



INTERNATIONAL LAW  
JOURNAL

---

**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

[WWW.WHITEBLACKLEGAL.CO.IN](http://WWW.WHITEBLACKLEGAL.CO.IN)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK  
LEGAL

## **EDITORIAL** **TEAM**

### **Raju Narayana Swamy (IAS ) Indian Administrative Service** **officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) ( with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

diploma in Public

### **Dr. R. K. Upadhyay**

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



## **Senior Editor**

### **Dr. Neha Mishra**



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

### **Ms. Sumiti Ahuja**

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



### **Dr. Navtika Singh Nautiyal**

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.



### **Dr. Rinu Saraswat**

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

### **Dr. Nitesh Saraswat**

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



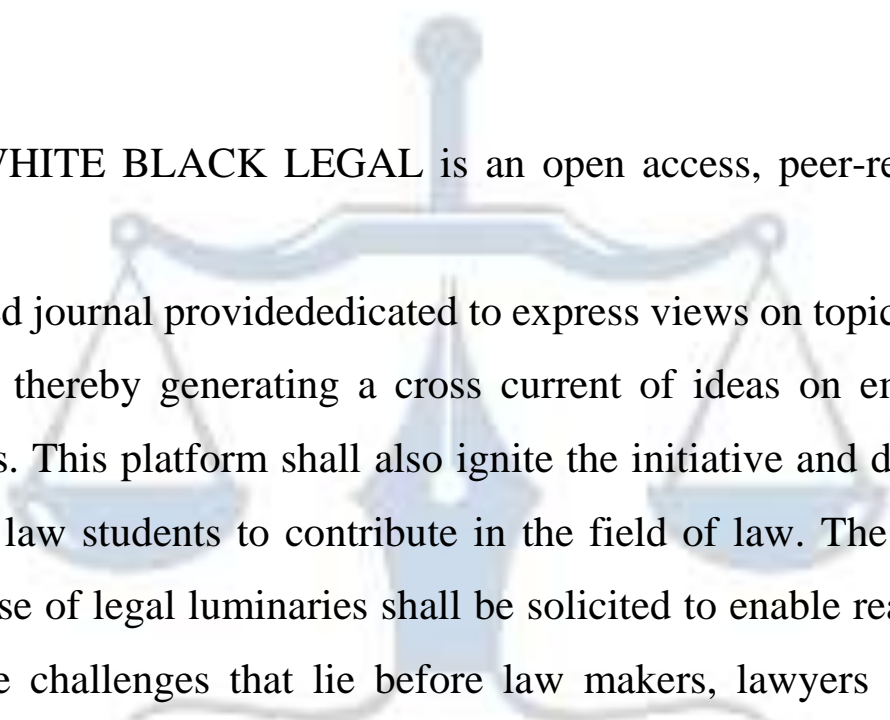
### **Subhrajit Chanda**



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## ***ABOUT US***



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated 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

# **FROM LEGISLATION TO LIBERATION: HOW LAW DRIVES SOCIAL TRANSFORMATION IN INDIA**

AUTHORED BY - KAPIL BHARGAVA

Assistant Professor

Indore Mahavidyalaya, Indore

## **Abstract:**

The interplay between law and social transformation is profoundly significant, as the advancement of society often demands corresponding modifications in legal structures. In the context of India, however, the process of enacting legal changes that reflect the evolving needs and aspirations of the populace can be particularly challenging. This complexity is further compounded by the critical role that education plays in facilitating meaningful and positive changes within society.

Legislators are entrusted with the pivotal responsibility of crafting and amending laws to address the pressing issues faced by their constituents. Yet, a notable concern arises from the observation that many legislators may lack the necessary educational background and resources to fully comprehend and analyze the nuanced needs of the communities they represent.

This research paper aims to delve into the ways in which social transformation catalyzes changes in existing legal frameworks and to highlight the essential role that a robust education plays for politicians seeking public office. Additionally, the paper will explore the myriad challenges that citizens encounter when their elected representatives do not possess the requisite qualifications to effectively advocate for their interests and needs. Through this exploration, the research seeks to illuminate the importance of aligning legislative efforts with the educational development of those in positions of political leadership.

# Chapter 1

## INTRODUCTION

### Introduction

Law is a crucial tool for social transformation in India; without it, achieving significant social change is challenging. Before discussing the connection between law and social transformation, we first need to define what law is, along with the concepts of social transformation and social change.

Once we have established these meanings, we can explore how law promotes social transformation and examine the reasons why social change in India often takes a long time. Additionally, we will look into how the education of politicians impacts law-making, especially when it comes to social legislation such as the prohibition of child marriage, the Right to Education, the Sexual Harassment of Women at the Workplace Act, and transgender rights, among others.

According to Robertson “Law is a set of rules that are created and are enforceable by social or governmental institutions to regulate behavior.” According to Thomas Aquinas “law as an ordinance of reason for the common good, made by him who has care of the community, and promulgated.” Within this definition he included various types of laws- eternal, divine, natural, and human.<sup>1</sup> According to Bentham “Utility is the quality or tendency of a thing to prevent some evil or procure some good. The logic of utility meant augmenting the happiness of community with a formula.”<sup>2</sup>

After discussing the meaning of law, we have gained an understanding of social change and the distinction between social change and social transformation. Social transformation refers to the comprehensive restructuring of all aspects of life, including culture, social relations, politics, and the economy, as well as the ways we think and live.

