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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

LAW AS AN INSTRUMENT OF SOCIAL CHANGE IN MODERN SOCIETY

AUTHORED BY - AALAN JOE EDWIN J J¹

ABSTRACT:

The function of law as a tool for social change in contemporary society is both significant and complex. This article examines how legal structures and reforms act as drivers for altering societal norms, values, and behaviors. Modern legal systems have increasingly addressed matters like human rights, environmental sustainability, and social equity, mirroring a changing public awareness and championing justice. By analyzing key legislation, court decisions, and the relationship between law and social movements, this study demonstrates how legal instruments can either promote or obstruct progress. It highlights the necessity of viewing law not just as a means of regulation, but as a dynamic entity that can uplift marginalized communities and encourage social change. In conclusion, the discussion reinforces the ongoing importance of law in building a fairer and more just society, confirming its essential role in confronting current issues and promoting lasting change.

Keywords: Social Change, Social Transformation, equality, legal system

Introduction:

“No other culture on the planet has the variety of waves that India has”

In the beginning, humans were wanderers, moving from one location to another until they began to inhabit caves, where they also discovered fire. Fire enabled them to create tools, and with these tools, humans migrated for hunting purposes and eventually settled near riverbanks, choosing to live in communities. Once they established their homes by the rivers, they formed groups and started cultivating the land for sustenance. The dawn of civilization is estimated to have emerged between 4000 and 3000 BCE. As humans evolved their thinking abilities, they organized themselves into societies where agriculture and trade flourished. After societies were formed, people felt the need to protect their livelihoods and crops from threats posed by wild animals and conflicts with other humans. This led to the creation of a fundamental agreement:

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“I will safeguard you and your crops, while you will do the same for me.” From this point, the concept of society took shape, and each community developed a unique identity and a set of rules to adhere to. The guidelines that were passed down through generations are now regarded as customs, having originally been known as practices.

“In today's modern world, we follow some rules and regulations that were followed by our forefathers at one point in time, with some alterations and changes over time, as new rules and regulations were created with a little modification to the previous ones”.² When it comes to formulating new laws, we do not need to search far; they can be derived from our traditional practices. The new regulations or standards are intrinsically connected to the customs we used to observe, either intentionally or unwittingly. Norms and regulations that were previously not formally codified were followed indirectly, but now they are observed more explicitly. A prominent example of this is Hindu Law, which transitioned from an uncoded state to a codified one. However, along the way, we have engaged in some harmful traditions such as sati, child marriage, and untouchability. In this article, I will discuss how law emerges from tradition and culture and serves as a catalyst for social transformation and social change.

Meaning of Tradition:

What is meant by tradition? The word tradition does not have a specific definition; instead, it offers a broad interpretation that encompasses all aspects connected to tradition. Tradition is nothing but the beliefs, rituals, principles, and moral ideas or ways of acting that people in a particular society or group have continued to follow for a long time. In simpler terms, what rituals or values are we passing down to the next generation that can be classified as tradition. Here we have to understand one thing, it's very hard to find the period when the tradition was started. Tradition is the nexus between the present and the past. If there is no connection between the present and the past, we cannot claim that it represents the traditions of a specific group or society.

As humans began to settle in one location, they started to adhere to what we now call tradition. Each religion, society, and community has its unique traditions, which have been passed down through generations since ancient times. **Tradition means** a belief, principle, or way of acting which people in a particular society or group have continued to follow for a long time or a

² <https://www.scribd.com/doc/119272982/Law-as-a-Product-of-Tradition-and-Culture-losc-Seminar>

belief passed down within a group or society with symbolic meaning or special significance with origins in the past.

Meaning of Culture:

According to **the Merriam-Webster dictionary** culture means the set of shared attitudes, values, goals, and practices that characterize an institution or organization.

Abid Hussain states, "Culture means a sense of ultimate value possessed by a particular society as expressed in collective instructions by its members in their feelings, attitudes, and manners, as well as the significance they give to material objects".

The Center for Advance Research Language Acquisition defines "culture as – shared patterns of behavior and interactions cognitive constructs and understanding that are learned by socialization".

