

Finding the Ratio between Law as an Instrument of Social Change and Social Changes that Germinated Law: A Unique Indian Scenario

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Abstract

The main objective of this paper is to study the way how law and Indian society had interacted with each other during colonial and post-colonial era. While doing so this paper examines why groups seeking social reform have resorted to different movements, litigation which eventually germinated law, and whether and how court-made law has contributed in social engineering. From a sociological perspective, an attempt has been made to treat law in its institutional, historical, socio-cultural, and politico-legal systems and analyze its dialectics with the ever changing Indian society in its broader structural setting. Finally, an attempt has been made to find out the ratio between the spheres where “law changed the society,” and where “society changed the law.”

Keywords: law, social engineering, judicial law making, socio-cultural movement, politico-legal system, social change.

I. Prologue

Let us begin with the assumption that any good polity must have a proportionate ratio between the so called concept of ‘law as an instrument of social engineering’ and the concept that ‘social changes do really germinate law’. “Every social and economic change causes a change in the law, and it is impossible to change the legal bases of society and of economic life without bringing about a corresponding change in the law.”³ Consequently this paper peeps into the scenario where social movement has contributed for propelling the process of law making to cover certain areas touching some socio-economic,

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³ E. Ehrlich, “Fundamental Principles of the Sociology of Law”, (437), Translation by W. L. Moll, Harvard University Press, 1936 (“Ehrlich”).

demographic, and political issues along with their volatility. This piece of paper then inter alia probes the fact as to whether do we have a balanced ratio as mentioned in the title of the article. Having these in mind if we try to explore Indian scenario few things need clarification, i.e., social engineering, social change, social movement, and their interplay in the backdrop of political engineering by law making agencies specially the legislative bodies directly controlled by the state and the role of the apex court of the country in particular.

II. The Concept of Law as an Instrument of Social Engineering

The concept of law as an instrument of social engineering has its initial foundation in Roscoe Pound's Jurisprudence,⁴ although Sociological jurisprudence was first introduced by Roscoe Pound in a law-review article⁵. He questioned the formal jurisprudence by introducing the concept of using social sciences to develop legal rules. He was of the view that for the just claims and desires to be satisfied the law as a form of social control need to be adequately employed and reliance upon the social science is necessary for the understanding of law in society.⁶ This is where we also need to look at sociological jurisprudence from the perspective of model for responsive law.⁷

Law has always been looked at as one of the important instruments that could bring about social change. Many academicians have supported the view that law enjoys and uses unifying power to contribute towards better social cohesion, as a tool for bringing about homogeneity in the heterogeneous population having socio-cultural diversities and reformation through law is perhaps one of the most effective and safest methods to achieve this end.

It is pertinent to mention here that while sociological jurisprudence ultimately came to be associated with legal progressivism, its underlying rationale did not

⁴ Jurisprudence by Roscoe Pound, Volume I, Chapter 6, Section 22, The Law book Exchange, LTD. Union, New Jersey, 2000, Pages- 291-358.

⁵ Roscoe Pound, "The Scope and Purpose of Sociological Jurisprudence," (1911), 24 Harvard Law Review 591.

⁶ - Richard Langone, "The Science of Sociological Jurisprudence as a Methodology for Legal Analysis" (2001) 17 Touro L Rev 769, 779.

⁷ - Philippe Nonet, Philip Selzinck, et al, Law and Society in Transition: Towards a Responsive Law (2001) 73.

inherently require judicial deference to the legislature.⁸ This is the basic reason for which Judiciary is understood to be playing a major role to bring about the reform in the society to which sociologists refer to as ‘social change’.⁹

Law as an instrument of social change implies many things.¹⁰ Firstly, law is the reflection of the will and wish of the society. It is believed that if we want to study any society, we have to study the laws enacted by that society and you come to know whether the society is developed or wild world. The law, though it is the product of the society is responsible for the social transformations. In fact, there are two modes of this aspect. Secondly, “Law changing the society”, which means that the law of the land compels the society to be changed according to it. Thirdly “Society changes the law”, as per its needs. It means law is made by the society according to its requirement by its democratic institution i.e. legislative bodies or by adopting custom and usage. When law changes the society, it is the sign of beginning of the development of the society. When society changes law it is the sign of maturity of the society.

III. Social, Religious, Political Movements and The Law During Colonial Era

India in the 18th century had to endure one of the most chaotic periods in its entire history. The Mughal Empire, which had dominated the Indian subcontinent for two centuries, began to decline with internal and external pressures. Following the decline of the empire, numerous local powers strived for independence, and foreign powers began to invade the area, further deteriorating the situation of India and promoting additional disorder.¹¹ The then Indian society was burdened with a host of evil customs and regulations. Elaborate rituals and strict moral codes were enforced which were largely modified, and badly interpreted ancient traditions.¹²The 18th century colonial

⁸ Roscoe Pound, “The Sociology of Law and Sociological Jurisprudence”, 5 U. Toronto Law Journal, 1,2-3, 1943.

⁹This can particularly be seen in the post-independence scenario of our county.

¹⁰Ibid at 3.

¹¹<https://www.quora.com/Is-it-right-to-call-18th-century-a-dark-age-in-the-Indian-history>.

¹²http://www.nitintayade.com/feed_post.php?blog_id=21.

legislation primarily influenced by orientalism¹³ and it had left its impression in some social legislation.¹⁴ The colonial legislations of pre-independence period though helped in abolition of social evils prevalent at that time but gradually led to breach the socio-religious fabric of India since they were mainly focused and based on the English perception and attitude. But it would be an injustice to deny the contribution various social and religious movements that were led by some great Indian intelligentsia¹⁵; namely Raja Ram Mohan Roy and BrahmoSamaj, PanditIshwar Chandra Vidyasagar, DayanandSaraswati and, Henry Vivian Derozio with his young Bengal, M.G. Ranade and PrathanaSamaj, JyotibaPhule and its SatyashodhakSamaj, RamakrishanParamhansa Dev and Swami Vivekananda, Rabindranath Tagore, Kesab Chandra Sen, DadabhaiNaoroji, Gopal Krishna Gokhale and many more had in fact made deep impact on the then ruler including the masses in general. The colonial legislation touched the following areas for reforming the society.

