



IS LAW THE ONLY INSTRUMENT OF SOCIAL CHANGE? A CRITICAL ANALYSIS

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ABSTRACT:

Social changes are necessary within the society for its development. This change can be made by the tool of law, otherwise it is very difficult to clear the hurdle of custom and usage. This society is always in the habit of doing certain things, if we want to change such things then law is the strongest instrument to change it. To make the last strongest is the streak of punishment. If law prohibits any act, then it also has to make it punishable. Social change is necessary in every society and is possible if it takes place by the instrument of law. Law has a tremendous potential for initiating positive social change. Legal reforms have changed the face of many societies all over the world. Law has the ability to mould social change. It is designed to bring about a social order where individual rights are protected. In this research paper the researcher will be covering some special changes that have taken place in India where law has acted as an instrumentality of social change and also a critical analysis shall be made as to whether law alone should be considered to be a tool of social change and can that lead to the development of a society or not.

Index Terms: social change, development, society, upliftment, punishment, instrument

Introduction:

Social change means a change in the norms and conduct of the people towards society. Earlier, the society used to be customarily governed by the morals. But, as soon as society got replaced by the State, morality too got replaced by the law. If we want to change any existing custom or behaviour in society, it should be changed by the instrument of law only. There are two modes of changing law. Firstly, "law changes the society", which means that the law of the land compels the society to be changed according to the law. When any dispute involving the question of law comes before the judiciary, the judiciary on the basis of rule of law forces the society to change either the existing custom or the law. Secondly, "society changes the law; it means that the law is made by the society according to the requirements of its democratic institution, i.e., by Legislative function or by adopting custom practices. The prime function of legislators is to enact laws as per the requirement of the society and whenever any question arises in the court of law regarding the validity of a law in force, when the court finds it constitutional, moral and just, then it holds that law valid and if not so then law is declared as invalid or unconstitutional.

Law of any civilized country is not definite, but changes according to the and circumstances of the society. In India, there are two main institutions which make that law change, namely, (a) Legislature (by enacting new laws or Amendments); a Judiciary (by interpreting according to the 'rule of law' and the "law of land"¹).

Law as an instrument of social change:

The Hon'ble Supreme Court has observed that, "an unusual situation posing issues for resolution is an opportunity for innovation. Law, as administered by courts, transforms into justice. The law does not operate in a vacuum. As social norms and values change, laws too have to be reinterpreted, and recast². It is correct that law is an instrument of social change, law changes its shape according to the requirement of society or society changes the law through enactment of statutes.

It can be said that both the Legislature and Judiciary play an equally important role in the transformation of society.

It to be noted that social change is necessary in every society and is possible if it takes place by the instrument of law. To show the instrumentality of law of social change, it is necessary to study some special changes that have taken place in India. Some of the important transformations that have taken place in our Indian social system because of the Legislature are:

- (a) **Abolition of slavery and bonded labour system:** Article 23 of the constitution of India protects trafficking of human beings and forced labour as a part of fundamental rights³. But there have been a number of incidents of dasipratha (slavery system) even after independence. India has passed a law banning bonded labour in 1976 in the form of Bonded Labour System (Abolition) Act, 1976. But the practice persists to this day. In 2005 in ILO's global report on forced labour there are still estimated worldwide 12.3 million slaves⁴.
- (b) **Abolition of sati system:** Sati is not suicide but cold-blooded murder. In many instances it is found that the woman cried and also ran away from the pyre but the people surrounding the pyre caught her and pushed her into the burning pyre of her husband. On 4th December 1829 this practice was formally banned in the Bengal presidency lands by the then governor Lord William Bentinck by passing a regulation XVII of 1829⁵. The parliament has taken serious steps by introducing a special law for the treatment of persons who abets at E and made it exemplary punishable up to death sentence under Commission of safety prevention act 1987.
- (c) **Widow remarriage:** The Hindu Widows' Remarriage Act, 1856 was enacted on 25th July, 1856, to legalize the remarriage of Hindu widows and to provide legal safeguards against loss of certain forms of inheritance for remarrying a Hindu widow in all jurisdictions of India under East India Company rule⁶. The Act especially targeted Hindu child widows whose husbands had died before consummation of marriage. This was an Act to remove all legal obstacles to the marriage of Hindu Widows.
- (d) **Prohibition of child marriage:** It has been a practice since ancient times that the marriage of a child was solemnized in his/her childhood. It was opposed by Shri Jyotirao Phule, Maharishi Dayanand Saraswati, Mahatma Gandhi and many other reformers and they had suggested prohibition of child marriage. In 1929, Child Marriage Restraint Act, 1929, was enacted which made child marriage punishable. According to the Act, child meant a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age⁷.

