDENCE LEGISLATION: In India, Parliament is the highest legislative body. The Constitution of India's principles and objectives must be implemented through Parliament. The Preamble of the Constitution declares social, economic, and political justice as one of the objectives of the Constitution. The Parliament has enacted many laws to introduce socio-economic changes in the country, particularly for the protection of the interests of weaker sections like women, children, scheduled castes, and scheduled tribes. The following are a few of them:¹⁶

8.2.1 Special Marriage Act, 1954: This Act establishes a unique kind of marriage for all Indians, including Hindus. Two persons of different religions may also marry under this Act. If a Hindu marries under this Act, he shall be deemed to effect his severance from the coparcenary (joint family). To solemnize a marriage under this Act, no ceremony is necessary.¹⁷

8.2.2 The Protection of Civil Rights Act, 1955: This Act was passed to punish the preaching and practice of untouchability, as well as the enforcement of any impairment resulting from it, as well as other related problems. The primary goal of this Act is to put Article 17 of the Indian Constitution into practice, which forbids untouchability.¹⁸

8.2.3 Hindu Marriage Act, 1955: One of the far-reaching actions of social reform was the Hindu Marriage Act of 1955. By enforcing monogamy, it established equality of sexes, by providing for separation, divorce, and dissolution of marriage among Hindus.¹⁹

8.2.4 Hindu Succession Act, 1956: For the first time, the Act grants a Hindu woman entire rights to her property. This Act allows both sons and daughters to inherit property. The Act removes the

¹⁵ Mayank Madhaw, *Family Law Part-II* (Singhal Law Publications, Delhi, 7th Edition, 2019-2020)

¹⁶ Dr. Ajaymeet Singh, *Simplified Approach To Jurisprudence*, 236 (Shree Ram Law House, Chandigarh, 1st Edition, 2019)

¹⁷ Supra 13

¹⁸ Dr. Ajaymeet Singh, *Simplified Approach To Jurisprudence*, 238 (Shree Ram Law House, Chandigarh, 1st Edition, 2019)

¹⁹ Supra 17

shame attached to daughters inheriting their father's property. Because popular opinion favours women having equal rights and opportunities, the Act may be quickly implemented.²⁰

8.2.5 Hindu Adoption and Maintenance Act, 1956: This measure has contributed to the advancement of women's rights. It allows for the adoption of a son or daughter. It necessitates the wife's consent for child adoption. It also allows widows to adopt children.²¹

8.2.6 The Immoral Traffic Prevention Act, 1956: This Act was enacted to prevent immoral traffic (activities related to prostitution). It does not prohibit or punish prostitution. This Act, on the other hand, makes all prostitution-related activities illegal.²²

8.2.7 The Maternity Benefit Act, 1961: This law was enacted to limit women's employment in select industries at specific times before and after childbirth, as well as to provide maternity benefits and other perks. It safeguards women's employment throughout pregnancy and provides them with maternity benefits, such as a fully compensated leave of absence from work (maternity leave) to care for their newborn child.²³

8.2.8 The Dowry Prohibition Act, 1961: Dowry has become a customary evil in the Indian society as it was continuing unabated for the past many centuries. This act was enacted to prevent the giving and taking of dowry, during or after the solemnization of marriage. A giver, as well as receiver of the dowry, has been made punishable under this act. Sec 304-B was inserted into the IPC in 1986 to define and punish dowry death.²⁴

8.2.9 The Equal Remuneration Act, 1976: This Act was passed to ensure that men and women workers are paid equally and that discrimination against women on the basis of sex is prohibited in the workplace and in situations related to or incidental to employment. As a result, the goal of this Act is to put the directive principle embodied in Article 39(d) of the Constitution into practice.²⁵

²⁰ CN Shankar Rao, *Sociology Principles Of Sociology With An Introduction To Sociological Thought* 514 (A Chand And Company Limited, Ram Nagar, New Delhi, 7th Edition, 2019)

²¹ Ibid

²² Supra 18

²³ Ibid

²⁴ CN Shankar Rao, *Sociology Principles Of Sociology With An Introduction To Sociological Thought* 515 (A Chand And Company Limited, Ram Nagar, New Delhi, 7th Edition, 2019)

²⁵ Dr. Ajaymeet Singh, *Simplified Approach To Jurisprudence*, 241 (Shree Ram Law House, Chandigarh, 1st Edition, 2019)

8.2.10 The SC/ST Prevention of Atrocities Act, 1989: The purpose of this Act was to prohibit the commission of offences and atrocities against members of the Scheduled Castes and Scheduled Tribes, to establish Exclusive Special Courts for the trial of such offences, and to provide relief and rehabilitation to the victims of such offences, among other things. This Act was important to protect the interests of the scheduled castes and tribes.²⁶

8.2.11 The Child Marriage Prohibition Act, 2006: The Prevention of Child Marriage Act, 2006 was adopted by Parliament to ensure that child marriage is removed from society. In favour of this law, the Child Marriage Restraint Act of 1929 was repealed. The new law makes it easier to prohibit child marriage, protect and support victims, and strengthen the penalty for anyone who aids, promotes, or solemnizes a child marriage.²⁷

8.2.12 The Protection of Children from Sexual Offences Act, 2012: This Act was passed to protect children from sexual assault, sexual harassment, and pornography, as well as to establish Special Courts for the trial of such offences and related problems. It imposes harsh penalties for sexual assaults against children.²⁸

8.2.13 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013: This Act was passed to protect women at work from sexual harassment, as well as to prevent and resolve complaints of sexual harassment, as well as problems related to and incidental to that.²⁹

