

Law as an Instrument of Social Change:

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Description of Module

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Subject Name	Law
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Law as an Instrument of Social Change:

Dynamic Instrument: Law is a really dynamic instrument designed by society for the purpose of adjustment of sweet human relations by **elimination of social** tension and conflicts.

Justice: Justice is the Basic of any society that **creates peace and progress**. Law is an instrument for giving of Justice.

Changes shape of the Society: Law changes the society as per societies requirement also **society changes the law** through amendment of statutes/Acts etc.

Interpreting the Law: Every session of parliament and state Legislature introduce the Bill to amend the Act or enact Act on the other hand where any **question of facts** comes before the court, the Higher Judiciary is interpreting the law according to the requirement of society.

Security: Security of **persons and property** of the people its an essential function of the state and this can be achieved through implementation of law(Criminal law).

Social Change: Social changes are necessary within society for development but this change can be made by the **tool of law**.

Law is the Strongest Instrument: Earlier society was based on custom the morals (Right or wrong).But it is very difficult to clear the hurdle of custom and Moral but as soon as **society replace by the state** morality too gets **replaced by the law**. So Law is the strongest Instrument to change the custom.

To show the instrumentally of law of social change it is necessary to study **some special changes** that have taken place in India because nothing is permanent but change is permanent.

1. Abolition of Sati System: Sati Was an ancient **Hindu custom**, On 4th December 1829 the practice was formally banned in the Bengal Presidency by the Governor Lord William Bentinck by passing a regulation burning alive the widow of Hindus illegal and punishable under criminal court. But the ban was challenged in the privy council in London finally implemented in 1832. Unfortunately abetment of sati could not find place to be a special

offence under IPC but Judiciary has held that abetment of Sati is an offence of **abetment of suicide and** punishable under section 306 IPC. (Sati Mata Ki Jai).

Sati prevention Act 1987: Even after the custom was ban this custom did not vanish completely. Between 1980 and 1983 some case of Sati were reported from U.P, M.P. and Rajasthan. This time legislature has taken serious steps by introducing special law Sati prevention Act 1987 for the treatment of persons who abet Sati and punishable up to death sentence. Now almost all area of India have forgotten Sati system so here law is a strongest instrument for change the custom.

2. Muslim Women are entitled for Maintenance: The Supreme court held in the case of Shah Bano Begum (Mohd. Ahmad Khan V Shah Bano Begum, AIR 1985 SC 945) that if the divorced woman is able to maintain herself, then the husband's **liability** ceases with the period of iddat, but if she is unable to maintain herself after the period of iddat she is entitled to maintenance under section 125 of the CRPC, 1973. This led to controversy to the Muslim Women Act 1986. The court further observed and gave the decision whether spouse belongs to Hindu, Muslim, Christian, Parsis the CRPC provision are in the nature of secular and apply to all religion.

3. Free Education is Fundamental Right: The Hon'ble Supreme court held that the right to education is a fundamental right under Art. 21 of the Constitution. In the case of *Mohini Jain v State of Karnataka* the five judges bench held that right to education is fundamental right under Art. 21 of the constitution. But the right to free education is available only to children until they complete the **age of 14 years**. But after that state will provide the free education subject to limits of its **economic capacity**. After that the legislature has amended the constitution by introducing Art. 21A and made right to education free and compulsory for children of the age 6 to 14 years.

4. Introduction of Public interest Litigation: The Hon'ble Supreme Court has adopted broader approach **locus standi** to utilize the **zeal of public spirited** persons to move the courts for the general or group interest even though they may not be directly injured in their own rights.

Ex: Who due to **lack of sound economic conditions** are deprived to approach to court to get justice for their rights any public spirited persons can approach the court on behalf of that poor people.

5. Right to Information: Right to Information is an instrumentally of law regarding social change. The Hon'ble supreme Court upheld that **freedom of speech and expression includes right to receive** and inform the information. (State of UP v Raj Narain (1975)).

6. Marriage shall be compulsory registered: Marriage is governed by the personal laws in India, Christian marriage Act 1872 provides the compulsory registration of a valid marriage but under Hindu Law **it was an option**. The Supreme court directed that marriage registration is compulsory in the whole territory of India. There is no restriction on the **grounds of religion**. It is in the secular form.

7. Law relating to Prisoners: The law says that **germs of the crimes** are within the society then why punish the criminals they should be **reformed**. They should not cease to be a person. Prisoners are entitled to all constitutional rights, reading and writing books in jail, Use of Parole, Release on Bail etc.

8. Abolition of Polygamy: Polygamy had existed in India and there was no restriction on the bigamy **except the Mohammed law** which prohibited not to marry more than four wives. In 1860 Under IPC bigamy was made a specific offence under section 494 and it was allowed by the customs. Section 60 of Indian Christian Marriage Act 1872 Prohibited of polygamy.

9. Prohibition of Child Marriage:

1. Meaning of Marriage: During colonial time in India Child marriages were official marriage in childhood. At the time marriage spouse were not aware about the meaning of marriage.

2. The Child marriage Restraint Act 1929 it restricted the child marriage but did not abolish it. Under this Act child means a person who if a male has not completed 21 years of age and if a female has not completed **eighteen years of age**. This law was introduced after all the religions prohibit the child marriage.

10. **Abolition of Slavery system:** up to the 18th century there was slavery system in the entire world. All human beings were **treated as commodity** and not as humans they were not enjoying any rights. Slaves were not included as a person. In India Article 23 of the constitution of India Prohibited bonded labour and slavery. Also a special Act Bonded Labour System (Abolition) Act 1976.

11. **Elimination of Child Labour:** The employment of children Act 1938 was enacted to prohibit child below the age **of 15 years**.

12. **Law and Prostitution: Prostitutes are not criminals** but they are victims of the society and surrounded by criminals world constituting kidnapers, pimps, drug pushers, murderers etc. The Supreme court issued direction to the Government and social organization to take appropriate steps to **rehabilitate the prostitutes** and their children.

13. **Recognition of Live-in Relationship:** It is true that **sexual contact** should take place only between marital partners there is no statutory offence. The Supreme court observed that a live-in relationship between two consenting adults of different sex does not amount to any offence even though it may be **as immoral**.