

Indian Women in the Event of Social Transformation – Legal Perspectives

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Abstract

"All collective human life is indirectly shaped by law. Law is like knowledge, an essential and all pervasive fact of the social condition" –Niklas Luhmann.

Law is the reflection of man's social consciousness at a given period of time. Society is a changing phenomenon and this process requires to be maintained by some machinery in order to avoid disorientation and disarray. Legal propositions, researches and judicial pronouncements are those instruments which are developed in the form of norms and principles and its accuracy being checked and then applied as true principles of law.

Indian society being multifaceted and bearing a hierarchical structure has experienced enormous variations over decades with law playing an effective and affirmative role throughout this journey and is a recurring one. With the world steadily heading towards greater equality, Indian women, in the event of transformation are sincerely involved and their character is being a subject of passionate discussion all through. Women have suffered at large and have become an emblem of revolution against poverty and violence, despite numerous statutes, treaties and laws. Hence, spotlight is upon whether law or its implication is insufficient in the event of social transformation.

The New India, obviously has a more progressive outlook for her women folk, although she still has a long way to reach her destination but women's active participation in economy and polity and her overall growth have on one hand expressed her power and ability, and raised her role and social status and on the other, ultimately giving her a good life and living in a developing nation.

Keywords :Women, revolution, poverty, violent, transformation, law, treaties, development.

I. Introduction

Society is changeable and moving since it is a process and unchanging society is a fiction. Hence, it is requirement of society to change and similarly in the case of women. Law is and has been playing a significant role of an agent in this

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transformation event with the objectives of being stable and maintain a good life in the society and more important to persuade social change by changing itself according to the varied requirements of human and society.

II. Role of Law in Social Transformation

Roscoe Pound observed law as a tool of social engineering. Social transformation may be assumed as a conscious human control where law is a catalyst of such control. The social, political and economic system of every nation keeps on modifying as a basic 'rule of change' and with these changes there arises complexities in the existing laws as well as demand of new and innovative laws for contemporary issues, and the concept of adoption of social sciences to develop legal rules or sociological jurisprudence came up. However, the changing phenomenon of society have both positive and negative directions and the nation with whole political and legal system aims to curb such transformation and in a desired direction. Hence law is such a measure which is designed and formulated on the basis of a specific social context bearing capacity to regulate a society and its intricacies and divergent requirements.

The vibrant character and distinguished feature defining a nation is its political and legal structure. As per the 'Lead and Lag' law approach, law may be looked into broadly in two ways. Firstly, where law determines the nature and direction of the aim and objective towards which the social system shall revolve and secondly, wherein law is formulated to shaft and tackle the evolving problems within the existing social order or system. In lead law approach, law is treated as a powerful agent that plays a vital role in social control or rather acts upon the society, it being autonomous in nature. The popular and leading ages of social transformation adopted law as a powerful weapon of governance mechanism of adjudication process and professional version of legal doctrinetherebyupholding the sovereign power and authority bearing the capacity of legislation and control of social behavior. Lag law approach on the other hand is based on sociological perception and are ineffective and dead at its initial stage, as and when fails to

provide security of social requirements and thereby pulverize the moral sophistication,local meaning and variety².

It has been observed that the western social structure,culture, ideas and values are extremely different from the Asian ones. But in the 19th and 20th century, merely all Asian societies including India adopted the western system of law and governance mostly through colonial imposition like the common law and Westminster Parliamentary system came with the British,the civil and Roman Dutch law and administration from Dutch and the Soviet socialist system with Marxist Communism.Hence, cultural feature from British and France,Dutch administration and Spanish social heretical system were adopted and brushed up over these societies including India which led to the Gandhi-Nehru reign, face rejection and restoration of democracy. The political and legal structure of Indian society at the same time adopted the multiparty governance,democratic elections, rule of law and separation of power through the constitution like other Asian countries. The concept of democracy and rule of law is therefore well known and familiar concept after independence for India among other Asian countries. The political leadership had little or no scope to insert and keeptheir thoughts and views in administration process and governance and was given the public services which lessoned them about administration processes. Trade Unions were though lead by native leadership, schools and educational centerswere handled and managed by native teachers who were trained in home land but finally examined by the British.

