

FUNCTION OF LAW: SOCIAL CHANGE AND SOCIAL TRANSITION

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ABSTRACT-- *This article aims to examine the role of law in social change and social transition and how law affects society and vice versa. Apart from this article also attempt to weigh the law's effectiveness on the basis of society's acceptance.*

Keywords-- *function of law: social change and social transition*

I. INTRODUCTION

Change is a fact of human life. We may not be aware of it in our day-to-day experience but it continues to affect us in one way or the other. Society changes take place in the course of merely a generation or two.ⁱ And some time there is sudden change like in case of revolution.

Social change is a process, in the sense that it involves a series of event over a period of time. The idea of continuity is implied in it and shows a sequence of operations that bring about change. Thus, the notion of process indicates two major dimensions of social.ⁱⁱ We know that change is a demand of the nature whether it is society or law both should be dynamic according to need, circumstances and situation otherwise they cannot be survive. Social change is inevitable condition and similarity the law being an instrument of social ordering it needs to be dynamic to serve the changing needs of the society .Law becomes useless and abusive if it is not in conformation with changes in the society as this rightly said that a rolling stone never gathers moss or in other words ,A river becomes polluted if it does not flow continuously.

There is very thin line between social change and social transformation some time they are overlapping to each other, generally social transformation is permanent change in the desirable will of the society but not always. Here we can take the example of the Revolution in **Tunisia, Egypt, Lebanon, Yemen** and other Muslim and Arab countries which shows a trend of the Social Transformation in desirable direction of the society.

II. WHAT DO YOU MEAN BY SOCIAL CHANGE?

Social change: consequences of the human action is conditioned by the challenges faced by a society from the time to time being a dynamic process with the changing conditioned, it further gives rise to many issues of the vital sociological concern and thus sets the future course of human action and consequent changeⁱⁱⁱ.

Gainsberg defines it as by social change “I understand a change in social structure, e.g. the size of the society, the composition or balance or its parts or the type of its organisation.”

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Jenson called” social change as modification in ways of doing and thinking of the people “

After analysis of the above definition it is very difficult to put the definition of the social change in straight jacket formula because some authors define the social change in terms of the measurement and some are emphasis on behavioural approach.

In recent times, new forces of the changes, namely advance information technology, globalisation, capitalist production, consumerism, and the proliferation of the market economy have accelerated the process of social transformation and caused rapid changes all over the world. The impact of these is felt more in the case of tradition and developing societies like India, the reason accordingly to him is that the lesser societies ,where the pace of the change has been relatively low. Another aspect of the concept of the social change is related with the notion of the time, which is an inseparable component of it. A change takes place over a period of the time, in other words suddenness of the change depends upon the intensity of the conflict of the society^{iv}. **Smith** define change as – “A succession of temporal differences between and within unit “Thus, it the conceptualisation of the social change, there is need to take stock of the structural change which is called revolution.

III. THE CHANGING FAMILY STRUCTURE

Family is the basic and universal social structure of human society. It fulfils needs and performs function which is indispensable for the continuity, integration and change in the social system. Nuclear family is the example of the structural change, which leads the social change.

Finally, no society remained confined to a single pattern of change as well as causation, because social change envisaged the changes in the existing pattern of the social life.

IV. WHAT DO YOU MEAN BY THE SOCIAL TRANSFORMATION?

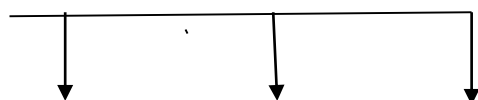
Basically there is no hard difference between social change and social transformations both are the overlapping concept after the analysis of above definition it can be clearly documented that.” When massive or structural or far reaching social change occurs, it is called social transformation. “^v

Formation of new cultural field, new relations and new social conflicts emerge from social transformation.^{vi} We can say that transformation occurs in a desirable direction, which is good but not always, it is mostly durable and permanent.

United Nations Secretary-General Ban Ki-moon in his following speech indicated that, revolution in Arab country led to social change. In a speech in Buenos Aires, Mr. Ban hailed a “new era of global change” and cited recent events in Egypt, Tunisia, Yemen and even troubled Syria as example.^{vii}

Transformation for better and social welfare are desirable ; but the undesirable transformation resulting in exploitation, ill health, violation of the human rights and immorality are not liked or allowed by the civilised legal system. Indicator of the social transformation for good include: elevation of people’s standard of living, elimination of the poverty, expansion in the education, safeguards of the human rights etc.^{viii}

There are three theoretical models on social transformation i.e.



Consensus Model

The term consensus model associated with the democratic function means which believes that social change can be bring by the consensus of the society. **Savigny** asserted that” law as reflecting conscience of the community and not as a norm imposed by a law giver from the above”. This contention of Savigny clearly documented that acceptability of the law depends upon the will of the people. Like implementation of Dowry Prohibition Act, 1961 still in dormant condition because of lack of the will of the people.