What is social change and social transformation is defined by Roger Cotterrell that “Social change is held to occur only when social structure-patterns of social relations, established social norms and social roles-changes. Thus a change the established pattern of social relations

---

<sup>1</sup> Michael D. Bayles, *What is jurisprudence about?., 2009 Theories, concept, or conceptions of law?.*, Vol. 18 No. 1 Philosophical Topics, SPRING, 23, 26(1990).

<sup>2</sup> P. Ishwara Bhat, *Law and Social Transformation*, 4 (1st ed., 2009).



between racial or ethnic groups in a society would constitute social change.”<sup>3</sup> “For example, mobility of the class of women to a better social situation is a kind of social change whereas mere increase in production of computer software is not reflecting a social change itself. Overall restructuring of the society on a different pattern of values is implicit in social change. When massive or structural or far-reaching social change occurs, it is called social transformation.”<sup>4</sup>

“The process of education has always been considered one of the primary means through which desired transformation in society can be achieved.”<sup>5</sup> Indian society is currently undergoing unprecedented changes, many of which are positive. Signs of the country's growing economic, technological, and scientific strength are evident across various sectors. Over the seven decades since independence, India has made significant progress in many development indicators. For many Indians, especially those living in urban areas, the quality of life has improved, leading to greater opportunities for progress for themselves and their children.

Education is the most crucial tool by which any society can transform. In India, legislators are responsible for lawmaking, but a major loophole in this system is the lack of a minimum educational qualification required to become a legislator. As a result, anyone can become a politician and get elected to any legislative assembly, regardless of their educational background.

The Law Commission of India plays a significant role in legal and social transformation. Its members are educated individuals who understand the needs of the people and can identify existing gaps within the legal framework, suggesting appropriate remedies. Although lawmakers occasionally acknowledge these suggestions, they often ignore the recommendations made by the Law Commission, sometimes due to a lack of understanding of their importance. Examples of this include the Right to Education Act and the Women's Protection Act.

“Transformation for better and for social welfare is desirable; but the undesirable transformations resulting in exploitation, ill health, violation of human rights and immorality

---

<sup>3</sup> Roger Cotterrell, *The sociology of law*, 47 (2<sup>nd</sup> ed., 1992).

<sup>4</sup> P. Ishwara Bhat, *Law and Social Transformation*, 14 (1st ed., 2009)

<sup>5</sup> *Education and Social Transformation*, bahaichairdavv, available at <https://bahaichairdavv.org/wp-content/uploads/2020/08/8.-Education-and-Social-Transformation.pdf>, last seen on 03/09/2022.

are not liked or allowed by the civilized legal system. Indicators of social transformation for good include: elevation of people's standard of living, elimination of poverty, expansion in education, better protection of women and children, promotion of social justice by equitable distribution of opportunities, reduction in economic disparity, safeguarding of human rights, widespread popular participation in decision making process and public life, effective protection of environment and human rights, and promotion of communal harmony."<sup>6</sup>

We understand the relationship between law and social transformation, and we analyze how education plays a crucial role in this process. In this research paper, we explore the differences between policies created by legislators who have a background in education and knowledge, compared to those developed by legislators who are less educated or lack relevant expertise. We examine how these differences impact social transformation.

"Any growing nation education is most important aspect in all terms may it be human development or mechanical development, although education comes after hunger but know after 65 years of independence, hunger is not our major problem but education is. Thus now our politicians need to be qualified and educated. So this leads to a very common discussion that Whether Educational Qualifications for politicians are necessary or not? Politician should be people with high education because many leadership attributes are gained through education. Leaders with no education cannot cope up with the change hence it hinders country development. Education is necessary for a leader, for the country's bright future and prosperity."<sup>7</sup>

In this research paper, the researcher will analyze the constitutional provisions related to discrimination based on disability, exploring how disability can become a ground for such discrimination. The paper will also discuss the effects of law and social transformation concerning disability as a basis for reservation.

Additionally, the researcher will examine legislation that has brought significant changes to our society in modern times, such as the rights of transgender individuals and the recognition of live-in relationships. The advancement of transgender rights and the acknowledgment of live-in relationships serve as prime examples of social transformation in Indian society.

---

<sup>6</sup> P. Ishwara Bhat, *Law and Social Transformation*, 21 (1st ed., 2009).

<sup>7</sup> *Education Qualification for Politicians*, Our Blog Education, available at <https://blog.oureducation.in/educational-qualification-for-politicians/>, last seen on 13/09/2022.

## Chapter 2

### EDUCATION IS THE BEST INDICATOR OF SOCIAL TRANSFORMATION

#### 2.1 Introduction

In exploring the intricate relationship between law and social transformation in India, it becomes evident that legislation plays a crucial role in facilitating change within society. As a democratic nation, India bestows the legislature with supreme power to enact laws that can spearhead social reforms. However, the path to social transformation is often complicated by the nation's rich diversity and various prevailing social and political interests.

The constitutional framework of India empowers the legislature to initiate and implement laws aimed at creating meaningful social changes. In this capacity, the legislature acts as the primary agency for promoting progress and addressing social issues. Yet, for these laws to have a significant positive impact on society, it is vital that the legislators themselves possess a solid educational foundation.