A. Female Infanticide

This practice was very common among upper class Bengalis and Rajputs, who considered females as economic burden. Hence, in order to reform the perception of Indian society, the Bengal Regulation Acts of 1795 and 1804

¹³[Edward W. Said](#), "Orientalism" 1978, Pantheon Books, ISBN-978-0-394-42814-7, in which the author discusses [Orientalism](#), defined as [the West's](#) patronizing representations of "[The East](#)"—the societies and peoples who inhabit the places of Asia, North Africa, and the Middle East. According to Said, orientalism (the Western scholarship about the [Eastern World](#)) is inextricably tied to the [imperialist](#) societies who produced it, which makes much Orientalist work inherently political and servile to [power](#). The first school of thought that emerged in the writing of empire is perhaps best described as British Orientalist. The Orientalist scholars proved most dominant during the early modern contact between India and the Great Britain.

¹⁴ Toynbee, Arnold, "The Disintegration of Civilization; A Study of History", (V) Oxford University Press, New York, 1962; Arnold Toynbee, among others, helped in universalizing the notion of Intelligentsia by assigning to it the function of mediator between cultures. The intelligentsia arises, says Toynbee, "in any community that is attempting to solve the problem of adapting its life to the rhythm of an exotic civilization to which it has been forcibly annexed or freely converted."

¹⁵: See also Taylor, Joshua, (ed.) „Nineteenth-century Theories of Art", University of California Press, Berkeley, 1987.

declared murdering of female infant illegal. Finally, in 1870 an Act was passed for the prohibition of female infanticide whereby among other things it was made compulsory for parents to register the birth of all children and provided for the verification of female child for some years after birth especially those areas where this custom was very much prevalent.

B. Abolition of Sati

This was influenced by the step of Raja Ram Mohan Roy's frontal attack. The British Government decided to abolish the practice of Sati or live burning of widow and declared it as culpable homicide. The Regulation of 1829 was applicable for the first instance to Bengal Presidency alone, but was extended with slight modification to Madras and Bombay Presidencies in 1830.

C. Abolition of Slavery

This was another practice which came under British scanner. Hence, under *Charter Act of 1833* slavery in India was abolished and under Act V of 1843 the practice of slavery got sacked by law and declared illegal. The Penal Code of 1860 also declared trade in slavery illegal.

D. Widow Remarriage

Vidyasagar took the initiative to propose and push through the Widow Remarriage Act XV of 1856 in India, which was decreed on 26 July 1856.¹⁶ The following year, he filed a petition before the government of the day, seeking legislation that would allow widow remarriage. Although support for his campaign came from few influential people, a lot of backlash came from powerful conservative groups within Hindu society. In fact, the government received more than 30,000 signatures challenging Ishwar Chandra's petition. However, his sustained efforts, alongside fellow social reformers finally resulted in the passing of the Widow Remarriage Act,¹⁷ on 26 July 1856.¹⁸ Despite their

¹⁶ <https://theprint.in/india/vidyasagar-the-path-breaking-reformer-educationist-who-is-bengals-intellectual-pride/235933/>.

¹⁷ Please see <https://byjus.com/free-ias-prep/this-day-in-history-jul16/>.

¹⁸ The Act contained that "No marriage contracted between Hindus shall be invalid, and the issue of no such marriage shall be illegitimate, by reason of the woman having

success in passing a law, the real challenge was getting society to accept widow remarriage.¹⁹

E. Prohibition on ‘Hook Swinging’

The practice of hook-swinging, linked to rituals of Hindu Gods in Bengal and South India, was a source of both interest and horror to British authorities in the eighteenth and nineteenth centuries. It was finally banned by the British ruler in 1860.²⁰

F. Prohibition of Polygamy

Another Act was passed in 1872, at the insistence of BrahmaSamaj, which tried to abolish polygamy and marriage of minor girls below 14 years and sanctioned inter-caste marriages and remarriages of widow. Preventing a child from enjoying his childhood is a grave crime.

G. Protection of Childhood

Preventing a child from enjoying his childhood is a grave crime. This idea came to the mind of the then society. The Factories Act, 1881²¹ was the first one of its

been previously married or betrothed to another person who was dead at the time of such marriage, any custom and any interpretation of Hindu Law to the contrary notwithstanding,”

¹⁹<https://www.thebetterindia.com/182357/ishwar-chandra-vidyasagar-widow-remarriage-bengal-women-rights-india/>: Also see <https://theprint.in/india/vidyasagar-the-path-breaking-reformer-educationist-who-is-bengals-intellectual-pride/235933/>.

²⁰ Alexander Duff, “India and India Mission,” (Edinburgh: 1840), 268-9; Cited in Geoffrey Oddie, Popular Religion, Elites and Reform: Hook-Swinging and its Prohibition in Colonial India, 1800-1894

(New Delhi: Manohar, 1995), 13: Also see, J. H. Powell, "Hook-Swinging in India. A Description of the Ceremony, and an Enquiry into Its Origin and Significance," *Folklore*, Vol. 25, No. 2 (Jun. 30, 1914), pp. 147-197, [Taylor & Francis, Ltd.](https://www.jstor.org/stable/1254904) on behalf of Folklore Enterprises, Ltd. ,available at <https://www.jstor.org/stable/1254904>, p 1-65.

²¹The Act, listed 17 occupations and 65 processes in Schedules A & B.

kind to prohibit employment of child below the age of 7 years and the working hours were limited.²² Even after this, the Age of Consent Act came up in 1891.

H. Prohibition of Child Marriage

In 1872, *the Native Marriage Act* (Civil Marriage Act) intended legislative action for the prohibition but had very limited periphery because it was not applicable to Hindus, Muslims and other recognized religions. In 1891, Act of the Age of Consent was enacted which prohibited the marriage of girl child below the age of 12 years. The Child Marriage Restraint Act, 1929 was passed on 28 September 1929, which, fixed the age of marriage for girls at 14 years and boys at 18 years and the same was later amended to 18 for girls and 21 for boys. It is popularly known as the **Sarda Act**²³ which came into effect six months later on 1 April 1930 and applied to all of British India.

During twentieth century, the policies regarding social change mainly resulted from Indian opinion, various movements, progress of western education, growth of political consciousness, coupled with struggle for social reform by the then Indian intelligentsia and off course much credit goes to Renaissance of that period. Side by side the upsurge of nationalistic movements due to British suppression and control mechanism to extend their colonialism contributed much friction among the Indian polity to come out and organize the Indian masses, developing the mindset for social reform as well as for freedom struggle.

The targets of the then intellectual attacks were against the existing socio-cultural evils and malpractices such as obscurantism, superstitions and irrationality imbedded in the society.²⁴ The social reform movement did not;

²²Dr.S. Durgalakshmi& Mrs. R. Ammu, "Law as an Instrument of Social changes and for Empowerment of the Masses",Indian Journal of Applied Research, Vol-5,issue 12, Special Issue Dec 2015,issn-2249-555X, at page 131.