On 10th January, 2007, the Child Marriage Restraint Act, 1929, was substituted by the Prohibition of Child Marriage Act, 2006⁸. It introduces 'Child Marriage Prohibition Officer' and extended the power of family court to decide the matter under the Act. The Act says that child marriages are to be voidable at the option of contracting party.

The Karnataka High Court in its landmark judgment held that though prohibition of Child Marriage Act, 2006, is applicable to all the citizen', of India, except J&K. Therefore, no citizen on the ground of his belonging to a particular religion, can claim immunity from the application of the Act⁹.

In a recent judgment, The Supreme Court accepted the plea to make uniformity in the marriageable age for boys and girls¹⁰ and Union Cabinet cleared a proposal to bring uniformity in the marriageable age of men and women. By amending the Prohibition of Child Marriage Act (PCMA), 2006 and other personal law, the legal age of marriage of women is raised from 18 to 21 years.

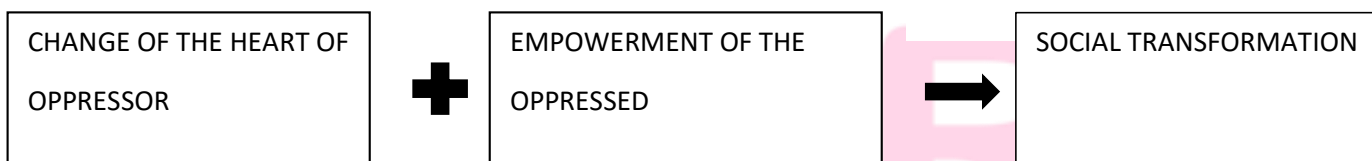
ALTERNATIVES TO LEGAL STRATEGY: GANDHISM, SARVODYA, MARXISM AND NAXALISM:

Law is not the only instrument to usher in social transformation. Education, voluntary action public opinion, principles of morality, concerted efforts and social movements form important non-legal instruments that herald social transformation in civilised systems. If the social structure inclines towards peace, justice and harmony, social changes of desirable type will ensue. Sometimes, application of force by voluntary violent groups is put forward as justification to bring revolutionary changes, arguing that ends justify means. But democracy eschews bloodshed except for securing its own survival. India has embraced and built the democratic values on stable footing. But the fear of using undesirable means of cult of violence to achieve the desirable goal still haunts with exhibition of inhuman consequence.

There is a desirability as well as relevance that approaches alternative to law to transform the society do exist but they must be understood in the light of our basic commitment to constitutional ideology and methods. It is a paradox that gentle means of persuasion in the ideals of Gandhi's and Sarvodaya suffer cold reception while the of violence is held in awe and commands obedience. Therefore, in the context of social transformation it is important to analyse the desirable and compatible strategies like Gandhism and Sarvodaya should be integrated to the legal techniques and how the problems of violent movement should be effectively faced by the legal order

GANDHISM:

One unique contribution of Gandhiji to the technique of social transformation is the change of heart theory. Gandhiji wanted to establish in India a democratic order free from political, economic and social exploitation in addition to the removal of foreign rule. In Hind Swaraj he propounded that the British conquer of India was due to inner failure of the Indians to offer resistance through better social organisation; that the path of getting freedom consisted in withdrawal of cooperation with the exploiter; and that true freedom for Indians consisted in rejection of the western civilisation and revival of ancient Indian system of society, economy and polity¹¹. This was through the technique of change of heart of the oppressor and reinforcement of strength in the oppressed. Both these factors ought to take place simultaneously in order to bring the social change¹². To put it in a formula:



The change of heart theory propounded by Gandhiji contemplated that by conscious efforts—both individual and social—the habits and nature of man should be subjected to attitudinal changes towards desirable goals. Proper education, persuasion, negotiation and conciliation were to be used to bring behavioural transformation. Since it changes the human personality itself, both head and heart, he believed that the change of heart policy, by banishing greed and filling human love, was a powerful instrument of social transformation. Realisation about one's own evil actions towards others and changing of his attitude or behaviour render the deviant, a useful citizen.

