

Concept of Social change and the Role of Law

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Description of Module

Items	Description of Module
Subject Name	Law
Paper Name	Law and social transformation in India
Module Name /Title	Concept of social change and the Role of Law
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Objective:

When any dispute rises that comes to the Judiciary and on the basis of Rule of law the judiciary forced the society to change existing customs.

Learning Outcomes: Law is an instrument of social changes but sometimes social changes become the law.

Introduction:

There are two sides of each coin similarly each action of a person is also either good or Bad. And it is the rule of the society. Good means Dharma or Satya has to accept and bad prohibited adharm or asatya. This rule still exists and shall be till the end of civilization. Earlier society was customarily based on the morals (Right or wrong) but as soon as society replace by the state morality too gets replaced by the law. If we want to change any existing custom or behavior in society it should be changed by the instrument of law only. Social change refers to an alteration in the social order of a society. Social change may include changes in nature Social institutions, social behaviors, or social relations. Social change may refer to the concept of social progress or socio cultural evolution It may refer to a typical change in the socio-economic structure. it may also refer to social revolution, such as the socialist revolution presented in Marxism, or to other social movements such as Women's suffrage or the Civil rights movements. Social change may be driven by cultural, religious, economic, scientific or technological forces. Developmental psychology can play a role in social change. Change comes from two sources. One source is random or unique factors such as climate, weather, or the presence of specific groups of people. Another source is

systematic factors. For example, such as a stable and flexible government, On the whole, social change is usually a combination of systematic factors along with some random or unique factors.

Concept of Social Change:

The word 'change' immediately brings to mind something different from yesterday or past. Change is the certain law of nature. It may be or may not be visible but all things are changing at varying paces. There are changes in physical environment, plants and flowers, water table, so on and so forth. Similarly, social environment which has been created by human beings themselves is continuously in the process of change. A look into the history of society reveals that all social institutions such as family, religion, marriage, political, economic, social values and social attitudes have undergone a drastic change over a period of time. The social life being lived by human being at present during the dawn of 21st century was not so about hundred or more years back. Permanence of human society is not a reality. Human society is in an ever-changing process, growing, destroying, renewing and adjusting itself to new-found ideas, inventions and ways of living.

The concept of social change was introduced by August Comte, a Frenchman, known as founding father of Sociology. Later on, the concept of social change was further refined and developed by Herbert Spencer, Karl Marx and a number of other sociologists. No human society is static and at the same time it is difficult to predict the forms and directions of social change. The reason is that the factors which cause social change do not remain uniform always. The population changes, expansion of science and technology, ideologies and social values take on new forms, and as a result of that social structure, social system, and social institutions change their functioning. The process of industrialization and urbanization has changed the whole set of social relationships. It is quite visible that the contemporary world is not changing uniformly and is also manifesting complexities in social change. Migration of illiterate persons from remote rural areas to metropolitan cities will effect the institutions of family life in it, add to stress and strain of daily living due to fast pace of city life and new social values required for industrial and urban living.

From the middle of nineteenth century onwards, a large number of sociologists have tried to define social change. Some often quoted definitions of social change are:

August Comte: Societies progress through a series of predictable stages based on the development of human knowledge.

Anderson and Parker: Social Change involves alterations in the structure or functioning of social forms or processes themselves.

Gillin and Gillin: Social changes are variations from the accepted modes of life; whether due to alteration in geographical conditions, in cultural equipment or composition of the population, etc.

Ginsberg, M.: By social change, I understand a change in social structure e.g. the size of society, the composition or balance of its parts or the type of its organization.

The important features that emerge from the definitions of social change are: 1) Social change is the effect of certain causes. 2) Social change modifies social structure, social organization and social functioning. 3) It modifies the life-pattern of people. 4) Technological and cultural changes are different from social change. 5) Social change is reflected through social attitudes, social values and ways of living.

Declaring the Right To Privacy as a Fundamental Right

On August 24th 2017, a nine-judge constitutional bench declared that the Right to Privacy is a fundamental right, that it is intrinsic to life and liberty and is protected under Article 21 of the Constitution.

Recognising transgender persons as a third gender

In April 2014, the SC created the 'third gender' status for hijras or transgenders, as they were earlier forced to write male or female against their gender. According to the SC, "absence of law recognizing hijras as third gender could not be continued as a ground to discriminate them in availing equal opportunities in education and employment."

Disqualification of convicted representatives in India

In July 2013, the Supreme Court, in its judgement of the Lily Thomas v. Union of India case, ruled that any Member of Parliament, Member of the Legislative Assembly or Member of a Legislative Council who is convicted of a crime and given a minimum of two year imprisonment, loses membership of the House with immediate effect. Rasheed Masood was the first to go after being charged with corruption.

Declaring instant Triple Talaq Unconstitutional

In 2016, 35-year-old Shayara Bano challenged the practise of triple talaq after her husband of 15 years divorced her. In 2017, the SC declared the practice of Triple Talaq as unconstitutional by a 3:2 majority. Justices Nariman and Lalit held that instant Triple Talaq is unconstitutional, while Justice Joseph struck down the practice on the ground that it goes against Shariat and the basic tenets of the Quran.