²³ Popularly known as Sarda Act, after its sponsor [Har Bilas Sarda \(1867-1955\) was an Indian academic, judge and politician. He is best known for having introduced the Child Marriage Restraint Act \(1929\).](#)

²⁴ This proves what Ehrlich had succinctly written that "the center of gravity of legal development lies not in legislation, not in juristic science, nor in judicial decision but in society itself," For details please see, E. Ehrlich, "Fundamental Principles of the

however attack the entire social system as a whole. It was mainly focusing on the perversions and distortions that had crept into the then existing society. They did not advocate a sharp rupture in the existing social structure of the country but touched some fundamental evils that were enough to destroy the society.²⁵ In a way, the social reform movement was a prelude to nationalism.

IV. Law and Social Change During Post-Independence Period

During post-independence period, law has often been used as an instrument of social reform. Every year new legislation or regulation is coming up as such in post independent period we could see voluminous legislations and regulation or bye laws. For better understanding this subtopic may be examined under the following touch stone of some fundamental aspects of human life in a continuously evolving society which the law tries regulate and also see whether the society has been able to evolve further to demand its own share and thereby making the pathway of new law to adjust with the society on the basis of its prevalent need.

A. Touching The Untouchability and the Caste System

India is a caste ridden society. The caste system has been a stumbling block towards enforcing equality before law. The caste system survived despite the introduction of rule of law, growth of urbanization and industrialization, spread of mass education, and constitutional commitment to establish egalitarian society. Despite challenges thrown by the newer sects of Hinduism like Buddhism, Jainism, and Sikhism, the practice of untouchability and stricter

Sociology of Law", (437), Translation by W. L. Moll, Harvard University Press, 1936 ("Ehrlich").

²⁵[The history of British India: a chronology](#), John F. Riddick, 2006, Praeger, West Port, Connecticut, London. Also note that The Rowlatt Act, 1919 was much resented by an aroused Indian public. All nonofficial Indian members of the council (i.e., those who were not officials in the colonial government) voted against the acts. [Mahatma Gandhi](#) organized a protest movement that led directly to the [Massacre of Amritsar](#)²⁵ (April 1919) and subsequently to his [non-cooperation movement](#) (1920–22). The acts were never actually [implemented](#). Accepting the report of the Repressive Laws Committee, the [Government of India](#) repealed the Rowlatt Act, the [Press Act](#), and twenty-two other laws in March 1922.

caste division still remained and India witnessed worst categories of unequal treatment meted out to certain categories of people.

Taking a cue from the central spirit of Article 17 of the Constitution, the independent India enacted Untouchability Offences Act, in 1955. This legislation outlaw's practice of untouchability directly or indirectly, though it has not attempted to define untouchability. The working of the Act was reviewed in 1972 and various limitations were discovered. Then the government came up with the Protection of Civil Rights Act, 1976.²⁶ The difference is that while the former Act was concerned with prohibitions imposed on untouchables in relation to public places, the new Act included both public as well as privately owned place of worship allowed by owner for public worship. Many new behaviors like, discrimination in jobs and employment, disability in participation in cultural, or in hostels, residences, have been brought within the ambit of the Act. It forbids direct or indirect preaching or practicing of untouchability or its jurisdiction on historical, philosophical or religious grounds.

After a decade back the government realized that the atrocities on the SCs' and STs' were rising phenomenally and, therefore, it came out with The Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989. The Act confers civil rights on SC/STs' and seeks to prevent atrocities on them. Civil Rights Act, 1976 does not define untouchability, but the SC/ST Act defines atrocities. The Hallmark of this law is its conceptualization of the term atrocity through its definition and introduction of stringent measures for committing atrocities. The Probation of Offenders Act does not apply to an accused under the Act. This shows legislature's importance attributed to this law.

B. Protection of Children

Primary Education: A Sine Qua Non for Any Social Change

Any exercise in empowerment and social development of any sections of Indian society is bound to be ineffective unless the prospective beneficiaries are literate and can appreciate the framework of empowerment or reform to which there are

²⁶The Act forbids enforcement of disability on the ground of untouchability against any person with regard to access to any river, well, bathing ghat, etc.

being subjected.²⁷ Education provides the basic foundation for good citizenship, and is a primary vehicle for imparting cultural values in children, and making them adjust to the fast-changing environment around them. Professor Amartya Sen rightly argues that social rate of return from investment in education especially basic and primary education compares favorably with investment in physical assets and that increase in physical capital-formation by itself cannot ensure rapid economic growth.²⁸ Article 26 of the Universal Declaration of Human Rights has recognized education as a basic human right. It also envisages primary education to be free and compulsory. Article 45 of the Indian Constitution which contains such a promise and says that, "the State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

"The right to education flows directly from the right to life²⁹." Later in **Unni Krishnan v. State of A.P.**,³⁰ the majority judges held the right to education as a fundamental right. The National Education Policy (1986) projected that the promise of Article 45 would be redeemed by the year 2000. The Constitution (86th Amendment) Act, 2002 inserted Article 21-A in the Constitution of India to provide free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such a manner as the State may, by law, determine. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which represents the consequential legislation envisaged under Article 21-A, means that every child has a right to full time elementary

²⁷Prof. Debi S. Saini, "Law and Social Development in India", a paper presented in an international Dialogue on 'Law and Social Development', at Mexico City from November 24-26,1999.

²⁸MoktarMaazouz, "Return to Investment in Human Capital and Policy of Labour Market: Emperical Analysis of Developing Countries", in 'Procedural Economics and Finance', Vol-5, 2013, pages -524-531.

²⁹Mohini Jain vs. State of Karnataka, (1992) 3 SCC 666 where the court observed that; "Right to life is the compendium expression for all those rights which the court must enforce because they are basic to the dignified."

³⁰(1993) 1 SCC 645.

education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.³¹

The title of the RTE Act incorporates the words 'free and compulsory'. 'Free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education. 'Compulsory education' casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age groups. On the basis of constitutional mandate provided in Article 41, 45, 46, 21A as well as, as per the various judgments' of the Supreme Court, the Government of India has taken several steps to eradicate illiteracy, improvement the quality of education and make children back to school who left the schools for one or the other reasons. Some of these programmes are National Technology Mission, District Primary Education Programme and Nutrition Support for Primary Education, National Open School, Mid-Day Meal Scheme, SarvaSikshaAbhiyan and other state specific initiatives.³² With this, India has moved forward to a rights based framework that casts a legal obligation on the Central and State Governments to implement this fundamental child right as enshrined in the Article 21A of the Constitution, in accordance with the provisions of the RTE Act.