Conflict Model

Marx, said “without conflict no progress” means according to Marx, conflict and social change are inseparable. The concept of conflict model is very well justified by the positivist jurist **John Austin** he said that” Law is command of the sovereign” he emphasised to enforce the law through the sanction of the state although people are agree or not.

Integrated model

This model relies on the activist and cooperation partnership of state and society in heralding social transformation. since factors that assist and resist social change from the society itself, consensus and constrains two equally valid aspect of the social change.^{ix}

Conflict model pursued in the revolutionary set up of the government. But in parliament these both model are interact with each other’s we can understand both the model very easily if we take the illustration of Gandhi Ji and Ambedkar both were want to eradicate the untouchability but in different manner. Gandhi ji opinion is based upon the consensus model while Ambedkar opinion is based upon the conflict model.^x

A mass movement of the public at large for the independence and over throw arbitrary rule of the government is the symbol of the Social Transformation like Egypt, Libya, Sudan are the examples of it.

V. What are the factors which influence social change and social transformation?

Except the law there are various factors which insists the social change some are

- Demographic factors
- Technological factors
- Economic factors
- Cultural factors
- Political factors etc.

Demographic factors

Studies of population changes within the country are the immense value to understand the social process.^{xi}the system of urbanisation insist the native of rural area to migrate towards the urban area for betterment as well as

augmentation of their livelihood which caused the social change by changing the life style, their living standard , size of the family etc.

Technological factors

21 century is electronic era we can easily go around the world by just pushing a button. Really, all these technology profusely led to social change for example Genetic engineering, cloning system, test tube baby, all these development caused the social change.

Role of media in social change- In India, media is the fourth pillar of the democracy. It plays a very vital and influential role in the overall development of the country. Media has served as a powerful agent of the social change since early time. However , with the advent of the new technologies over the past few decades , the power of the media has been greatly magnified press play a very well role to through lights on the current social problem . There is a very good illustration in the case of Rupan Deol Bajaj according to written complaint by Rupan Deol Bajaj ,against K.A.S. Gill , the director general of the Punjab Police misbehaved with her in the party . The reporting of this case by Bajaj provoked certain reaction from a section of the sprees which are interesting to note “we are told by ‘The Hindustan Times ‘(August 4) that women should not treated an” innocuous tease” as sexual harassment.^{xii} Media is one form of the technology which insisted a great change in the society through spreading the awareness.

Economic factors

“Like river, law weaves its way through economic life, creating possibilities for economic development and placing constraints on the form of that development”Edelman

Karl Marx is the chief architect of the economic theory of social change. He believes that social change is basically the result of the economic factors. The mode of production Determines the social,cultural,religious and the political aspect of he society.^{xiii}

Economic factors also play a vital role in bringing the social change like new advance method of agriculture increase the output , five year plan bring a noble change in India by raising the standard living of the people living below the poverty line, and by promoting the social justice.

Cultural factors

India is a place of tremendous culture, people’s idea, culture, morals, thinking vary according to region, places, and cultural is itself a factor of the social change.

Social system are directly or indirectly the creation of cultural values. Any change in values or belief system on the part of social group affects social institution .New social values and beliefs can also produce social change. There is a very simple example that how due because of change in culture, ideology join family converted into nuclear family. Social change also occurred when one society adopts the cultural traits of another through prolonged contact as in travel, trade etc.^{xiv}

Political factors

In this section, we shall examine the role of the state and legislation in bringing about social change. Laws act as an instrument of socio-economic and political change in the society. The effective role of law will be discussed in the following arguments.

VI. LAW IS THE INSTRUMENT OF THE SOCIAL CHANGE.

“Stability and the change are the two sides of the same law-coin” Albert Camus

Law could be a powerful instrument of social change when majority of the people accepted that social change with their unanimous consent. Law is part of human society. Its purpose is to protect the genuine interest of the society. It plays a very vital role in harmonising the various conflicting interests of the society.

According to **Bentham**, Law should endeavour to promote the happiness of the greatest numbers. In order to achieve this object, there has to be balancing of the individual interests with social welfare. Law is not only the measure of social control but it is also an instrument to bring about social change, as regards the role of the law in bringing about the social change, there are two views i.e.

- To reinforce the existing models.
- To bring about social change according to requirement.

In dynamic societies the role of the law is limited, but in conservative societies the role of the law can be more effective in bringing about change in traditional beliefs and values. As an instrument of social change, law involves two interrelated processes. By means of new enactment, there will be institutionalisation of a new pattern of behaviour manifesting new social values. When this new pattern is incorporated in the legal code, any deviance from this new pattern could be punished according to law. In order that the law could become an active social force, there should be a correlated cultural process, namely the internalisation of this new pattern of behaviour in the individuals. These two processes are closely related.^{xv} Moreover, there should be minimum morality in the law, but it does not mean, a law without morality like **Austin's** gun man theory of law that is “**law is command of sovereign backed with sanction**”.