Education serves as a critical indicator of a legislator's ability to understand and address the complexities of social issues. In this chapter, I will discuss the necessity of implementing minimum educational qualifications for candidates contesting elections. I intend to illustrate how educated politicians can better navigate the law-making process, as they are equipped with the knowledge and skills necessary to evaluate the potential effects of legislation on various segments of society.

Furthermore, I will delve into the interconnectedness of education and social transformation, demonstrating that an educated legislative body is better positioned to enact laws that reflect the needs and aspirations of the community. Ultimately, this chapter aims to underscore the importance of education in politics and its potential to drive social change effectively, contributing to a more progressive and inclusive society in India.

#### 2.2 Education as an indicator of social change

The expansion of education at various levels is a vital factor for social change as it enables building of pro-welfare public opinion and diffusion of knowledge that arms the people against exploitation and blind beliefs. As stated in the Report of the Education Commission 1964-1966, "The most powerful tool in the process of modernization is education based on science and

technology. The one great lesson of the present age of science is that with determination and willingness to put in hard work, prosperity is within the reach of any nation which has a stable and progressive government.” A person’s education and health give access to jobs, expand income, facilitate public discussion of social needs, increase the ability to resist oppression and obtain a fair deal.”<sup>8</sup>

Education is a very powerful tool for any kind of change that occurs in the society like creating awareness regarding education, women empowerment, prohibition of child abuse, and other social issues.

**“Education is the most powerful weapon which you can use to change the world.”**

**Nelson Mandela**

“Education helps to improve various spheres of society by encouraging social transformation:

- **Assistance in changing attitudes:**
  - a. Education helps to change the attitudes of people in favour of modern ways of life and develops attitudes which can fight prejudices, superstitions and traditional beliefs.
  - b. It can bring about a change in attitudes of people in favour of small family towards rising above orthodox values and socio-cultural barriers of caste and class and towards religion and secularism.
  - c. Education interacts with the process of social development which is another name of social transformation.
- **Assistance in creating desire for change:**
  - a. Education creates a desire for change in a society which is prerequisite for any kind of change to come.
  - b. It makes people aware of social evils like drinking, dowry, gambling, begging, bonded labour etc. and creates an urge to fight and change such things.
  - c. Education makes underprivileged, down-trodden and backward people aware of their lot and instills a desire to improve their conditions. Thus education creates a desire for change. \

---

<sup>8</sup> Law and Social Transformation, P. Ishwara Bhat p. 19.

- **Assistance in adopting social transformation:**
  - a. Whenever some social change occurs, it is easily adopted by some people while others find it very difficult to adjust themselves to this change.
  - b. It is the function of education to assist people in adopting good changes.
- **Overcoming Resistance to Social transformation:**
  - a. Certain factors create resistance in the way of accepting social transformation.
  - b. Education helps in overcoming resistance.
- **Analysis of Change:**
  - a. Education invests the individual with the capacity to use his intelligence, to distinguish between right and wrong and to establish certain ideals.
  - b. Education determines the values which act as a criterion for the analysis of social transformation.
- **Emergence of new changes:**
  - a. Education initiates, guides and controls movements for social reform.
  - b. Education helps in agitating public opinion towards the abolition of many social changes.
- **Advances in the sphere of knowledge:**
  - a. New researches and inventions depends upon education, because only the educated individuals can search for new things in every field. Thus education contributes to social transformation by bringing changes in knowledge.
- **Transmission of culture**
  - a. Education is the creator, generator and director of all social change. In short, education is preservatives, consolidating, establishing and creative force democracy. It can help in developing democratic attitudes and values for better living.
  - b. Democratic values such as liberty, equality, fraternity, justice, tolerance, mutual respect, feeling of brotherhood and faith in peaceful methods are stabilized through education in free India. These values are helpful in bringing about social transformation.
- **National integration**
  - a. Education can prove very useful in bringing about national integration which is the basis for unity among people.

- **Economic prosperity**
  - a. Education is the most important factor in achieving rapid economic development and technological progress and in creating a social order founded on the value of freedom, social justice and equal opportunity.
- **National development**
  - a. Education is the fundamental basis of national development.
  - b. Education is the powerful instrument of economic, political, culture, scientific and social change.”<sup>9</sup>

### 2.3 Education of Politician and Social Transformation

In India, politicians hold the essential role of creating legislation that serves the interests of society. Those who are elected by the majority during elections are termed representatives of the people, tasked with shaping laws for the greater benefit of the community. However, one significant concern arises from the absence of educational requirements for contesting elections; theoretically, anyone can become a politician and gain a seat in the legislative assembly. This brings into question the quality of social legislation produced by individuals who may lack the necessary educational background.

If politicians themselves are not adequately educated, it challenges our expectations that they can formulate sound social legislation consistently benefitting society. Historically, in India, significant changes and social transformations post-independence have often resulted from the judiciary's interpretation and application of the law. The Constitution of India, enacted in 1950, comprises provisions that explicitly address equality, the right to life, women's rights, and other fundamental aspects. However, it is through landmark cases brought before the Supreme Court that these provisions come to life and make a tangible impact on society.