Abolition of Child Labour

Article 45 of the Constitution should be read along with Article 24.³³ The former makes primary education compulsory and free for all children till they

³¹ Article 21-A and the RTE Act came into effect on 1 April 2010.

³² Dr. Sanjay Sindhu, "Fundamental Right to Education in India: An Overview," 'Global Journal of Interdisciplinary Social Sciences,' Published by Global Institute for Research and Education, Vol.3(5):92-95 (September-October, 2014) ISSN: 2319-8834.

³³ Article 24 mandates that No child below age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Similarly, Article 39(f) lays down certain directive principles of policy to be followed by the State: Article 39 The State shall, in particular, direct its policy towards securing: (f) that children are

complete the age of 14 years. The Government of India in 1986 enacted the Child Labour (Prohibition and Regulation) Act, which in a way considerably harmed the child labour abolition agenda. It should be noted that the employment of children is hazardous per se because it takes away from the child his/her childhood. However, the thinking and the act of making child labour as acceptable and worthy of regulation in some employments is not tenable. This shift of official thinking took place in India in 1980s when we made a choice of giving support to working children rather than banning it altogether.

Protection Against Child Marriage and Sexual Offences

Protection Against Child Marriage

Even after 72 years of our independence from British rule, child marriages could not be completely eradicated. The Child Marriage Prohibition Act was passed in 2006. Organizing a child marriage is under the Act, but the breaching of the age bar does not make the marriage invalid (*void ab initio*). As per Section 3 of the Act, the marriage is voidable at the option of the contracting party who was a child at the time of marriage. This means that a petition for annulling the marriage can be filed on behalf of the minor by his/her guardian or 'next friend', along with the Child Marriage Prohibition Officer. The petition under this section may be filed at any time but within two years after attaining majority (18 years). It is a reflection on rural society which supports child marriage that the provisions of this Act are not invoked when child marriages are performed by families and communities.

Protection From Sexual Offences

The government had also acceded the Convention on the rights of the child, adopted by the General Assembly of the United Nations in 1992 which prescribed a set of standard to be followed by all State parties in securing the best interest of the Child. The sexual offences against children continued in an

given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

unabated manner and the government felt the need of the hour and as a result Protection of Children from Sexual Offences (POCSO) Act, was passed in 2012.³⁴ This Act is an improvement over IPC as it criminalizes acts of any immodesty and not just traditional 'peno-vaginal' intercourse. Hereby child pornography was criminalized.

The Act is gender neutral and arrangement of special courts for POSCO cases is good initiative. But there are certain demerits like; no provision of police training, no counseling available for children to recover from post crime trauma, it encompasses the biological age of the child and silent on the mental age considerations. Consequently, the government came up with Protection of Children from Sexual Offences (Amendment), Act 2019 to cover up the demerits of the earlier Act.³⁵ But certain drawbacks remained with regard to, medical examination,³⁶ treatment cost,³⁷ consented sexual intimacy,³⁸ child marriages,³⁹ mental age of the victim.⁴⁰

C. Peoples' Participation

Though Mahatma Gandhi, had advocated for a village model of development, with self-dependent villages having resources and even the dispute resolution being done at the village level, the constitutional framers were not very much in favour of such a model. The model that finally got implanted in India is a top-down approach model, with a partial mention to the need for village level

³⁴Article 15(3) of the Constitution inter alia empowers the state to make special provisions for children.

³⁵Now punishment is stronger, emergency medical facility within 24 hours, care and protection and compensation by the state government within 30 days.

³⁶Conflicting legal position arises when female doctor is not available and the criminal law says anybody can do examination.

³⁷The hospital and establishment has to provide free medical care or the state should take responsibility to reimburse otherwise the hospital may provide substandard treatment.

³⁸Sexual contact between two adolescents or between an adolescent and an adult are considered illegal under the Act.

³⁹Child marriages are considered illegal under the Act but it enjoys sanction under certain personal law thus complicating the matter.

⁴⁰It does not take mental age as parameter thus injustice to those suffering from them.

administration in Article 40 of Constitution of India. The 73rd Amendment to the Constitution of India⁴¹ in 1992 which inter alia envisages a model of governance having following features:

- a. Formation of Gram Sabhas (Village councils)
- b. Uniform 3-tier system at village, block and district levels
- c. Direct elections—all seats at all levels
- d. 21 years as minimum age for membership as well as chairperson of the Panchayat

The Gram Sabha, which is the pivot of village panchayat has been entrusted with multi-dimensional responsibilities in the changed atmosphere.

In the area of municipal governance, the 74th constitutional amendment Act, 1992 besides providing for the constitution of municipal council, ward committee directs that not less than one third seats to be reserved for women (including SC/ST women) in proportion to their population, which may be allotted by rotation to different constituencies. Works of UpendraBaxi and Marc Galanter⁴² point out that the Nyaya Panchayat role in the process of informal, effective, faster and economical access to justice for the people in the rural areas. But at the same time, Panchayati Raj Institutions (PRI) as a method of decentralized mechanism of administration, with participatory method got constitutional recognition in the real sense, quite late with the aforesaid Amendment.⁴³ Both the 73rd and 74th Constitution Amendment Acts aim to enhance the capabilities of rural people to involve themselves in the planning process about their priorities. One can also witness decentralization of developmental activities, with active people participation.

⁴¹ The 73rd Amendment of the Constitution provide for direct participation of people in village governance structures.

⁴² UpendraBaxi and Marc Galanter, "Panchayat Justice: An Indian Experiment in Legal Access" in M. Cappelletti (ed), Access to Justice (1979) Vol. III.

⁴³ UpendraBaxi, "Towards a Sociology of Indian Law, 1st Edition, Satvahan Publications, 1986: Please see https://www.academia.edu/8135594/Baxi_Upendra.1985.Towards_a_Sociology_of_Indian_Law.New_Delhi_ICSSR_Satvahan_Publications.

D. Empowering Women: The Mother of All Social Development

Empowering women in the Indian context is a very complex issue. It involves changing the preconditioned mindsets of males and the society in general. There are several problems to be tackled in this regard. Human dignity for women needs economic self-sufficiency; they need capacity to generate independent income. Their disempowerment is a result of complex interaction of economic, social and political power structures. Education of women is also a first pre-requisite in uplifting their status.