VII. SOME ILLUSTRATION OF SOCIAL CHANGE DUE TO THE LAW

We are all well acquainted that India is the place of tremendous culture in which some are good but some are based on superstitions. Now it is essential to know the role of the law in the society. Law has long occupied an important position in organised efforts to improve the status of the women, children, Dalits and other weaker sections of the society. There are egregious evils in our society such as **sati, thuggee, human sacrifice, female infanticide, slavery, untouchability, religious prostitution, child marriage polygamy** now all these evils are removed up to its optimum limit we can say it's a Social Transformation for the benefit of the people.^{xvi}

Soon after independence our constituent assembly brought about a change from a caste and feudal society to a casteless and classless “society through the means of parliamentary democracy based on a adult franchise. The constitution of India contains a number of provisions to eradicate all these social evils, which are as follows:

Art.17- provides abolition of untouchability

Art.23- restriction of traffic in human being and forced labour

Art.24- prohibit the child labour

Art. 29 and 30- protect cultural and educational rights of the minorities etc.

VIII. HOW SOCIETY EFFECT THE LAW

No society is static. Change develops gradually over the years in practically every sphere brought about by evolution in environmental, economic and political circumstances, national global, as well as in religious and moral ideas. They may occur slowly or rapidly; they may be ephemeral as with passing fashion, or permanent. **Savigny** the father of the historical school, adopted a conservative approach about the law, he said, 'it is the manifestation of the **volksgiest**' the spirit of the people, so that it alters with the development of this spirit.^{xvii} According to **savigny** law grows with the growth of the people, strengthenes with the strength of the people and finally wither away when the nation losses. These entire jurists want to put through the light that, law is for the society not the vice – versa.

Law is the part of human conduct, and in the idea of purpose **Ihering** found the mainspring of laws, which are only instrument for serving the need of society. There purpose is to further and protect the interest of the society. Purpose should also guide judicial thinking, of which his analysis of possession was an example^{xviii}

Therefore, it can be clearly documented that, law cannot achieve its desirous goal unless it's gets the support of the society. we all well known about the pathetic condition of the Dowry Prohibition Act, 1961. According to **Ehrlich** -" living law of the people", law should be based on social behaviour rather than the compulsive norm of the state, norms observed by the people, whether in matters of religious habits, family life, or commercial relations, are law even if they are never recognised or formulated by the norm of the state.^{xix}

IX. ILLUSTRATION

Living relationship

The debate on live-in relationship started when the Apex Court of India held that live in relationship should be treated equivalent to marriage. The Supreme Court's this decision is led to change the dynamics of such relationship. Is it social change? What the factors insisted the Court to give such type of decision in India? And much hue and cry on the legalisation of live- in relationship arose when Maharashtra cabinet approved a proposal in favour of changing the definition of ' Wife' under section 125 of Cr.p.c. 1973 on the recommendation of the Malimath Committee which said if a man and a woman are living together as husband and wife for a reasonable long period then they are treated as married couple.^{xx}

It is also a form of the social change there are various factors which insist such type of relationship

- If parents are not agree to their marriage with desirable couple
- Fulfil the need of sexual satisfaction without any obligation.
- Tendency of living independently
- So much overburden of the work

Land Reform

The preamble of the constitution enshrines the concept of Justice- Social, Economic, and Political. The concept of economic justice enshrine the economic equality means there should not be concentration of the wealth

in the same hands so these are the major objective behind the land reform . The system of zamindari is now abolished this also led to social change.

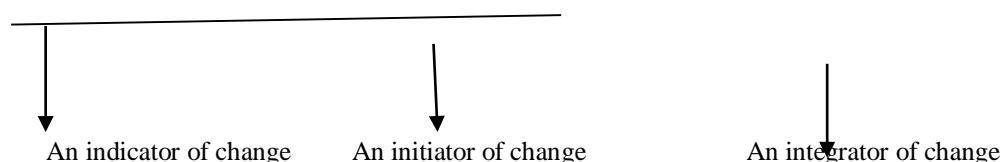
Plea Bargaining

The concept of the plea bargaining is indeed a welcome change in the desirable direction of the society, because the concept of the plea bargaining is one tool which give us relaxation from the burden of huge cases; it provide a quick and expeditious resolution of the case it was introduce in section 265A to 265L by Criminal (Amendment) Act, 2005 now it officially entered in the domain in the Indian legal system.

X. CONCLUSION

A Holistic picture that we analysis that law play a vital role in social change and social transformation. However, Laws alone cannot bring the social change unless it supported by the majority of the people, because public consensus is the strongest tool of the social transformation and social change, Laws alone not capable to change ritualistic traditional and cultural belief

Sociologist have referred that function of the law can be divided into the following category.^{xxi}



Therefore, we can say that ‘Living Relationship’ is the fruit of the westernisation culture in metro cities, where people starts such type of the relationship that’s why its compelled to the Apex Court to decide the case in such direction, but still it is not get the full support of the society due to some culture and traditional believe. So at last but not least the concept of social change and social transformation is only successful when it occurred in the desirable direction of the society.

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