For example, the doctrine of basic structure and discussions regarding the right to equality have been refined through various judicial pronouncements, allowing for meaningful discourse on these essential rights. This highlights the judiciary's influence over social progress compared to the educational background of legislators. While judges are typically highly qualified, many

---

<sup>9</sup> Testbook, *Education is a factor that explain social change*, available at <https://testbook.com/question-answer/education-is-a-factor-that-explains-social-change--5fa8fd9edb6e16cec9633f22#:~:text=Education%20as%20an%20instrument%20of%20social%20change%3A&text=Education%20can%20transform%20society%20by,philosophy%20of%20the%20changing%20society.,> last seen on 29/10/2022.

politicians often lack the same level of educational attainment, which raises concerns about the effectiveness of legislative actions.

Modern India stands at a pivotal crossroads where the need for well-educated politicians is paramount. These individuals need to be attuned to the diverse needs of society and committed to effecting positive change. Education plays a vital role in combating corruption, which can obstruct the law-making process and hinder social transformation. A pertinent example is the reservation policy, originally designed to uplift backward classes, which has, in some instances, been co-opted for political gain rather than societal benefit.

The reality of Indian politics is often encapsulated by the controversial "3Cs" formula: Currency, Caste, and Crime. This formula sheds light on the types of individuals that can ascend to power, rather than focusing on competence or integrity. In a progressive society like India, the necessity of cultivating a class of politicians who possess both competence and education is essential. Such politicians should aim to serve the country selflessly rather than pursue personal gains. Ultimately, a shift towards educated representation can foster more accountable and effective governance, aligning political action with the genuine needs and aspirations of society.

After independence, there are several laws enacted by the legislature but the effect of that laws on society occur very late or we can say after the intervention of the Supreme Court such as:

1. The Hindu Marriage Act which was enacted in 1955 talked about the rights of women in property but till 2005 there was conflict relating to the rights of women then the Amendment to this Act took place and woman's equal rights to the property is inserted in the Hindu Marriage Act. But this amendment also there several conflict relating to the such right which is settled by Supreme Court in the case of *Prakash v. Phulavati*<sup>10</sup>, *Danamma v. Amar*<sup>11</sup> and *Vineeta Sharma v. Rakesh Shrama*<sup>12</sup>.
2. Article 21 also talked about the right to education but is not recognized this right as a basic fundamental right of everyone till the case of *Mohini Jain v. State of Karnataka*<sup>13</sup> and *Unnikrishnan v. State of Karnataka*<sup>14</sup> cases there was no compulsory

---

<sup>10</sup> *Prakash v. Phulavati*, (2016) 2 SCC 36.

<sup>11</sup> *Danamma v. Amar*, (2018) 3 SCC 343.

<sup>12</sup> *Vineeta Sharma v. Rakesh Shrama*, (2020) AIR 3717

<sup>13</sup> *Mohini Jain v. State of Karnataka*, 1992 AIR 1858.

<sup>14</sup> *Unnikrishnan v. State of Karnataka*, (1992) 3 SCC 666.

right to education in India this is the case where supreme court define the right to education is a fundamental right of every citizen. After 9 years article 21A was inserted in our constitution which talked about the right to education. But after this case and amendment, there was legislation was enacted till 2009, and in 2009 the right to education Act was passed.

3. The Sexual Harassment at Workplace (Prevention) Act, of 2013 is also the best example of the failure of legislature work. In the judgment of Vishaka v. State of Rajasthan<sup>15</sup> in 1997, the Supreme Court declare guidelines and directed the legislature to enact a law relating to it but the legislature after around 15year enact such a law in the year 2013.

Numerous laws have been enacted in India in the years following independence, addressing various social issues such as disability rights, transgender rights, live-in relationships, and the prohibition of Triple Talaq. These legislative measures reflect significant strides towards social equity and justice. However, it is important to acknowledge that many of these reforms were long overdue and took considerable time to materialize.

Each of these issues represents a critical facet of social legislation, highlighting the need for timely intervention by the legislature. For instance, the rights of persons with disabilities aim to ensure inclusivity and accessibility, while the recognition of transgender rights underscores the importance of dignity and equal protection under the law. Additionally, the legal acknowledgment of live-in relationships signifies a progressive shift towards recognizing diverse family structures in modern society.

Had these issues been addressed promptly and through appropriate legislative processes, the potential for transformative growth in Indian society would have been significantly enhanced. Timely legislation not only fosters a sense of belonging and security among marginalized communities but also contributes to the overall socio-economic development of the country.

In essence, the success of social legislation lies in its ability to resonate with the changing dynamics of society, addressing the needs of its constituents effectively. By prioritizing timely responses to emerging social issues, India can accelerate its journey towards a more equitable and inclusive future, which in turn will drive the nation's growth and development.

---

<sup>15</sup> Vishaka v. State of Rajasthan, AIR 1997 SC 3011.



## **2.4 State Having Minimum Education Qualification**

There are several states which recently amended their provisions relating to contest election and set up a rule that there is some minimum education qualification required to contest a election for certain post.

### **1. Rajasthan**

Rajasthan is the first state who introduced minimum education qualification criteria to contest Panchayat election.