Women's rights in India are widespread over a fairly good area. For example, there is prohibition of discrimination against them as per the spirit of Articles 14, 15, 16, 39 of the Constitution. Article 15 (3) envisages affirmative action for women and children. The Equal Remuneration Act 1976 talks about: equal wages for the same work or work of similar nature for men and women workers; and prohibits discrimination against women in matters of recruitment. The Maternity Benefits Act 1961 and the Employees State Insurance Act 1948 provide for payment of maternity benefit. But in actuality very small number of women gets this benefit. Unfair Labour Practices are committed by employers against their employment. The Factories Act, 1948 provides for restriction of hours of work (women cannot be asked to work between 7 p.m.-6 a.m.), concessions regarding lifting of weights, and special safety protection for women. The Dowry Prohibition Act 1961 provides stringent punishment for the practicing of dowry. The government has appointed the National Commission on Women for deliberating on issues of women's empowerment. There is provision for special Women's Cell in police departments which is also a significant step in providing special protection to women. The new law⁴⁴ provides reservation of not less than 1/3 seats for women in panchayats. These may be allotted to different constituencies in a Panchayat. It is expected that about 8 lakh women including those belonging to SC/STs will benefit from such reservations.

Women organizations have demanded reservation of 1/3 seats for women in Indian Parliament. But the political parties have not been able to resolve several

⁴⁴ The Constitutional 73rd Amendment Act 1992 commonly known as the Panchayati Raj Amendment Act. Also note that the Constitutional 74th Amendment Act 1992 also has similar provision.

issues connected to this. We need to follow policies of affecting fundamental change in attitudes of the state and the society towards women. Major areas of focus are: improving wage conditions for women; equality of wages between men and women; protection of women from problems resulting from their biological situation; access to credit and training for self-employed.

Feminist women in India are mostly urban phenomena. Women in rural areas are a subject of grave exploitation. The voluntary organizations need to undertake massive programmes of reforms in this regard. The problem of dowry exists both in the urban and rural areas. The dowry prohibition law has made some impact on the abolition of this practice but we still have a long distance to cover.

E. Sexual Offenses Against Women and Some Recent Protest Movements

Nirbhaya Protest

On 16 December 2012 a female [physiotherapy intern](#)⁴⁵ was beaten and [gang raped](#) in [Delhi](#). She died from her injuries thirteen days later, despite receiving treatment in India and Singapore. The incident generated international coverage and was condemned by the [United Nations Entity for Gender Equality and the Empowerment of Women](#), who called on the [Government of India](#) and the [Government of Delhi](#) "to do everything in their power to take up radical reforms, ensure justice and reach out with robust public services to make women's lives more safe and secure".⁴⁶ Public protests took place in Delhi and many parts of the country, where thousands of protesters clashed with security forces. Similar protests took place in major cities throughout the country.

Six days after the incident, on 22 December 2012, the central government appointed a judicial committee headed by [J. S. Verma](#), a [former Judge of Supreme Court](#), to suggest amendments to criminal law to sternly deal with [sexual assault](#) cases and submit the report within 1 month.⁴⁷ The report

⁴⁵["IAP Condoles death of Delhi gang-rape victim"](#), *New Delhi: Zeenews.com. PTI*, 29 December 2012, *New Delhi*, last updated on January 20, 2013, IST 06:57.

⁴⁶[Stenhammer Anne F,"UN Women condemns gang rape of Delhi student"](#), *Press Release, UN Women*, 20 December 2012.

⁴⁷[Joshi, Sandeep \(24 December 2012\), "Shinde calls meeting of Chief Secretaries, police chiefs to review crime against women", *The Hindu.*, Chennai, India](#), retrieved on 27

indicated that failures on the part of the Government and Police were the root cause behind crimes against women. Major suggestions of the report included the need to review [AFSPA](#)⁴⁸ in conflict areas, maximum punishment for rape as life imprisonment and not death penalty, clear ambiguity over control of Delhi Police etc.⁴⁹

The [Cabinet Ministers](#) on 1 February 2013 approved for bringing an ordinance, for giving effect to the changes in law as suggested by the Verma Committee Report. According to former Minister of Law and Justice, [Ashwani Kumar](#), 90 percent of the suggestions given by the Verma Committee Report have been incorporated into the Ordinance.⁵⁰ The ordinance was subsequently replaced by a Bill with numerous changes, which was passed by the Lok Sabha on 19 March 2013.⁵¹ There is an urgent need for a policy-level discussion on lowering the age of consent which was increased from 16 to 18 years by the CLA Act, 2013.

In November 2019, the [gang rape](#) and murder of a 26-year-old veterinary doctor in [Shamshabad](#), near [Hyderabad](#), sparked outrage across [India](#).⁵² There are some

December 2012: Also see "[Justice J S Verma committee submits report on rape laws](#)". *Times of India*, 23 January 2013.

⁴⁸ Armed Forces (Special Powers) Act (AFSPA), 1958.

⁴⁹ [Joshi, Sandeep](#), "[Failure of governance root cause of crimes against women: Verma committee](#)", *The Hindu*. Chennai, India, 23 January 2013.

⁵⁰ "[UPA's Black Friday: Ashwani Kumar, Pawan Bansal resign - The Times of India](#)". For details see <https://timesofindia.indiatimes.com/india/UPAs-Black-Friday-Ashwani-Kumar-Pawan-Bansal-resign/articleshow/19992151.cms>.

⁵¹ The law has been severely criticized for being gender biased and giving women the legal authority to commit exactly the same crimes (against which they seek protection) against men with impunity. The Criminal Law (Amendment) Ordinance, 2013 has been strongly criticized by several human rights and women's rights organizations for not including certain suggestions recommended by the Verma Committee Report like, [marital rape](#), reduction of age of consent amending Armed Forces (Special Powers) Act so that no sanction is needed for prosecuting an armed force personnel accused of a crime against woman. The [Government of India](#), replied that it has not rejected the suggestions fully, but changes can be made after proper discussion.

⁵² Please see, [Balakrishna Ganeshan](#), The NEWS Minute, Friday, November 19, 2019, IST 12:46 available at <https://www.thenewsminute.com/article/when-will-our-country-become-safe-women-outrage-after-hyderabad-vets-murder-113148>.

stark similarities between Nirbhaya the 2012 Delhi gang rape victim and the Hyderabad gang rape victim. Both were from medical profession. Nirbhaya was a paramedic student while the Hyderabad victim was a veterinarian. Had they been alive, compassion would have been the common professional connects between the two. Both met tragic ends after being gang raped by lumpen elements working in public transport sector. In both cases, police let off the main accused just before the gruesome gang rape. One hopes the similarities end here for the sake of speedy justice to gang rape victim lest it becomes yet another case of delayed justice, if not denied. Still the fact remains that till today there has been delay⁵³ in executing death sentence to the Nirbhaya accused and as a result many people now supporting the action of police encounter that was taken by the Hyderabad police. Nirbhaya case reminds us why speedy justice is not merely an aspect of the right to life with dignity, but is essential for the efficacy of law and for smooth functioning of the society.