The cultural practice varies from one society to another society. This is why the Indian Constitution safeguards traditions and customs in Part III, specifically under the Right to Freedom of Religion (Articles 25-28) and Cultural and Educational Rights (Articles 29, 30).

Meaning of Social Change:

"Change is the rule of society. Society forms its 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"³.

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

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".

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

Changes in technology, agriculture, dairy, farming, and science may not be considered "social change." Social change is restricted to changes in the realm of social connections. Social relationships encompass social processes, patterns, and interactions.

³ [LL.M. II SEM \(LAW AND SOCIAL TRANSFORMATION\) L-2003 TOPIC- Law as an instrument of social change new.pdf](#)

Meaning of Law:

Glanville Williams defines law as – “law is the cement of the society and also an essential medium of change. Knowledge of law increases one's understanding of public affairs. Its study promotes accuracy of expression facility of argument and skill in interpreting the written words as well as some understanding of social values”.

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

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

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

In simplest, Law is a set of rules that govern human conduct and are enforced by a controlling authority.

Law as an Instrument of Social Change:

The ultimate aim of the law is to change society peacefully but traditions and culture create obstacles to it. Religions have a connection to culture and tradition. Religion is the source of law. Law as a result of tradition. Before we gained freedom, we had a lot of terrible traditions that persisted in our country. We created legislation to fully eliminate those wicked practices and allow good traditions to be practiced in our society. The harmful customs that we eradicated by enacting laws are listed here.

a) Sati System

Sati was an ancient Hindu custom, according to the custom if the husband died a wife sacrificed herself at the pyre of her husband. The origin of Sati is unknown, although traditionally, it has been said that God Shiva's wife, Sati, after discovering that her husband was not invited by her father Daksha for some Yaga to which all other goddesses are invited Sati set fire to herself in front of the visitors for her husband. It was an honor to become a sati in the Hindu religion, which has been around since ancient times. **Raja Ram Mohan Roy** was the one who spearheaded the effort to eliminate the Sati practice. His sister-in-law was compelled to perform sati and immolate herself on her husband's pyre, which prompted him to abolish the institution. With large sacrifice and hard work, the practice of the Sati system was abolished and

was banned in the Bengal presidency land by **Lord William Bentick**, Governor-General, by passing a regulation of 217 of 1829. The regulation described the practice of Sati as revolting to the feelings of human nature.

Section 306 IPC: The abetment of sati could not find a place to be a special offense under IPC but Judiciary has held that abetment of Sati is an offense of abetment of suicide and punishable under section 306 IPC. But now this concept was placed in BNS section 108.

b) Child Marriage

It's a very common and usual tradition followed in still 20th century (somewhere in India it still going on). Children were married at a young age before they even knew what marriage was. Recognizing the need for reform in Indian society about child marriage, an act was passed in 1929 to restrict child marriage. The act is referred to as the Child Marriage Restraint Act 1929. The act's goal was to abolish the specific evil that posed a threat to the life and health of a female child who could not resist the stress and strains of married life, as well as to prevent such minor moms from dying prematurely.

The Child Marriage Restriction Act of 1929 was then redesigned and amended in 2006, becoming the Prohibition of Child Marriage Act of 2006. The statute established a child marriage prohibition officer and granted him the authority to look into child marriages. The new act enhanced the punishment of fines up to Rs.2lakh and imprisonment up to 2 years.

c) Polygamy

Polygamy had existed in India and there was no restriction on bigamy except the Mohammed law which prohibited not marrying more than four wives. In 1860 Under the IPC bigamy was made a specific offence under **section 494** and it was allowed by the customs. Indian Christian Marriage Act 1872 **Section 60** Prohibits polygamy. According to **BNS Section 82** speaks bigamy.

d) Abolition of the Dowry System

The actual word of dowry is coined **Stridhan**. The word 'Streedhan' has been derived from the words '**Stri**' meaning a woman and the word '**dhana**' means property. The combining of these two words, we get 'property of woman' her Stridhan. The girl's parents

would present something to the groom during the wedding so that the newlywed husband and wife might enjoy a happy life free of financial problems. This was performed in practically every region of India, and particular acknowledgment is provided in Hindu law.