SARVODYA:

Sarvodaya is a serious attempt to reorient the human mind and resources to reconstruct human society on the pedestal of justice and equity. Etymologically, Sarvodaya (Sarva + udaya) means rising of all living beings. Negatively, it implies that nobody is excluded from enjoying anything from others, while positively it connotes, participation of all people without distinction based on religion, caste, class, sex and creed¹³. Total development of all the faculties—physical, mental and spiritual—of all the human beings is also within its contemplation. According to Vinoba Bhave, Sarvodaya connotes two things: first, making all happy by removing suffering and poverty with the help of the scientific knowledge; and second, establishing a world state full with divinity, kindness and equality¹⁴. Jayaprakash Narayan said, " The Sarvodaya movement appears to me as an instrument through which people's energies could be liberated and mobilised for the task of reconstruction¹⁵." Bhoodan Movement and surrender of dacoits of Chambal Valley in 1970's can be seen as a part of the application of Sarvodaya principle.

MARXISM:

Marxism is a radical philosophy that advocated revolutionary social change as a method of reversing the exploitations and tyranny of the strong over the weak. Developed in the context of exploitative social order that had been unleashed by the industrial revolution in the West, it responded to the deep-seated differences between capital and labour by looking to the materialistic background of exploitation and historical instances of class conflicts. It wielded a great impact all over the world, and upon developing countries in particular, to evoke socialistic thoughts and policies. Upon the Indian society that had been subjected to colonial rule for more than two centuries; that had suffered drain of wealth and impoverishment of the common masses; and that witnessed the class differences, poverty and deprivations, Marxism cast indelible impact by supplying distinct doctrinal tools and practical guidelines to organise and carry socio-political movements¹⁶.

Karl Marx believed that in order to deal with the organised bourgeoisie power that oppressed the toiling community, they gave a call for unity of workers of the world so that they would be unshackled of their chains of bondage. The dictatorship of proletariat so consciously built was to serve the interests of the classless society on a footing of equality and gradually enable withering away of state. "From each according to his ability and to each according to his need" was the policy of distributive justice in Marxism.

But the practice of Marxism in communist countries has witnessed bloodshed and violence, which has given rise to popular misconception that violence is essential tool for asserting people's supremacy. Thus, it is un-Marxian to hold that only an armed revolution can lead to socialism. "The correct position is that either method can be used, but which of the two is suitable to a particular-situation can be determined only by the relevant historical and conditions. There can be no doubt that if Marxian methodology were to be applied to India it would be the democratic method that would have to be selected¹⁷. In contrast to the countries of communist practice Russia, China and Eastern Europe— India has liberal democratic tradition and clear inclination for peaceful changes within the constitution.

NAXALISM

Naxalism is a set of revolutionary thoughts and strategies developed by leaders under the influence of Marxism originally to resolve the problems of exploited peasants. The word is traceable to name of group of villages (Naxalbari) in Darjeeling where a revolutionary peasant movement had started in 1967 with the establishment of CPI (M-L). Unlike the unplanned violent outburst of peasants' anger in Telangana at the dawn of independence¹⁸, the dissatisfaction of the peasants and landless labourers in West Bengal got articulated in the form of organised efforts. The gulf between landlords (jotedars) and tenants (adhiars) had become deepened with the exploitative practices about crop sharing and money lending. The share of adhiars was to undergo deductions on account of supply of cattle plough, seeds and loan of paddy at a totally disproportionate rate. Free-of-cost maintenance of jotedars' labourers, stable and granary was also

the burden of adhiars. The ever-increasing burden of debt, loss and fraud, in addition to feudal practices of social hierarchy, provoked the peasants to revolt against the system.

Added to this were the anti-people activities of gardeners and estate owners. Thus, behind the peasant unrest of Naxalism, there was a deep-seated social malady. It was one of the alternative forms in which the dissatisfaction of the people with their living conditions found expression. The slogans demanding abolition of zamindari, land to the tiller, non-eviction of tenants, and reasonable rate of interest were expressed with both economic assertions and political challenges in 1952. Loss of strongholds, the declining appeal of ideology and leadership crisis, along with the improved performance from the Naxal-affected states in socio-economic fronts has also led to significant improvement of counterinsurgency operations¹⁹.