‘Me Too’ Movement and Ensuing Backlash

The ‘me too.’ movement was founded in 2006 to help survivors of sexual violence, particularly Black women and girls, and other young women of color from low wealth communities, find pathways to healing. ‘MeToo’ movement was founded by Tarana Burke⁵⁴ but began as a much needed social phenomenon in October 2017 as a hashtag started by American actress Alyssa Milano who shared her story of sexual assault against Harvey Weinstein.⁵⁵ She did this in an attempt to demonstrate the widespread prevalence of sexual assault and harassment, especially in the workplace. It followed sexual-abuse allegations against Harvey Weinstein.

‘Me Too’ began gaining prominence in India with the increasing popularity of the international movement, and later gathered sharp momentum in October 2018 in the entertainment industry of Bollywood, centered in Mumbai, when

⁵³ It took 7 year 3 months 4 days to hang the accused: Please see, Times of India, 20/3/2020.

⁵⁴ Tarana Burke began ‘me too’ with young Black women and girls from low wealth communities. She developed culturally-informed curriculum to discuss sexual violence within the Black community and in society at large.

⁵⁵ En.wikipedia.org> wiki > Me_ Too movement.

actress Tanushree Dutta⁵⁶ accused Nana Patekar of sexual harassment.⁵⁷ This translated into a rush to comply with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013,⁵⁸ also known as the POSH⁵⁹ law, which mandates offices with more than 10 employees to have an internal complaint committee, among other things. There was a focus on doing sessions with small groups of women, getting their feedback.⁶⁰

Starting in September 2018, numerous women in India's media and entertainment industries shared their accounts on social media of workplace sexual harassment and assault, as part of the '#MeToo' movement. Thereafter, [Radhika Apte](#)⁶¹, Richa Chadda, [Swara Bhasker](#) and Konkona Sen Sharma, and many other Bollywood actresses are speaking up on Tanushree Dutta's experience. These public accounts, naming the accused, highlighted the failures of due process, lack of mental health services and support for survivors, and the urgent need to fully implement the Sexual Harassment of Women at Workplace Act, 2013, which prescribes a system for investigating and redressing complaints in the workplace.

An analysis of the BSE⁶² 100⁶³ companies by consultancy ComplyKaro⁶⁴ Services reveals that there has been a 14% increase in the number of complaints

⁵⁶ Hindustan Times, Bollywood, updated: September 25, 2018, IST 17:24, where Actress Tanushree Dutta says that she was abused by an actor and that the Me Too movement won't happen in India unless and until what happened with her on a movie set in 2008 is acknowledged.

⁵⁷ Ibid.

⁵⁸ Act No.14 of 2013.

⁵⁹ A law, to prevent and to provide protection against, Sexual Harassment of women at the workplace as well as Redressal of complaints of Sexual Harassment.

⁶⁰ Delhi-based lawyer Sonal Mattoo, who is on the ICC, of several organizations including BCCL which publishes ET Magazine.

⁶¹ See, <https://tribune.com.pk/story/2120335/4-radhika-apte-calls-metoo-movement-bollywood-dissappointing/> where she says "the movement 'came and went 'without making any impact", published on December 18, 2019.

⁶² Bombay Stock Exchange (BSE) was established in 1875 as the Native Share and Stock Brokers' Association. BSE-100 was launched in January 03, 1989 and was previously known as the BSE National Index.

⁶³ Economic Times, October 10, 2019.

in 2018-19, compared with the previous year. “Because of the #MeToo movement, organisations are doing more, fearing reputational risk. People now know that if women don’t have a choice, they might speak out on social media or go to the police. And because companies are doing more, women are more confident in approaching the ICC,” says Vishal Kedia, director of ComplyKaro.

Discouragingly, there has been a backlash against women who spoke out. Both actor Parvathy and singer Chinmayi Sripada have spoken about how work has reduced in the wake of their public statements against harassment. There have also been defamation suits filed against women, from former Union minister MJ Akbar, who is suing journalist Priya Ramani, to Tamil director Susi Ganesan, who has filed a case against screenwriter and filmmaker Leena Manimekalai. The latest is artist Subodh Gupta, who has filed a suit in the Delhi High Court and sought Rs 5 crore as damages from anonymous Instagram handle @herdsceneand, which had shared an accusation of harassment against him.⁶⁵

Sexual Orientation and Gender Identity

On September 6th 2018, India’s Supreme Court struck down section 377 of India’s penal code, decriminalizing consensual adult same-sex relations.⁶⁶ The Supreme Court, in four separate but concurring judgments, set aside its own verdict in the Suresh Kaushal case.⁶⁷ The five judges Constitution Bench unanimously decriminalized part of the 158 year old colonial era provisions of Section 377 of the Indian Penal Code, 1860 which criminalizes consensual unnatural sex. The Apex Court observed that:

⁶⁴ Complykaro Services Private Limited is a Private incorporated on 09 September 2014. It is classified as Non-governmental company and is registered at Registrar of Companies, it has been empaneled by Ministry of Women & Child Development, Government of India, as a resource company for providing training for The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013.

⁶⁵ Economic Times, October 10, 2019.

⁶⁶ *Navtej Singh Johar & Ors. v. Union of India*, W. P. (Criminal) No. 76 of 2016, ([Supreme Court of India](#)).

⁶⁷ *Suresh Kumar Koushal & Anr vs Naz Foundation & Ors*, Civil Appeal No. 10972 of 2013 arising out of SLP (C) NO. 15436 of 2009, Supreme Court of India.

“Social exclusion, identity seclusion and isolation from the social mainstream are still the stark realities faced by individuals today and it is only when each and every individual is liberated from the shackles of such bondage and is able to work towards full development of his/her personality that we can call ourselves (India) a truly free society,”⁶⁸

“Section 377 is irrational, indefensible and manifestly arbitrary,” said Chief Justice Dipak Misra. “Majoritarian and popular views cannot dictate constitutional rights. We have to vanquish prejudice, embrace inclusion and ensure equal rights.”⁶⁹

The ruling followed decades of struggle by activists, lawyers, and members of LGBT communities. The court’s decision also has significance internationally, as the Indian law served as a template for similar laws throughout much of the former British Empire.