- I. The Rajasthan Panchayati Raj (amendment) Bill, 2015, made Class X mandatory for contesting municipal elections and for contesting zila parishad or panchayat samiti elections.
- II. To contest the sarpanch elections, an aspirant from the general category must have passed Class VIII and a SC/ST aspirant must have passed Class V.
- III. It has also made a functional toilet mandatory in the house of a contestant.

By this, Rajasthan became the first State in the country to fix a minimum educational qualification for contesting elections to the Panchayati Raj Institutions.

But later in the year 2019 the Rajasthan government abolished the condition of a minimum educational qualification to contest local body elections.

### **2. Haryana**

Haryana is the second state who amended the Haryana Municipal Bill in 2016 and that amendment introduce minimum education qualification to contest election of Urban Local Bodies. In the year of 2016 Haryana Government made some remarkable change by adding minimum education qualification for contesting the election of Sarpanch or Panch and all by amending section 175 of Haryana Panchayati Raj Act, 1994.

- I. For male general candidate he must have pass matriculation and have functional toilet at home.
- II. For woman and Schedule Caste he/she must pass the 8<sup>th</sup> standard.
- III. For Schedule Caste woman candidate must pass 5<sup>th</sup> standard.

### **3. Uttarakhand**

In the year 2019 Uttarakhand government amend their law Uttarakhand Panchayati Raj Niymawali (amendment) and added minimum education qualification to contest election relating to Panchayat.

- I. Who want to contest Panchayat election in Uttarakhand must have to pass matriculation (10<sup>th</sup>) from recognized board.
- II. For women and SC/ST (men), the minimum education qualification is that the person should have passed Class 8.
- III. For SC/ST (women), it is Class 5.

This amendment further added one more criteria that any person who has more than two living children won't be eligible to contest the panchayat elections.

## **2.5 Conclusion**

After thoroughly discussing and analyzing various aspects of social legislation in India, the researcher concludes that education is crucial for politicians to effectively enact and implement laws that address societal needs. An educated political class is better equipped to understand the complexities of the issues at hand and can contribute to meaningful legislative changes that benefit society as a whole.

Education empowers legislators to make informed decisions, ensuring that laws are crafted with a deep understanding of their potential social impact. It can enhance their ability to engage with constituents, recognize diverse perspectives, and implement policies that are not only beneficial but also sustainable in the long run.

Some states have already recognized the importance of education by amending their laws regarding candidates contesting Panchayat elections, requiring certain educational qualifications. This progressive step underscores the significance of having educated representatives at the local level.

Given this context, it is now imperative to extend similar reforms to the central and state levels. The researcher advocates for a legislative amendment mandating minimum educational qualifications for all candidates contesting elections in India. Such a requirement would help elevate the standards of political representation and foster a better-informed legislative process, ultimately leading to more effective governance and social transformation in the country.

## Chapter 3

### ANALYSE SOCIAL LEGISLATION RELATING DISABILITY

#### 3.1 Introduction

In understanding the role of legislation as a powerful tool for social transformation in India, it is evident that various social laws have significantly influenced societal norms and values. Notable examples include the Disability Rights Law, legislation recognizing Transgender Rights, the Triple Talaq Law, and laws concerning live-in relationships. However, it is important to note that many of these changes were realized only in the 21st century. This delay in legislative response can be attributed to a lack of representation by educated politicians who truly understand the needs and aspirations of diverse communities.

In this chapter, the focus will be on the evolution of disability laws in India. These laws have emerged as critical components in the fight for equality and inclusion for individuals with disabilities. The journey towards establishing robust disability rights has seen significant milestones, from initial recognition of the challenges faced by people with disabilities to the comprehensive legal frameworks that now exist.

The chapter will explore the historical context of disability legislation in India, tracing the developments that have taken place over the years. It will examine pivotal laws, such as the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995, and the more recent Rights of Persons with Disabilities Act of 2016, which reflects a more modern understanding of disability as a social construct.

Additionally, the chapter will discuss the role of advocacy groups, civil society, and educated legislators in pushing for these changes. By analyzing the impact of these laws on society, the research aims to highlight the importance of ongoing efforts in promoting awareness, accessibility, and rights for persons with disabilities in India.

Ultimately, this chapter will demonstrate that, while progress has been made, continued advocacy and legislative refinement are essential to ensuring that individuals with disabilities can fully participate in society and access the opportunities they deserve.

### **3.2 Disability Law in India**

In ancient India, disability was often viewed through the lens of karma, where any impairment was seen as a consequence of one's actions in past lives. This belief system positioned disability as a familial obligation, placing the burden of care and responsibility primarily on the family unit. There were virtually no rights or specific remedies available for individuals with disabilities. However, the aftermath of World War II marked a pivotal shift, both globally and in India. Many soldiers returning from the war bore physical and psychological impairments, prompting society to recognize their sacrifices as heroes. This change in perception led to the establishment of special quotas and rights aimed at protecting these individuals and supporting their livelihoods.

In the broader context of disability, two disciplines—medicine and psychology—have historically shaped the understanding of disability. Unfortunately, both fields have predominantly relied on a medical model that views disability as an individual condition or problem. This perspective often overlooks the social dynamics at play and fails to consider disability as a broader societal issue. Instead of being recognized as a collective concern, disability continues to be framed as an individual challenge that must be managed at the personal level. This individualistic approach can marginalize the experiences of persons with disabilities from discussions about society, politics, and economics.