Revision of Section 66A which allowed arrests based on online content

We've all been witness to some of the most bizarre arrests in recent times, based on issues like people posting memes about Modi and Hindutva in general. In 2015 however, the SC struck down the controversial section 66A as unconstitutional.

Section 66A of the Information Technology Act allowed arrests for objectionable content posted on the internet.

Declaring that passive euthanasia is permissible

In March 2018, a five-judge Constitution Bench, headed by Chief Justice Dipak Misra gave legal sanction to passive euthanasia, permitting 'living will' by patients on withdrawing medical support if they slip into irreversible coma. The SC held that the right to die with dignity is a fundamental right.

Deeming sexual relations with minor wife as rape.

In October 2017, the apex court ruled that having intercourse with the minor wife will be considered as rape. Highlighting the injustice meted out to scores of minor girls who are married off before they turn 18,

"A child remains a child whether she is a married child or an unmarried child or a divorced child or a separated or widowed child."

Decriminalizing gay sex and repealing Section 377

A five-judge bench at the country's highest court decriminalized homosexuality, striking down the 160-year-old law which deemed gay sex "against the law of nature". In a historic judgement, which drew cheers from across the nation, the judges scrapped Section 377 and proclaimed that each individual has an equal right to love whoever they want to.

Meaning of the law and social transformation:

The law and social transformation is a subject studies the social problems of the societies and their solutions through legal approach.

There are two modes of changing law: i. Law changed the society ii Society changed the law

- i. **Law changed the society:** the laws of the land force the society to be changed according to the law. When any dispute rises that comes to the Judiciary and on the basis of Rule of law the judiciary forced the society to change existing customs.

ii **Society Changed the Law:** it means law is made by the society according to its Custom. Ex:By adopting custom and usage. If any law has made by the society I;e Unconstitutional then declares it is invalid and unconstitutional.

Law is an instrument of social changes but sometimes social changes become the law. (Prohibition of child marriage)

In India there are two main institutions which makes that law changes namely (a) Legislature(by enacting new Law) (b) Judiciary (Interpreting according to Rule of Law).As per the Art.368 of Indian constitution states that any part of the constitution may be amended by adopting proper procedure except destroying the basic structure of the constitution. Moral has been transformed by law. In village the new generation were following the instructions of their parents and elder persons of the village so there is some moral. But in case of Urban Area there is no meaning of Moral everyone is bothered about their legal rights.

The Role of Law on Social Change:

Social Transformation by Law:

1. **Standard contracts:** The law has transformed the society in almost every area growth of standard contracts, structure and function of property, growth of social insurance, Impact on law of torts, freedom of trade, transforming criminal law etc.
2. **According to Gainsberg :**social change is change in social structure I;e The size of a society, The composition or balance of its organization.
3. **Anderson and Parker:** Social change involved alteration of structure and functioning of the society.

Law effects changes in society:

Meaning of Law: In strict legal sense Law means the legal institutions e.g Court, legislature and other agencies. Thus a social change may be either direct I;e through statutes, codes and delegated legislations or it may indirect e;g through judiciary.

Social Change other factors: A human society is not any absolute concept. It is a reality and keeps on changing due to its composition and many other factors I;e due to civil war, revolution, technology, ideology etc. Due to public dissatisfaction against law by raising social movements searching new laws to social change. Social change does not mean developments of society. It means planned and balanced development in the basic structure and foundation institutions on which the society is based.In any society basic organization include:

I Political Institutions ii Economic institutions iii Ideology iv Religion.

I Political Institutions:

The Government is the most political institution and includes executive, legislature, judiciary, Administrative agencies, law enforcement agencies etc. All these are cannot exist without law. Even a Government may be established by force or by gun or they may change the law as they like but they can rule only by law.In a democratic governments ballot

decides the legislators, chief executive etc. all this function of law. So the change in the society comes through these institutions of law.

Economic Institutions:

Economic institutions are the back-bone of any society. The role of law in this sphere is not very specific. Despite this markets needs help of law for prohibition of unfair trade practice, Industrial action, strike, lock-out, control of price, supply of essential commodities, smuggling, adulteration etc are no of activities which are effect the economic institutions and these institutions are regulated by law. in the hands of the government to promote economy and to maintain a proper balance in any society. The Role of banking and industrial houses in shaping of economy and role of law in regulation of these institutions to well establish in the society.

Ideology:

The purpose of law is to promote individual with giving maximum happiness to the maximum numbers of people with balancing interests. The statement of ideology is contained in the preamble of almost every constitution. The most of the democratic governments set the achievements of economic justice, political justice, social justice, equality before law, equal protection of law, liberty of thoughts, freedom of speech and expression etc. All these reforms through law. War against poverty, untouchability, race sex caste discrimination, hunger and war against fatal diseases like Aids cancer being fought only by governments and the weapon is law.

Religion:

The law has its own Religion I;e truth, ahinsa, Respect to elders etc. The Role of law is to maintain equilibrium between religion and morality and it gives the positive force for leading the society to prosperity. If a religion is rigid, it is capable of arresting the mental.