In December, the lower house of parliament passed the Transgender Persons (Protection of Rights) Bill, 2018. Rights groups and a parliamentary committee had criticized an earlier version of the bill for contradicting several provisions laid down in a 2016 Supreme Court ruling. Although the government incorporated several amendments in the revised bill, it failed to adequately protect the community, including transgender people’s right to self-identify. The Transgender Persons (Protection of Rights) Bill 2019 has been passed by the Parliament. The Act received the assent of the President on 5th December, 2019.

V. Crisis of Governance; Legislative Vacuum and Judicial Law Making for Social Development

According to Roscoe Pound, “The sociological jurists stand for what has been called equitable application of law; that is, they conceive of the legal rule as general guide to the judge, leading him toward the just result, but insist that within wide limits he should be free to deal with the individual case, so as to meet the demands of justice between the parties and accord with the general reason of ordinary man.”⁷⁰

⁶⁸ Ibid at 44.

⁶⁹ Ibid.

⁷⁰ Roscoe Pound, “The Scope and Purpose of Sociological Jurisprudence”, (1911) 24 Harvard Law Review 591 at page 597: Also see N.E.H. HAULL, “Reconstructing the

It is for this reason that judiciary is understood to be playing a very major role in bringing about the reform in the society to which the sociologists refer to as 'social change.' In the present discourse it would not be wrong to say that in many cases whenever there was a crisis in governance or there was a legislative vacuum our Apex court came to rescue and opened the path of judicial law making which in most of the cases contributed for social development and upholding the principles enshrined in the Constitution. One of the finest contributions in this regard can be seen in the acceptance and recognition to Public Interest Litigation.⁷¹

PIL can be seen as an important means of Social development. Contemporary Indian discourse on law and social change has given an important place to PIL. Judiciary has shown commitment to correct administrative injustice through this device. This method originated in the USA and has travelled fast in India. It is a concept aimed at increasing the accessibility of Justice and forms a part of constitutional jurisprudence in India⁷² and in many cases helped in ameliorating the social conditions as well.

PIL is concerned not with individual rights but with interests of class/groups. It goes to the credit of the Supreme Court that it has broadened Locus Standi which was diluted for the first time by **Justice P.N. Bhagwati** in the case of **S.P. Gupta .v. Union of India**.⁷³ He argued that Locus Standi arose in an era when private law dominated the legal system and public law had yet to be born. This is the case where Justice Bhagwati said that the court will readily respond even to a letter addressed by such individual acting pro bono public, thereby, making the procedure of approaching the court more flexible.

This single piece of judicial pronouncement has opened a plethora of litigation against the injustices and contributed much for social development covering many aspect of human existence in the Indian soil since then and contributed much for enforcing rights as per the directive principles of state policy which

Origins of Realistic Jurisprudence: A Prequel to the Llewellyn-Pound Exchange of Legal Realism", 1989, Duke L.J. 1302 at pages 1307-1308.

⁷¹ Here in after referred as PIL.

⁷² Ibid at 21.

⁷³ S.P.Gupta.v. Union of India, 1981, SUPP, SCC 87.

requires proactive involvement of state and public institutions to fight governmental lawlessness among many other things.⁷⁴

Prof. UpendraBaxi has referred this judicial activism trend by the nomenclature of Social Action Litigation (SAL) as this is an Indian brand of class action suits and noted that the Supreme Court of India is taking suffering seriously.⁷⁵ The PIL which started around 1970s had cases related to the rights of disadvantaged sections of society such as child labourers, bonded labourers, prisoners, mentally challenged, pavement dwellers, and women as the subject-matter of the case. But this trend underwent a change and the subjects of PIL got shifted to matters of collective concern such as environment and policy matters in the 1980s and early 1990s.⁷⁶ PILs have contributed to the social change in the sense that without such a mechanism many of the problems that had been faced by the poor and those inaccessible people would have never come before the court. This has also contributed to the development of the Supreme Court as an important institution for social change by its liberal and pro-active interpretation of the provisions of the Constitution. This judicial activism was mainly carried forward by the way of making Article 21 of the Constitution of India an umbrella provision and by stretching its ambit. From the sociological jurisprudential perspective, the Supreme Court of India has played an important role in the social transformation with providing access to justice being made available for all through PIL and taking up important issues leading to the policy moulding with the purpose of striking balance between interest claims of society and individuals.

⁷⁴ The crux of the PIL, is that: If a legal wrong is caused to a person/s by way of violation of legal/constitutional right... and such person cannot come to court due to: poverty, helplessness, disability; or socially or economically disadvantaged position he can maintain an application for appropriate direction, order or writ in High Court under Articles 226 or in case of fundamental rights in the Supreme Court.

⁷⁵Baxi, Upendra (1985) "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India,"*Third World Legal Studies*", Vol. 4, Article 6: Available at:<http://scholar.valpo.edu/twls/vol4/iss1/6>.

⁷⁶ Deva Prasad, "Law and Social Transformation in India through the Lens of Sociological Jurisprudence," in, 'The Practical Lawyer' available at: http://www.supremecourtcases.com/index2.php?option=com_content&itemid=5&do_pdf=1&id=20264.

UpendraBaxi, an eminent jurist, has delineated the following typology of social/human rights activated judicial activism;⁷⁷

i) Civil Rights Activists, ii) People Rights Activists, iii) Consumer Rights Groups, iv) Bonded Labour Groups, v) Citizen for Environment Action, vi) Citizen Groups against Large Irrigation Project, vii) Child Rights Groups, viii) Custodial Rights Groups, ix) Poverty Rights Groups, x) Indigenous People's Rights Groups, xi) Women's Rights Groups, xii) Bar-Based Groups, xiii) Media Autonomy Groups, xiv) Assorted Lawyer- Based Groups⁷⁸, xvi) Assorted Individual Petitioners.⁷⁹

Over time it is not just the rights of the 'socially excluded' that have been put up for judicial review and intervention; a whole gamut of issues such as the environment, consumer affairs, property rights, the practices of municipal corporations, educational institutions, politicians and political parties, to name a few areas, have been presented before the courts to prescribe public policy outcomes. This widening of subject matter has caused Indian judicial activism to be celebrated as a device of engineering social change. But here it is pertinent to mention that some virtue could be seen in what we call interpretational judicial activism, while in other forms of judicial activism that encroach on legislative or executive decision-making on grounds of privilege could result in social costs that outstrip benefits.⁸⁰

VI. Social Engineering: An Assessment After 75 years Journey of Indian Democracy

Standing at the cross road after 75 years' journey of Indian democracy it has been seen that various laws have failed to fill the vacuum already created and a lot of change in social scenario has already taken place. During this journey

⁷⁷UpendraBaxi, "Judicial Activism: Legal Education and Research in Globalizing India," in *Mainstream*, New Delhi, 24 February, 1996, at page 16.

