

Judiciary and social Engineering

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Description of Module

Items	Description of Module
Subject Name	Law
Paper Name	Social Transformation and Social Engineering
Module Name /Title	Judiciary and social Engineering
Module No.	III

Judiciary and social Engineering

Objective: After reading this module, the learners will have a clear picture of

- (i) Implementing the Judiciary as an instrument for eliminating injustice from the society.(setting right the wrong done)

Learning Outcomes:

Ultimate goal of Judicial Process, undoubtedly, is to ensure social order and to make the society safer for its people. Law cannot be effective and useful without taking recourse of judicial process in maintaining social order. Judicial Process has played a significant role in order to deliver social justice, by eliminating socio-economic imbalance and social injustice from the society.

Introduction:

“Judicial Process” Means any judicial proceeding in connection with the special consideration of justice by any court. Social Ordering” means implementing the Judiciary instrument for eliminating injustice from the society.(setting right the wrong done).But here we are mainly concerned with role of the constitutional courts evolving new principles during the course of judicial process for keeping social order. Article 32 of the Constitution empowers the Supreme Court to issue directions or orders or writs for enforcement of any

right give under the Constitution for securing social justice. . Article 32 is an important instrument of judicial process to enforce social ordering.

Article 32 is an Instrument: The Supreme Court has granted great relief in cases of social injustice to the affected groups of the society under this provision. Article 32 of the Constitution of India itself is a fundamental right, Deprivation of the fundamental rights often results in to social disorder. The Supreme Court has played positive role in implementing social order.

Now it will be appropriate to examine the areas in which judiciary played a vital role in eliminating social dis-order:- Backward Classes of the Society

In "Indra Sawhney v. Union of India", AIR 1993 SUPREME COURT 477, the Apex Court has innovated concept of 'creamy layer test' for securing benefit of social justice to the backward class, needy people, and excluded persons belonging to 'creamy layer

BIGAMY

In "Lily Thomas v. Union of India", AIR 2000 S C 1650, it was held by the Apex Court that the second marriage of a Hindu husband after conversion to Islam without having his first marriage dissolved under law, would be invalid, the second marriage would be void in terms of the provisions of Section 494, IPC and the apostate-husband would be guilty of the offence punishable under Section 494, IPC. This verdict of the Apex Court would certainly be helpful in eliminating social evil of bigamy. Bigamy is a social evil which often creates social disorder. The Apex Court has tightened the noose over those avoiding punishment by taking plea of conversion to Islam.

Bride Burning

In "Paniben v. State of Gujarat", AIR 1992 S C 1817, the Apex Court held that it would be a false of justice if sympathy is shown when cruel act like bride burning is committed. Undue sympathy would be harmful to the cause of justice. The Apex Court directed that in such cases heavy punishment should be awarded.

Bonded Laborers

Bandhua Mukti Morcha v. Union of India", AIR 1984 S C 802, is a good example of social ordering by way of judicial process. The Apex Court has tried to eliminate socio-economic evil of bonded labour, including child labour and issued certain guide lines to be followed, so that recurring of such incidents be eliminated.

Caste system and Judicial Process

In "Lata Singh v. State of U. P.", AIR 2006 SC 2522, the Apex Court has given protection to

the major boy and girl who have solemnize inter-caste or inter-religious marriage.

Child Labour

In "M.C. Mehta v. State of T.N.", AIR 1997 S C 699, the Supreme Court has issued direction the State Governments to ensure fulfillment of legislative intention behind the Child Labour (**Prohibition and Regulation**) Act (61 of 1986). Tackling the seriousness of this socio-economic problem the Supreme Court has directed the Offending employer to pay compensation, a sum of Rs. 20,000/ for every child employed.

Child Prostitution

In Gaurav Jain v. U.O.I. AIR 1997 SC 3021, the Apex court issued directions for rescue and rehabilitation of child prostitutes and children of the prostitutes.