8.3 *SUPREME COURT OF INDIA AND SOCIO-ECONOMIC CHANGES*: The Supreme Court of India is the custodian of the Constitution and the guarantor and protector of Fundamental Rights. It has a Constitutional duty to provide justice (social, economic, and political) to all citizens of India. The role of the Supreme Court of India in bringing socio-economic changes can be discussed concerning the following points:³⁰

²⁶ Ibid

²⁷ Dr. Ajaymeet Singh, *Simplified Approach To Jurisprudence*, 244 (Shree Ram Law House, Chandigarh, 1st Edition, 2019)

²⁸ Mayan Madhaw, *Criminal Law Part- I* (Singhal Law Publications, Delhi, 4th Edition, 2017-2018)

²⁹ Supra 27

³⁰ Dr. Ajaymeet Singh, *Simplified Approach To Jurisprudence*, 249 (Shree Ram Law House, Chandigarh, 1st Edition, 2019)

8.3.1 Expanding Horizon of Right to Life: Article 21 guarantees the right to life and personal liberty to everybody within the territory of India. The horizon of this right has been considerably expanded by the Supreme Court over the past 7 decades through various judicial pronouncements. In the modern era, right to life and personal liberty also includes the right to travel abroad³¹, right to livelihood³², right to a healthy environment³³, the right to privacy³⁴, right to live with human dignity³⁵, right to reputation³⁶, right to shelter³⁷, right to sustainable development³⁸, right to education³⁹, right to know⁴⁰, right to health⁴¹, no right to die⁴², right against illegal detention⁴³, right to free legal aid⁴⁴, right to a speedy trial⁴⁵, right to a fair trial⁴⁶, right to bail⁴⁷, right against handcuffing⁴⁸, right against bar fetters,⁴⁹ right to write a book⁵⁰, right against solitary confinement⁵¹, right against inhuman treatment⁵², right against custodial violence⁵³.

8.3.2 Enforcement of Rule of Law: The Supreme Court has enlarged the frontiers of Rule of Law, which is a cherished goal of the Indian Constitution, throughout the past 72 years through many historic judgments. It can be explained with the following illustrations:

- i) The administrative and discretionary acts of the Government have been made subject to judicial review.
- ii) Natural Justice principles have been extended to administrative investigations.

³¹ Maneka Gandhi v. Union of India, AIR 1978 SC 597

³² Olga Tellis v Bombay Municipal Corporation, AIR 1986 SC 180

³³ Virender Gaur v. State of Haryana, (1995) 2 SCC 577

³⁴ K.S. Puttaswamy v. Union of India, AIR 2015 SC 3081

³⁵ Francis Coralie v. Union Territory of Delhi, AIR 1981 SC 746

³⁶ On Prakash Chautala v. Kanwar Bhan, AIR 2014 SC 1220

³⁷ Chameli Singh v. State of U.P., AIR 1996 SC 1051

³⁸ N.D. Kayla v. Union of India, AIR 2004 SC 867

³⁹ Unni Krishnan v. State of A.P., AIR 1993 SC 2178

⁴⁰ R.P. Ltd. v. Proprietors Indian Express Newspapers, Bombay Pvt. Ltd., AIR 1989 SC 190

⁴¹ State of Punjab v. Ram Labhaya Bagga, AIR 1998 SC 1073

⁴² Aruna Ramchandra Shanbang v. Union of India, AIR 2011 SC 1290

⁴³ D.K. Basu v. State of W.B., AIR 1997 SC 610

⁴⁴ M.H. Hoskot v. State of Maharashtra, AIR 1978 SC 1548

⁴⁵ A.R. Angular v. R.S. Nayak, AIR 1992 SC 1701

⁴⁶ Zahira Habibulla H. Sheikh v. State of Gujarat, AIR 2004 SC 3114

⁴⁷ Baby Singh v. State of U.P., AIR 1978 SC 527

⁴⁸ Prem Shanker v. Delhi Administration, AIR. 1980 SC 1535

⁴⁹ Sunil Batra v. Delhi Administration, AIR 1978 SC 1675

⁵⁰ State of Maharashtra v. Prabhakar Pandurang, AIR 1966 SC 424

⁵¹ Supra 49

⁵² Kishore Singh v. State of Rajasthan, AIR 1981 SC 625

⁵³ Afzal v. State of Haryana, AIR 1996 SC 2326

iii) Principles of Natural Justice must be applied and enforced in the manner specified by the Courts.

8.3.3 Public Interest Litigation: The Supreme Court's creation of Public Interest Litigation, often known as Social Action Litigation, is an exemplary example of judicial activism. The Supreme Court developed PIL through its Epistolary Jurisdiction. Over the past 38 years, the Court has entertained numerous complaints filed through letters addressed to it by public-spirited persons regarding the violation of human rights of weaker sections of the society. The people belonging to the weaker sections of the society are unable to approach the courts because of their poverty and other social, economic, and physical disabilities. Therefore, the traditional 'rule of locus standi' has been dispensed with by the Supreme Court.⁵⁴

9 Conclusion:

It becomes clear that the law has contributed tremendously to bringing about socio-economic changes in the country. The modification and alteration of laws according to the changing needs of society is a continuous process. It requires both a committed Legislature and a watchful Judiciary. In the end, it can be concluded that change is the basic rule of nature. It is rightly said that "everything changes except the rule of change." Old order changes and makes room for the new. Life itself is a continuous change. The collaborative participation of the State and society contribute to the balance between continuity and change.

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