Disability rights activists and scholars have increasingly challenged these prevailing views, highlighting that the real causes of exclusion do not lie solely within the individual but are deeply rooted in societal structures and attitudes. Acknowledging the multifaceted nature of disability is essential; any condition has preventive, curative, promotive, and palliative aspects. Thus, caregiving within health systems should encompass not only medical interventions but also emotional and rehabilitative support. It is critical to understand that chronic, lifelong conditions involve extensive social, economic, and emotional dimensions, which require an interdisciplinary public health approach.

The growing trend of de-institutionalization, coupled with the state's retreat from health and welfare responsibilities—even in developed countries—has further shifted the burden of care onto families, particularly women, who often provide support for persons with disabilities and the elderly.

After gaining independence in 1947, the Constitution of India came into effect in 1950. While it did not contain specific provisions for the advancement of people with disabilities, Article 41 of the Constitution emphasizes the state's responsibility to ensure the right to work, education, and public assistance in cases of unemployment, old age, sickness, and disability. This inclusion affirms that individuals with disabilities hold the same political, social, and economic rights as any other citizen, as outlined in the Fundamental Rights and the Directive Principles of State Policy.

However, Article 41 exists as a directive principle, which provides guidance to the state rather than enforceable rights, meaning it is not easily subject to legal challenges if legislative bodies fail to uphold these duties. Moreover, the Constitution did not introduce specific legislation focused on the rehabilitation and integration of disabled individuals into society, leaving a gap in protections against discrimination in daily life. Until 1947, the predominant attitudes toward disability were rooted in charity rather than rights.

Despite these limitations, significant progress began to take shape in India after 1955, with the initiation of Five-Year Plans aimed at addressing the rights and welfare of individuals with disabilities. These plans sought to incorporate disabled persons into the mainstream of society, underscoring the government's commitment to improving their quality of life and ensuring their participation in all aspects of community life. This era marked the beginning of a more rights-based approach to disability, laying the groundwork for future legislative developments and advocacy efforts.

“The first 3 five year plans between (1955- 1969), during these plans the sole support to disabled people comprised of grants-in-aid to NGOs and the establishment of national training institutes.

- It was in the first Five-Year Plan (1955-1959) that an attempt was made to change the emphasis of programmes for the disabled from charity to rehabilitation.
- The second plan (1960-1964) emphasized education and employment with schemes for scholarships and setting up of special employment exchanges for the disabled.
- In the third plan (1965-1969), the state encouraged development of facilities for vocational training and expansion of employment opportunities for the disabled and better coordination between public and private organizations.

- Up to the close of the fourth plan, most of the programmes were curative or ameliorative in nature. From the fifth plan onwards, emphasis has been on the promotion of preventive and developmental services.
- The later Five-Year Plans encouraged development of facilities for vocational training and job opportunities.
- The later plans showed how support for the disabled people declined in real terms as social development priorities, programmes and projects emerged. The main thrust of the welfare programmes for the disabled have focused on prevention of disabilities and development of functional skills.
- Under the Seventh and Eighth Five-Year Plans prevention was stressed upon. However, the number of persons with disability benefiting from such initiatives remained negligible, seen in the context of their total population.”<sup>16</sup>

Ultimately The international landscape began to notably shift regarding disability with the declaration of 1981 as the International Year of Disabled Persons. This landmark event brought significant attention to the needs and rights of individuals with disabilities worldwide. It emphasized the importance of visibility and enumeration; advocates argued that recognizing and counting disabled individuals was a crucial first step toward gaining acknowledgment from both the state and society.

The idea behind this enumeration was that once disabled individuals were recognized within demographic data, it would pave the way for comprehensive policy formulations and interventions tailored specifically to address their needs. This approach aimed to enhance awareness and understanding, ultimately facilitating the processes through which disabled individuals could claim their rights.

The international focus on disability continued to evolve in subsequent years, leading to more robust advocacy and legislative changes that emphasized inclusion, accessibility, and the full participation of people with disabilities in all aspects of life. This shift marked a significant move away from earlier charity-based approaches, recognizing disability as a matter of human rights and social justice rather than merely a medical concern.

---

<sup>16</sup> Supra 14, at 146.

There are various models of disability by which we or every state dealt with disability and enact laws relating to the betterment of society;

### **I. Traditional Model of Disability**

This The traditional model of disability viewed it primarily as a consequence of past karma, suggesting that individuals with disabilities were somehow suffering due to their actions in previous lives. In this context, only those without any form of impairment were considered "full human." This perspective effectively invalidated the experiences and humanity of people with disabilities, denying them recognition and respect.

Within this model, individuals with disabilities were often stripped of their rights and autonomy. They were frequently unable to make choices about their own lives, as responsibility for their care and decision-making rested entirely with family members. This created a dynamic where control lay with the family, reinforcing a dependency that further marginalized disabled individuals. As a result, the voices of those with disabilities were silenced, and their needs and aspirations went largely unacknowledged or unmet. Such a framework not only limited personal freedom but also perpetuated societal attitudes that viewed disability as a burden rather than a valid aspect of human diversity.

### **II. Medical Model of Disability**

It The biomedical model of disability offers a more structured approach than the traditional model, yet it still presents its own limitations. In this framework, disability is primarily viewed as a health condition that necessitates intervention from medical professionals. Individuals with disabilities are seen as deviating from what is considered "normal" or "abnormal." Consequently, disability is often framed as an individual issue rather than a societal concern.