⁷⁸ This category includes the critically influential lawyers' groups which agitate for various causes.

⁷⁹ This category includes freelance activist individuals.

⁸⁰T. C. A. Anant and Jaivir Singh, "An Economic Analysis of Judicial Activism," *Economic and Political Weekly*, Vol. 37, No. 43 (Oct. 26 - Nov. 1, 2002), pp. 4433-4439. Also see <https://www.jstor.org/stable/4412779>.

India has witnessed the emergence of sui generis political engineering in the guise of social engineering and in the name of social engineering the survival of political engineering. This is because of the following reasons;

- a) In India, the poor and disadvantaged sections of people vote proportionately much more than the rich and stronger sections.
- b) Corruption at all levels of the system of government.
- c) The nature of politics has so far run on the premises where poverty alleviation has not remained just as an economic imperative but a political necessity.
- d) The withdrawal of the state from the essential function of shaping economic outcomes had eroded its role as an instrument of social inclusion.⁸¹
- e) The recent rise of crony capitalism, and reduced role of the state in reducing barriers to equality of outcomes has in fact produced misguided equality and fostered status quo.⁸²
- f) The rise of populism⁸³ which has brought more people into the economic mainstream but it was a political response to the symptoms of inequality rather than a solution.
- g) The techniques so far taken by several governments were not based on the principle of anti-free market policy it was rather based on political opportunism.

⁸¹Himanshu, "India's Politics and the poor," *Economy & Society*, available at [https://www.ecfr.eu/what does india think/analysis/indias politics and the poor](https://www.ecfr.eu/what%20does%20india%20think/analysis/indias%20politics%20and%20the%20poor): The findings are that since the onset of economic reforms in 1991 the state has been reduced to a merely political instrument, while the allocation of resources and even their redistribution are seen as the outcome of market-based policies.

⁸² Dennis R. Fox, "A Critical Psychology Approach to Law's Legitimacy," *HEINONLINE*, 25 *Legal Stud. F.* 519 (2001): Also see, Dennis R. Fox "Critical Psychology: An Introduction," Second Edition, Sage Publication, ISBN-13: 978-1847871732.

⁸³ The governments that have adopted pro-poor policies have been increasingly successful in recent years. This includes both the government at central and state level.

- h) The disjuncture between the process of political empowerment and the process of economic empowerment has led to a weakening of the state as mediator and regulator of economic institutions.⁸⁴

A danger inherent in the present system of government and political discourse led by the opposition can be seen which is virtually diluting the real issues and instead focusing on irrelevant issues. This becomes evident in view of the fact what the country has so far witnessed with regard to the Citizenship Amendment Act, 2019⁸⁵ and also NRC,⁸⁶ and NPR issues. What is ironical is that, a peculiar kind of silence and passive tolerance is clearly discernible both on the part of the Government and the whole opposition parties with regard to the increasing gap of inequality between poorest and the richer sections of the society. There is unique silence with regard to the publication of the name of big defaulters who looted and destabilized the Indian Banking System. The fallacious distribution of national wealth and its misuses makes it evidently clear actually where we are heading now.⁸⁷ A superficial projection of equality, and encouragement for

⁸⁴ The result can be ascertained from different economic corruption and looting of several thousand cores rupees by several economic offenders and fleeing from India and thereby putting huge pressure on Indian Economy.

⁸⁵ The Citizenship (Amendment) Act, 2019, passed by the [Parliament of India](#) on 11 December 2019. It amended the [Citizenship Act of 1955](#) by providing a path to Indian citizenship for illegal migrants of [Hindu](#), [Sikh](#), [Buddhist](#), [Jain](#), [Parsi](#), and [Christian](#) religious minorities, who had fled persecution from [Pakistan](#), [Bangladesh](#) and [Afghanistan](#) before December 2014.¹³ [Muslims](#) from those countries were not given such eligibility

⁸⁶ The [National Register of Citizens](#) is a registry of all legal citizens, whose construction and maintenance was mandated by the [2003 amendment](#) of the Citizenship Act. As of January 2020, it has only been implemented for the state of Assam, but the BJP has promised its implementation for the whole of India in its 2019 election manifesto. The NRC documents all the legal citizens so that the people who are left out can be recognized as illegal immigrants. The experience with Assam NRC shows that many people were declared "foreigners" because their documents were deemed insufficient.

⁸⁷ This become evident from the Oxfam Report published by Times of India, 23 January, 2019 which indicates that: "India's richest 1% gets richer by 39% in 2018. Just 3% rise for the bottom-half. 13.6 core Indians who make up to the poorest 10% of the country continued to remain in debt since 2004. "If this obscene inequality between the top 1%

limited, self-defeating legal solutions could be seen in the post-independence era.

VII. Epilogue

Law has often been used as an instrument of social engineering as far as India's pre-independence and post-independence scenario is concerned. There is a difference of ratio between two spheres namely "areas where law has contributed as an instrument of social engineering and social changes that germinated law." During pre-independence period it was seen that various socio-religious movements 'contributed much and as a result the colonial ruler was forced to enact several laws to eradicate several social evil and to cover few other things. The ratio was higher on the side of socio-religious movement and law making.

During post-independence era the scenario seems to be unique. In most cases it seemed that the ratio tilted in favor of the legislative bodies which had a constitution having enough provisions for enactment of laws that can bring about much needed social change and to fulfil the goal of the constitution. Viewed in this perspective it can be said that various laws (passed by successive governments) indeed have acted as an instrument of social engineering. Consequently, the ratio was higher in that side. On the other hand, there were instances of very few social movements which could attract the attention of the Government or the Apex Court and ultimately resulted into few law making or policy guidelines.

To fill the vacuum of law and resolve the crisis of governance the Apex Court of the country came forward. The result was application of various provision of the constitution and widening of the ambit of various articles therein along with introduction of PIL which went a long way for opening up a plethora of litigation against the injustices and contributed much for social development through judicial law making, covering many aspect of human existence in the Indian soil since then and contributed much to for enforcing rights as per the

and rest of India continues then it will lead to a complete collapse of the social and democratic structure of the country."

directive principles of state policy which requires proactive involvement of state and public institutions to fight governmental lawlessness among many other things. Here the ratio was greater on the side of judicial law making which eventually contributed to social engineering.

Finally, we would like to conclude by saying that the notion that law as an instrument of social engineering has gone through a huge metamorphosis and the journey so far made has not always been in a single straight line rather it has been in a zigzag way and that the ratio has not at all been proportionate.