CONCLUSION:

Though there may be many other strategies for social transformation, law is the most authentic and formal instrument. But in a country like India, where strong tradition of collectivism and community-initiated ameliorative measures were employed, a bottom-up approach of taking society into confidence is very much required. Gandhism has taught and practiced change of heart theory in a highly convincing manner by centre staging the human approach of placating the oppressor and empowering the exploited. The message is that social integration and solidarity established through consensus of diverse sections of society go a long way in visualising and effectuating social transformation. Gandhism did neither denigrate nor glorify the role of law. It tried to strengthen law by infusing the elements of justice, humanism and universalism. This calls for integrating legal and social strategy in the task of social transformation. Gandhian solution is highly inspiring because of cultural support it musters and enduring social benefits it engenders. While modernism's exclusive reliance on rationality, uniformity and progress have been proved to be inadequate and also problematic because of marginalisation of social forces, tradition, and voluntarism, Gandhism and Sarvodaya transcend beyond modernism and tradition and aim at enhancing overall strength health and wealth of society. Involving the society seriously in the process of social transformation has been the major strategy of Sarvodaya. These have all time relevance in the process of social engineering.

Marxism is a humanist reaction to economic and social exploitations. Although it overemphasised class conflict and proletarian unity as the process of social change, it did not preach the cult of violence as an indispensable tool. In India, the Communist and socialist ideologies had cast their own influence in planning for socialistic pattern of society within the democratic framework. But Maoist strategy of social and economic reform, which believed in annihilating the oppressor by whatever means, had kindled the fire of protest the disgruntled peasants and landless agricultural workers. Inadequate or defective land reforms, poverty and exploitations provoked violent movement of Naxalism in late 1960s. Spreading to the pockets of tribal communities by responding to the problems of their exploitation by moneylenders, evictions from forests and forced dispossessions, Naxalism has posed tall challenges to peace and order. The democratic and social response to Naxalism in West Bengal and Kerala has reduced the violent uprising into a syndrome rather than shaping it into strategy. Compared to the peaceful strategies, modest working and social impact of Sarvodaya and voluntarism under Gandhian ideology, Naxalism, which employs ruthless killing, retaliation and fear psychosis as its tools, fails to convince as an acceptable strategy at all. It also does not conform to the tradition of peaceful collectivism cherished for centuries. But its presence symbolises the prevalence of deep-rooted social imbalances, economic dissatisfactions an identity questions that are to be resolved more comprehensively²⁰.

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²B.P. Achala Anand v.S. Appi Reddy, (2005)3SCC 313

³The Constitution of India, 1950

⁴A global alliance against forced labour - Global Report on Forced Labour 2005 available at https://www.ilo.org/global/publications/books/WCMS_081882/lang--en/index.htm (Visited on May 23,2022)

⁵Harlow Barbara and Carter Mia (eds.), From the East India Company to the Suez Canal349, (Due University Press,2003).

⁶Hindu Widows Remarriage and Property Act, 1989(Act No. XXIX of Samvat 1989)

⁷The Child Marriage Restraint Act, 1929(Act No. XIX of1929)

⁸The Prohibition of Child Marriage Act, 2006 (Act No.6 of 2007)

⁹Ms Seema Begaum v. State of Karnataka, (W.P. 75889/2013)

¹⁰Ashwini Kumar Upadhyay v. Union of India (Writ Petition Civil No.699 of 2016)

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¹⁴ Rathnam Chetty, K.M., Sarvodya and Freedom: A Gandhian Appraisal, (Discovery Publishing House, New Delhi)

¹⁵ Narayan Jayaprakash, Total Revolution: Politics in India,292(Popular Prakashan, Bombay,1978)

¹⁶ibid

¹⁷ibid

¹⁸ Shah Ghanshyam, "Social Movements in India" available at <https://archive.org/details/SocialMovementsInIndia-English-GhanshyamShah>(Visited on May 26,2022)

¹⁹Naxalism in India: Causes, Government Response & its Outcomes available at: <https://www.iaseexpress.net/naxalism-in-india>(Visited on May 26,2022)

²⁰Ishwara Bhat P., Law and Social Transformation,165(Eastern Book Company, Lucknow,1st edn.,2009)