The then intellectual class including teachers,scholars,journalists were conventional pools out of which craze and demand of independence and equality geared up and desire of national identity was felt.³

²Singh A.P., '*Role of Law in Social Transformation*', Volume I, issue III, RLR, May, 2014. Available at <https://www.journal.rostrumlegal.com> last visited on 20.10.19 at 9 am.

³Tay Alice Erh-soon, '*Asian Values and Rule of Law*', Jura Gentium, 2005,available at <https://www.juragentium.org/topics/rol/en/tay.htm> last visited on 20.10.19 at 10 am.

III. Indian Society in Transition

India bears a unique and astounding variety of social and cultural aspects along with an elaborate background. Being one of the world's greatest civilizations, Indian society is multifaceted bearing diversity in culture, language, clans, caste, groups etc. Indian society has undergone huge transition in its journey from ancient times till its modernization. Separate and special social features are prominent and reflect the ideas of kinship, togetherness, dignity and honour. The major ages of transformation have experienced several reformatory movements and other major developments with span of time. Law has been playing a major role in this journey through out. The highlighting features in Indian society are its hierarchical pattern; family orientated where family ideals and kinship is supreme and impurity and untouchability are grave matters of concern. Social interdependence was another inevitable feature of ancient Indian society. People preferred to live in groups, families, clans, caste & religious communities and hence most of the disputes arose among groups instead of individuals and thus the concept of mediation and conciliation in the form of justice reared up which later on became the traditional base of Indian justice system.

Caste system was an evil practice evident in ancient Indian society and prevailed till date among some religions as a consequence of which positive and protective discrimination and affirmative action and occupational mobility were warranted through introduction of The Untouchability(Offences)Act, The Hindu Code Bill, and later on the fundamental rights etc. And thus law has been constantly performing the role of social reformation mechanism.

Another distinguished aspect of early Indian society was the 'Purdah' system or veiling of women which not only highlighted the strict maintenance of family honour and conservativeness, but also earned restrictions, restraints and discrimination for women in the society virtually in all spheres thereby curbing her access to education, employment and the whole outer world.

IV. Journey of Women from Ancient to Modern India

All human society is invariably characterized by various social differentiations and the role and status of women in Indian society has undergone many shifts

over the span of recorded history. Gender differentiation is a major and ethical issue which has been reverberating in Indian society publicly for years. A historical lookout/analysis of the women's position in the Indian society depicts a gradual declining trend .Various studies shows women in this society never shared an equal status with men but were honoured and respected and they performed their part of responsibilities within the family in the early years. Gradually with passage of time they took over some more responsibilities outside home and family and started educating themselves and sharing the earning responsibility with male partners and earn a status for themselves where they began to come across undesired circumstances and discrimination. This also started affecting their family as well as social life and the women were subject to evil practices like inequality, denial of education in addition to already existing protection and care of health, no food security, childmarriage, polygamy and the like and they were left to suffer. The Indian patriarchal society continued to rule the social, political and economic arena.

The position and status of women had worsened with other severe offences like dowry deaths, female feticide and infanticide, forced abortions, and added domestic violence, physical harassments and others which continued till date in modern India. In a nutshell, women were and are treated by Indian Patriarchal society in every age as a slave without remuneration, status and dignity.⁴

Social change began with initiation of movements by social reformers through spreading education and awareness and introducing progressive legislations with an objective of preventing evil practices like Sati⁵,Polygamy marriage⁶,dowry prohibition⁷, widow remarriage⁸,preventing female infanticide⁹,and introducing property rights¹⁰ for women. Lateron afterindependence, the Parliament made

⁴<https://www.importantindia.com> MEHRA VIKASH, 'STATUS OF WOMEN IN VEDIC AGE, last visited on 21.10.19 at 9.15 am.

⁵Bengal Sati Regulation,1829.

⁶The Child Marriage Restraint Act,1929 (19 of 1929).

⁷THE DOWRY PROHIBITION ACT,1961 (Act No. 28 of 1961).

⁸Hindu Widow Remarriage Act,1856 (Act XV, 1856).

⁹Female Infanticide Prevention Act 1870 (Act VIII of 1870) & Age of Consent Act 1891 (Act X of 1891).

