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LAW AS AN INSTRUMENT OF SOCIAL CHANGES

Rashmi Kapoor[1]

INTRODUCTION

There are two sides of each coin: similarly, each act of any person is also, either good or bad. And it is the rule, since existence of the society: good (dharma, or satya) has to be acted and the bad prohibited (evil, adharrna or asatya). This rule still exists, and shall be till the end of the (civilization, Earlier, society was customarily based on the morals. But, as soonas society is replaced by the State morality too gets replaced by the law. *If, we want to changeany existing custom or behaviour in society, it should be changed by the Instrument of law only, otherwise not.*

Definition of law

The word 'law' has thousands of definitions but none is complete. Obviously, It is very difficult to define the word law, if not impossible. The most commonly acceptteddefinition of law is given by **Blackstone**. He defines, it as

"Law is a rule of conduct, prescribed by the supreme power in the State, commanding which is right and prohibiting what is wrong, jurisprudentially, Law consists of rules prescribed by society for the governance of human conduct."

Chief Justice Marshall the great Judge of American Supreme Court in 1803 has observed that the constitution is the fundamental and paramount law of the nation and "It is for the court to say what the law is." He concluded that the particular phraseology of the constitution of the United States confirms and strengthens the principle supposed to beessential to all written constitutions—that a law repugnant to the constitution is void and that the courts as well as other departments are bound by that instrument. If there was conflict between the law made by the Congress and the provisions in the Constitution, it was the duty of the court to enforce the Constitution and ignore the law. The twin concepts of judicial review and judicial activism were born.[2]

Law should not be definite, but must be transformable according to the requirement and necessity of the society, arising out of passing of time. Judicial activism is a kind of 'construction'; court has to do social justice and not only legal justice.

The Hon'ble Supreme Court has observed that *the law regulates social interests,arbitrates conflicting claims and demands*. Security of persons and property of the people is an essential

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[2] *Marbwy* v. *Maddison.* (1803) 2 I, Ed 60

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function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, *law as a corner-stone of the edifice of 'order' should meet the challenges confronting the society.*[3]

Law as an Instrument of social change

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, in India, every session of Parliament and State Legislature introduces the Bills to amend the Act(s) or enact Act(s). On the other hand, where, any question of facts comes before the court, judiciary (especially higher judiciary) is interpreting the law according to therequirement of society.

Here the observation of Lord Woolf (Chief Justice of England) is very important to mention, He said that "Like old clocks, our Judicial institutions need to be oiled, wound up and set to true time". Similarly the Hon'ble Supreme Court has observed, that— –the law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through Instrumentality of criminal law. Undoubtedly there is a cross cultural conflict where living law must find answer to the new challenges and the courts are required to mould thesentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a corner-stone of the edifice of 'order' should meet the challenges confronting the society.[4]

Social changes are necessary within society, for development. But this change can be made by the tool of law otherwise; it is very difficult to clear the hurdle of custom and usage. The society is in the habit of doing the things, if. You want to change that, then law is the strongest instrument to change it. To make the law strongest is the stick of Punishment. If law prohibits any act, then it has to make it punishable.

It is to be noted that social change is necessary in every society and possible. if, It takes place by the Instrument of law. There is no value of morality in the eyes 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, because, nothing is permanent, but change is permanent****.*

[3] *State of M.P.* v, *Ohanshywn Singh.* (2003) 11 ILD 900 (SC): AIR 2003 sc 3191.
[4] State of M.P. v. Ghanshyam Singh. (2003)11 ILD 900 (SC).

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SATI SYSTEM

Introduction:

In 19th century India, various kinds of social evils crept in the society, as most of them were uneducated. They were burdened with superstition and blind faith in dictates in Brahmins. They lost the power to use their own judgment. Hence social reforms werenecessary. The social evils like sati system, was necessary to abolish. Therefore, to eradicate such practice, the Sati (prevention) act 1987, acted as an instrument of social change and this change can be possible through instrument of law.