Dowry Death

. In "Raja Lal Singh v. State of Jharkhand", the Supreme Court has laid down that there is a clear nexus between the death of Gayatri and the dowry related harassment inflicted on her, therefore, even if Gayatri committed suicide, S. 304-B of the I. P. C.(**cruelty or harassment by her husband**) can still be attracted. Dowry death is perhaps one of the worst social disorders prevailing in the society, which demands heavy hand of Judicial Process to root-out this social evil

Equality: Man and Woman

In AIR India v. Nargesh Meerza, AIR 1981 SC 1829, the Apex Court declared that – “the provision of AIR India Service Regulation 46 (i) (c)” or on first pregnancy whichever occurs earlier” is UN-constitutional, and is violative of Article 14 of the constitution.

Female Feticide and Judicial Process.

Leading to unhindered female infanticide affecting overall sex ratio in various states causing serious disorder in the society. In "Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India", AIR 2001 S C 2007, the Apex Court has held that despite the PNDDT Act being enacted by the Parliament five years back, neither the State Governments nor the Central Government has taken appropriate actions for its implementation. Hence, directions are issued by the Court for the proper implementation of the PNDDT Act,(Pre-Conception and Pre-Natal Diagnostic Techniques) for eliminating this Social evil.

Harassment of Woman

The Apex Court in *Vishaka v. State of Rajasthan* (AIR 1997 SC 3011) created law of the land holding that the right to be free from sexual harassment is fundamental right guaranteed under Articles 14, 15 and 21 of the Constitution. The Court has issued guidelines to be followed by employer for controlling harassment of woman at her work place.

Immoral trafficking

Immoral trafficking has now become a widespread social disorder. This is a deep rooted social evil has to be controlled. The Apex Court is of the opinion that accused persons are to be dealt with heavy hands of the Judicial Process in such cases. In "*State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain*", AIR 2008 SUPREME COURT 155 , the Court has rejected application for anticipatory bail, in a case where a minor girl was driven to flesh trade by accused persons , comprised of police officers, politicians and all were absconding for long time.

Maintenance

In *Mohd. Ahmed Khan v. Shah Bano*, AIR 1985 SC 945, the Apex Court , for the first time, granted maintenance to divorced Muslim woman under section 125 Cr. P. C., ignoring her personal law, keeping in view essence of equality before law

In "*Dimple Gupta v. Rajiv Gupta*", AIR 2008 S C 239, the Apex Court has granted Maintenance to illegitimate child under S. 125 Cr. P.C. This path breaking judgment has given breath to the innocent children who were victim of no fault of their own. These verdicts are judicial instruments of social ordering.

Need of Judicial Process

Noble preamble of our Constitution promises citizens of India to secure Justice, – inter alia , social justice, transforming social order. Judicial Process has played a significant role in order to deliver social justice, by eliminating socio-economic imbalance and social injustice from the society.

Prevention of Atrocity

When members of the S. C. and S. T. assert their rights and demand statutory protection, vested interest try to cow them down. In these circumstances, anticipatory bail is not maintainable to persons who commit such offences; such a denial cannot be considered as violative of Article 14 as held in "*State of M.P. v. R. K. Balothia*", AIR 1995 S C 1198

Goal of Judicial Process

Ultimate goal of Judicial Process, undoubtedly, is to ensure social order and to make the society safer for its people. Law cannot be effective and useful without taking recourse of judicial process in maintaining social order. Justice P. N. Bhagwati and Justice V. R. Krishna Iyer, both were of the opinion that law is an instrument of social change. It is satisfying to see that achievements of Judicial Process in respect of social ordering have been significant. Judiciary has not shied away from its responsibility of enforcing social order. Looking to the need of hour and demands of the changing society, the Supreme Court has innovated various tools and techniques, for securing social order. One can see how the Supreme Court of India has innovated, case after case, various juristic principles and doctrines, for upgrading social order. Needless to say those, Articles 14, 15, 16, 17, 38, 39A and 42 to 47 of the Constitution of India deal with facets of social justice.