¹⁰The Hindu Women Rightsto Property Act, 1937 Act No. XVIII of 1937.

much effort to defeat inequality and discrimination and passed strict laws with regard to Hindu marriage, Adoption and Maintenance of wife, children and aged. Women's protection against discrimination were further warranted through constitutional provisions confirming her equality and equal protection of law¹¹, non discrimination on the basis of caste, race, sex and religion¹², and affirmative discrimination in favour of women¹³, in addition to provision regarding just and human condition of work including maternity benefits¹⁴ and respect to each and every human being and not give derogatory treatment on the basis of sex¹⁵ and much more.

Apart from the several other enactments for women and other initiatives and progressive approaches in contemporary times are- formation of Statutory body for monitoring the implementation of legislations¹⁶, creation of provision of reservation for women (1/3rd representation) in local self govt.¹⁷ Action Plans¹⁸ ensuring survival, protection and development of girl child¹⁹, National Policy for Empowerment of Women,2001 for her development and empowerment.

The Indian society after experiencing such huge transition from times immemorial till this age of modernization and globalization, and in spite of several reformation movements, and law being a constant affirmative and active participant throughout the journey of all ages of transition, her women are subject to certain inconveniences which never made their journey very safe, smooth and easy. Their status although upgraded economically but she continues to be subjective of heinous crimes almost in all parts and the basic reasons are-

¹¹Article 14 of Constitution of India.

¹²Article 15 of Constitution of India.

¹³Article 15(3) of Constitution of India.

¹⁴Article 42 of Constitution of India.

¹⁵Article 51 (A)(E) of Constitution of India.

¹⁶National Commission for Women 1992.

¹⁷73rd and 74th Constitutional (Amendments) Act,1992.

¹⁸Govt. of India, *National Plan of Action for girl child (1991-2000AD)..PDF.*

¹⁹<https://www.india.govt.in> NATIONAL POLICY FOR EMPOWERMENT OF WOMEN, 2001 (DEPT.OF WOMEN AND CHILD DEVELOPMENT IN THE MINISTRY OF HUMAN RESOURCE DEVELOPMENT), last visited on 21.10.19 at 8 am.

- (i) Lack of education, which is still prevalent in many areas and prevents them from gaining knowledge of proper care for children and unaware of her own health, status, her power and representation in family as well as society. Lack of education also prevents them from knowledge of their rights and redressal and their overall growth as a human being.
- (ii) Lack of Food and Health security is the other common issue for women prevalent in many parts. Denial of proper food and nutrition to the girl child, lack of care and attention of women's health in many families leave them subject to several diseases thereby making the mortality rate ranking high.
- (iii) Lack of Power and victim of violence urges serious concern as more and more women continue to suffer despite of numerous laws because of either unawareness or fear of losing their jobs in work field or dignity and family status resulting into less recording of cases and less convictions. Besides, several social evils like dowry, trafficking and others keeps her making victim on one hand and on the other, are the social taboos that prevent them from gaining their financial stability in the society²⁰.

Thus, it is evident that formulation of special initiatives and enacting legislations are symbols of concern of the state, which partially shows a path and urges for women's own consciousness and quest for her dignity and self-respect.

V. Conclusion

Thus, although law plays a vital role in the event of social transformation of Indian women, but the answer to whether legislation and enactments are enough to banish the social evils towards women is in negative. The evil practices towards her are still relevant today, despite of laws, Treaties and commissions, Plans and Policies to combat the situation, but at the end of the day, it is woman who struggles every day against the heinous crimes and

²⁰Nandal Vikash & Rajnish, 'Status of Women through ages in India'; Volume 3, Issue (1), Int. Res. J. Social Sci., Pages 21-26, Jan 2014. Also available at <https://www.isca.in>

PEOPLE'S MOVEMENT AND SOCIAL CHANGE

offences, like she now denies marriage in case of dowry demands, and publicly celebrates the verdict on instant Triple Talaq and this is indeed symbolic of shift of mindset and emerges a ray of hope because women of Indian society traversed a long way and still have miles to go, but in the event, are displaying her capability and offering away for social reform of her own, in search of her status and empowerment.