The medical model emphasizes the notion that people with disabilities need to be "fixed" or cured, portraying disability as a tragedy that elicits pity from others. This perspective significantly focuses on what individuals cannot do or the limitations they face, often overshadowing their abilities and potential. As a result, the medical model can inadvertently reinforce negative stereotypes and narrow the public's understanding of disability.

Significantly, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995 was influenced by this biomedical perspective. While it sought to

provide a framework for rights and protections, it largely reflected the medical model's views on disability, centering the conversation around the deficiencies of individuals rather than promoting their rights and contributions to society. This approach, while important for ensuring medical support, must be complemented by broader perspectives that recognize the value and rights of people with disabilities in all aspects of life.

### III. Sociological Model of Disability

“According to the social model, ‘disability’ is socially constructed. The social model of disability contrasts with what is called the medical model of disability. The social model sees ‘disability’ as the result of the interaction between people living with impairments and an environment filled with physical, attitudinal, communication, and social barriers. It, therefore, implies that the physical, attitudinal, communication, and social environment must change to enable people living with impairments to participate in society on an equal basis with others.”<sup>17</sup> The social model of disability represents a significant shift in perspective, focusing on altering societal structures to better accommodate individuals living with impairments rather than trying to change those individuals to fit existing societal norms. This model asserts that people with disabilities have the right to participate fully in society as equal citizens, alongside everyone else.

Within this framework, individuals with disabilities are viewed not as "objects" of charity or passive recipients of medical treatment and social services, but as "subjects" with inherent rights. This perspective emphasizes their capacity to claim these rights actively and make informed decisions about their own lives. It promotes the idea that individuals with disabilities should have the autonomy to dictate their own paths and be recognized as active, contributing members of society.

The Rights of Persons with Disabilities Act of 2016 is grounded in this social model, reinforcing the notion that societal barriers—not impairments—are the primary obstacles to full participation. By focusing on rights, inclusion, and accessibility, this legislation aligns with the belief that addressing social attitudes and structural impediments is essential for empowering people with disabilities and ensuring they can engage fully in all aspects of life.

---

<sup>17</sup> Peoples with Disability Australia, *social model of Disability*, available at <https://pwd.org.au/resources/models-of-disability/#:~:text=The%20social%20model%20seeks%20to,an%20equal%20basis%20with%20others.,> last seen on 30/10/2022.



In India there are provisions of several laws which negatively pointed out disabled people like;

- Delhi Higher Judicial Service Rules, 1970

Proviso of rule 22 of the Delhi Higher Judicial Service Rule stated that the Persons with Disability candidates should be capable of efficiently discharging their duties as Judicial Officer as per the satisfaction of the Medical Board that may be constituted before or after their names are recommended for appointment.

- Motor Vehicle Act, 1988

Section 2 (18) of Motor Vehicle Act state the definition of invalid carriage it states that “**invalid carriage**” means a motor vehicle specially designed and constructed, and not merely, adapted, for the use of a person suffering from some physical defect or disability, and used solely by or for such a person.

- Cr.P.C.

Section 339 of Code of Criminal Procedure, 1973 uses the word **delivery** which is inappropriate; also not justify using such harsh or irrelevant word in legislation.

### 3.3 Conclusion

In this chapter, we explored the evolution of disability law within India's legal framework, highlighting how education has significantly influenced both societal attitudes and legislative approaches. We observed a transformative shift from viewing disability through a lens of charity to an emphasis on rehabilitation. This change also encompassed a transition from a medical model to a sociological model of understanding disability.

The progression in these concepts was largely driven by the education of legislators and the broader society, enabling a deeper understanding of the necessity for such transformations. The medical model, originally developed by educated medical professionals, focused primarily on fixing or managing disabilities. In contrast, the sociological model emerged from the insights of eminent jurists and scholars who recognized the importance of social structures and barriers in the lives of people with disabilities.

This chapter underscores that social transformation regarding disability rights is intrinsically linked to education. As society gains a better understanding of the issues at hand and the rights

of individuals with disabilities, it lays the groundwork for more inclusive policies and practices. Education has thus been a pivotal force in fostering the necessary changes in perspective that have shaped disability law in India, promoting a more just and equitable environment for all citizens.

## Chapter 4

### CONCLUSION

“A bird does not attend university to fly,  
But Pilots do.  
A fish does not attend school to swim,  
But athletes should.  
A lion does not attend class to rule,  
But leaders must.”

- Matshona Dhliwayo

Education plays a vital role for everyone, particularly for leaders who represent the state and address the needs of society. To ensure effective governance and informed decision-making, it is essential that those in positions of power have a solid educational background and understanding of critical issues.

The researcher advocates for the establishment of specific educational qualifications that should be mandatory for individuals aspiring to become members of the legislature or ministers overseeing particular portfolios. Such qualifications would help ensure that leaders possess not only knowledge relevant to their roles but also an awareness of the complexities surrounding various societal issues, including disability rights, social justice, and public welfare.