However, as time went on, it became customary to present something to the groom at the time of the daughter's marriage, and this was done on demand rather than freely. This has resulted in a wicked practice in society, which was once considered a beneficial practice to support family life. Girls used to suffer as a result of this dowry demand, and the girl's father was unable to complete the duty imposed by the husband's side, causing the woman to suffer greatly.

After the various troubles suffered by the people, society retrospects the dowry system and finally enacted a new law, which is known as the Dowry Prohibition Act of 1961. This act not only speaks about dowry but also speaks about,

- i. Cruelty including torture and harassment
- ii. Domestic violence
- iii. Physical and sexual violence
- iv. Abetment of suicide
- v. Dowry death including bride burning and murder

Apart from this act, **IPC section 498A** was inserted in 1983. This section speaks about the cruelty by the husband or relatives of the husband. As of now **BNS section 85** speaks it.

e) **Untouchability**

It is the curse of Indian society. It is still being practiced throughout India. Nobody knows when these wicked practices began. Many people battled against this discrimination. With time, someone had to take the initiative to remove this system, and the chairman of the drafting committee of our constitution, DR. Ambedkar, an untouchable of the Mahar caste from Maharashtra, "knew firsthand the many humiliations, including physical beatings, from orthodox Hindu, came forward and tried to remove this menace from the society and our country." In all these revolts and other protective measures, Dr. Ambedkar incorporated an article in our constitution under Part III Fundamental Rights **Article 17** in the constitution which is the **Abolition of Untouchability**. "Untouchability" is abolished and its practice in any form is forbidden.

The enforcement of any disability arising out of "Untouchability" shall be an offense punishable by law.

Some of the practices that were practiced in our country about untouchability are as follows:

- a) Eating with other caste members
- Marriage with another caste member,
- b) Separate glass utensils for Dalit members,
- c) Discriminatory seating arrangement,
- d) Different food menus for different caste people,
- e) Prohibition of the lower sect of people in temples and other holy place,
- f) Denial of access to common/public properties to the low caste people.

In the list above, we practiced untouchability in our society during the British time. Article 17 was included in our constitution, and a separate legislation known as the Untouchability (Offence) Act was introduced in parliament, with the primary goal of making the practice of untouchability a punishable offense. Later the act was renamed the **Protection of Civil Rights Act 1955** where the primary aim of the legislation was to prescribe penalties for the preaching and practice of untouchability, as well as the enforcement of any impairment resulting from it and other related problems. This act contains strict provisions for the practice of untouchability. Along with this, the Protection of Civil Rights Act of 1955 was altered and enacted by the new legislature known as the **Schedule Cast and Schedule Tribe (Prevention of Atrocities) Act 1989**.

f) Elimination of Child Labour and Slavery:

In the olden days, child labour was also practiced in India. Preventing a child from enjoying his youth is a serious crime. **The Factories Act of 1881** was the only one that prohibited the employment of children under the age of seven and limited working hours. Following independence, in our Constitution, **Article 23** protects individuals from trafficking and forced bonded labour in India. We enacted the **Bonded Labour System (Abolition) Act, 1976** to prohibit bonded labour in India and we passed the **Child Labour (Prohibition and Regulation) Act of 1986**, which raises the age of children to 14 years to prohibit child labour. Apart from this in **IPC Sections 370, 370A, and 371** speaks about slavery are offences. 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. Now this concept was spoken by **BNS Sections 143,144, and 145.**

g) Devadasi System

This system was prominently followed in southern and western parts of India. The literal meaning of Devadasi is “**female slave to God**.” It means that before a young girl reaches puberty, her parents dedicate her to God. A dedicated girl does a service to a deity in the temple for the rest of her life. The ceremony was called “pottukattu” which was similar to a marriage ceremony. In the period of origin, it had high respect but after years it turned to exploitation, like a sexual slave to the priest of the temple without her consent they were sexually assaulted meantime it led to religious prostitution which is against human dignity. It was first outlawed in 1924 under the British rule. Then

- Bombay Devadasi Protection Act 1934,
- Madras Devadasi (Prevention of Dedication) Act 1947,
- Karnataka Devadasi (Prohibition of Dedication) Act 1982,
- Apart above IPC section 372 prohibits selling minors for prostitution now it is in BNS section 98.
- The Traffic (Prevention) Act 1956 also makes prostitution in or in the vicinity of public places an offense.