By implementing compulsory educational requirements for certain ministerial positions, we can enhance the capability and effectiveness of governance. This approach would contribute to a more informed legislative process, empowering leaders to make decisions that are informed by knowledge and a genuine understanding of the diverse needs of the population they serve. Ultimately, well-educated leaders can foster a more responsive and responsible government that promotes the rights and well-being of all citizens;

- Education Minister – Must be having Master Degree in any Stream
- Finance Minister – must have a Master Degree in Economics

- Defence Minister – must be a retired army/navy/air force top ranked officer
- Law Minister – retired Judges/ senior Advocated etc.
- Agriculture Minister – must have Bachelor Degree in Agriculture

It is crucial to consider the implementation of educational qualifications for individuals wishing to become ministers or contest elections in India. In today's context, where the complexity of governance and policymaking is increasingly acknowledged, having a solid educational foundation is essential for effective decision-making. Just as specific qualifications are required for key positions such as judges, collectors, IAS officers, and the Attorney General, similar standards should be applied to politicians who occupy important decision-making roles.

The lack of adequate education among some politicians has, at times, led to significant policy blunders. A prominent example of this is the implementation of the Goods and Services Tax (GST) in 2016. The GST rollout faced numerous challenges and required several amendments shortly after its introduction, reflecting a lack of comprehensive understanding and planning.

Another instance is the introduction of the three Farm Bills, which faced widespread protests from farmers. The government ultimately had to withdraw these bills in response to the unrest, showcasing how insufficient dialogue and understanding of the ground realities can lead to misguided policies.

By establishing educational prerequisites for political positions, we can ensure that those in power are better equipped to understand the nuances of governance and engage meaningfully with the issues at hand. Such a move could help prevent avoidable blunders and promote more effective and informed policymaking, ultimately benefiting society as a whole.

## **BIBLIOGRAPHY**

### **Primary Source**

#### **Acts:**

1. The Constitution of India, 1950
2. The Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995
3. The Rights of Person with Disability Act, 2016

4. Haryana Panchayati Raj Act, 1994.
5. Uttarakhand Panchayati Raj Act, 2016.

### Books:

1. P. Ishwara Bhat, *Law and Social Transformation*, (1st ed., 2009).
2. Roger Cotterrell, *The sociology of law*, (2<sup>nd</sup> ed., 1992).
3. Upali Chakravarti, *Disability & Care Work, State, Society & Invisible Lives*, (1<sup>st</sup> ed. 2018).

### Secondary Sources

#### Articles:

1. *Education and Social Transformation*, bahaichairdavv, available at <https://bahaichairdavv.org/wp-content/uploads/2020/08/8.-Education-and-Social-Transformation.pdf>, last seen on 03/09/2022.
2. *Education Qualifications: A Necessity for Politicians*, Brilllopedia, available at <https://www.brillopedia.net/post/education-qualifications-a-necessity-for-politicians>, last seen on 13/09/2022.
3. *Education Qualification for Politicians*, Our Blog Education, available at <https://blog.oureducation.in/educational-qualification-for-politicians/>, last seen on 13/09/2022.
4. Michael D. Bayles, *What is jurisprudence about?., 2009 Theories, concept, or conceptions of law?*, Vol. 18 No. 1 Philosophical Topics, SPRING, 23, 26(1990).
5. Saachi Shukla, *LIVE-IN RELATIONSHIPS IN INDIA: PERVERSIVE MYTHS, SOCIAL STIGMA AND LEGAL STATUS*, Samvidhi, available at <https://www.samvidhi.org/post/live-in-relationships-in-india-pervasive-myths-social-stigma-and-legal-status>, last seen on 16/09/2022.
6. *Social Transformation*, Springer Link, available at [https://link.springer.com/chapter/10.1057/9781137365330\\_4#:~:text=Social%20transformation%20means%20the%20restructuring,to%20the%20way%20we%20live.,](https://link.springer.com/chapter/10.1057/9781137365330_4#:~:text=Social%20transformation%20means%20the%20restructuring,to%20the%20way%20we%20live.,) last seen on 02/09/2022.
7. Peoples with Disability Australia, *social model of Disability*, available at <https://pwd.org.au/resources/models-of-disability/#:~:text=The%20social%20model%20seeks%20to,an%20equal%20basis%20with%20others.>, last seen on 30/10/2022.

8. Testbook, *education is a factor that explains social change*, available at <https://testbook.com/question-answer/education-is-a-factor-that-explains-social-change--5fa8fd9edb6e16cec9633f22#:~:text=Education%20as%20an%20instrument%20of%20social%20change%3A&text=Education%20can%20transform%20society%20by,philosophy%20of%20the%20changing%20society.>, last seen on 29/10/2022.

**Cases:**

1. B.P. Achala Anand v S. Appi Reddy, (2005) 3 SCC 313.
2. Danamma v. Amar, (2018) 3 SCC 343.
3. Mohini Jain v. State of Karnataka, 1992 AIR 1858.
4. National Legal Services Authority v. Union of India, AIR 2014 SC 1863.
5. Navtej Singh Johar v. Union of India, AIR 2018 SC 4321.
6. Prakash v. Phulavati, (2016) 2 SCC 36.
7. Unnikrishnan v. State of Karnataka, (1992) 3 SCC 666.
8. Vineeta Sharma v. Rakesh Sharma, (2020) AIR 3717.
9. Vishaka v. State of Rajasthan, AIR 1997 SC 3011.