Case Laws:

i. Mohini Jain vs State of Karnataka (1992 AIR 1858)⁴

In this case, the Supreme Court ruled correctly by a majority that the right to education is a fundamental right under Article 21 of the Indian Constitution, which immediately follows from the right to life. Children have the right to free education until age 14, after which economic capacity and progress limit the state's commitment to offer education. The requirement imposed by Articles 41, 45, and 46 can be fulfilled by the state either by creating its institution or by assisting, recognizing, or providing affiliation to private organizations.

⁴ <https://www.escri-net.org/caselaw/2009/mohini-jain-v-state-karnataka-1992-air-1858/>

ii. Khushboo vs Kanniammal & Anr⁵

In our society, people believe in marriage, and no pair lives together unless they are married. However, today's culture format is completely different. In this case, the SC held that the live-in relationship comes under the purview of Article 21 of the Indian Constitution and it includes the definition of life. The court also stated that Live-In-Relationship is acceptable and the two majors living together cannot be construed as illegal and unlawful.

In S.P.S. Bala Subramanyam Vs. Suruttayan @ Andali Padayachi & Ors. AIR 1992 SC 756, this Court held that if a man and woman are living under the same roof and cohabiting for a number of years, there will be a presumed as husband and wife and the children born to them will not be illegitimate⁶.

In the case of Mohan Singh against Rajani Kant⁷, the Supreme Court ruled that a long-term live-in relationship cannot be considered a walk-in and walk-out relationship, and it is assumed that the parties are married.

iii. Navtej Singh Johar and Ors. vs. Union of India⁸

The constitutionality of IPC Section 377 was evaluated based on Articles 14, 15, 19, and 21, with the Court citing the NALSA judgment to affirm that sexual orientation and gender identity are essential aspects of a person's identity. Drawing upon prior rulings, the Court reiterated that the freedom to choose a life partner is protected under individual liberty and dignity. The Court deemed Section 377 as irrational and discriminatory, infringing on the rights of the LGBT community. It invoked the principle that one's home is a private sanctuary to highlight the disproportionate nature of Section 377's restrictions on freedom of expression and choice. Ultimately, the Court concluded that sexual orientation is a natural and immutable trait, asserting that the LGBT community deserves equal protection under the Constitution. The five-judge bench unanimously held Section 377 unconstitutional, reading it down to eliminate criminalization of consensual sexual conduct between adults in private, while underscoring that consent must be free, voluntary, and devoid of coercion.

⁵ (2010) 5 SCC 600

⁶ <https://main.sci.gov.in/jonew/judis/36667.pdf>

⁷ AIR 2010 SC 2933

⁸ AIR 2018 SC 4321, (2018) 10 SCC 1

iv. State Of Andhra Pradesh vs Challa Ramkrishna Reddy & Ors⁹

In this case, the Supreme Court declared that a prisoner is entitled to all fundamental rights unless prohibited by the Constitution. In another case, SC held that “there would be several factors that lead a prisoner to commit a crime but a prisoner is required to be treated as a human being entitled to all the basic human rights, human dignity, and human sympathy.”¹⁰

Conclusion:

Our Indian society is mostly built on religious beliefs, faith, conventions, norms, and sanctions. It is difficult to influence people's minds. Meanwhile, it is difficult to introduce social transformation and reasonable thinking into society. In this modern period, modern culture has emerged, but we are still lagging or stuck in old conventional concepts. But through the law, we can change society. Looking back to the past 75 years of Indian History, we can easily find out that only law is an instrument of social change.

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⁹ AIR 2000 SUPREME COURT 2083, 2000 (4) SUPREME 741

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