Law Made by Legislation in India

The Commission of Sati (Prevention) Act of 1987

Section 2(c) defines *Sati* as: The burning or burying alive of –

(i) any widow along with the body of her deceased husband or any other relative or with any article, object or thing associated with the husband or such relative; or

(ii) any woman along with the body of any of her relatives, irrespective of whether such burning or burying is claimed to be voluntary on the part of the widow or the women or other-wise.

The act of *sati* is said to exist voluntarily; from the existing accounts, many of these acts did indeed occur voluntarily. The act may have been expected of widows in some communities, and the extent to which social pressures or expectations constitute compulsion has been much debated in modern times. However, there were also instances where the wish of the widow to commit *sati* was not welcomed by others, and where efforts were made to prevent the death.

Section 3 Attempt to commit sati:

Whoever attempts to commit sati and does any act towards such commission shall be punishable with imprisonment for a term which may extend to **one year or with fine or with both**.

Section 4 Abetment of sati:

(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860), if any person commits sati, whoever abets the commission of such sati, either directly or indirectly, shall be punishable with death or imprisonment for life and shall also be liable to fine.

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(2) If any person attempts to commit sati, whoever abets such attempt, either directly or indirectly, shall be punishable with imprisonment for life and shall also be liable to fine.

Explanation.- For the purposes of this section, any of the following acts or the like shall also be deemed to be an abetment, namely:

(a) any inducement to a widow or woman to get her burnt or buried alive along with the body of her deceased husband or with any other relative or with any article, object or thing associated with the husband or such relative, irrespective of whether she is in a fit state of mind or is labouring under a state of intoxication or stupefaction or other cause impeding the exercise of her free will;

(b) Making a widow or woman believe that the commission of sati would result in some spiritual benefit to her or her deceased husband or relative or the general well-being of the family;

(c) Encouraging a widow or woman to remain fixed in her resolve to commit sati and thus instigating her to commit sati;

(d) Participating in any procession in connection with the commission of sati or aiding the widow or woman in her decision to commit sati by taking her along with the body of her deceased husband or relative to the cremation or burial ground;

(e) Being present at the place where sati is committed as an active participant to such commission or to any ceremony connected with it;

(f) Preventing or obstructing the widow or woman from saving herself from being burnt or buried alive;

(g) Obstructing, or interfering with, the police in the discharge of its duties of taking any steps to prevent the commission of sati.

Section 5. Punishment for glorification of sati.-

Whoever does any act for the glorification of sati shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years and with fine which shall not be less than five thousand rupees but which may extend to thirty thousand rupees.

CHILD LABOUR

Introduction

Children are important component of social structure and the potential future carriers of the culture. Unfortunately, the problem of child labour is existing in our country. Healthy child is the base of healthy human society, but if he remains hollow than society remains

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weak. As on weak base we cannot construct a multistoried building so for bright future of society, **proper nutrition, education, training guidance, protection is required. All these things can be regulated and maintained with the instrument of law.**

Law Related To Child Labour

At present, the legislations in India only specifically outlaw child labour in designated hazardous industries and bonded child labour, but both *Article 24 of the Indian Constitution* and *Section 67 of the Factories Act* explicitly direct that children below the age of 14 years are not to work in factories. In addition, the **Child Labour (Prohibition and Regulation)Act 1986** forbids the employment of children in specified hazardous industries.

The Supreme Court ruling of December 10, 1996, in an attempt to fill the loopholes left in previous legislation and to bring in judicial activism to social issues ordered the setting up of a fund for the child workers aimed at controlling and eventually eliminating child labour across the length and breadth of the entire country. While setting out a long list of child labour monitoring obligations of the State Governments, it also prescribes heavy fines for employers caught with children at work. In addition, India has ratified the UN Convention on the Rights of the Child.

1. Laws pertaining to Child Labour:

- Children [Pledging of Labour] Act (1933)
- Employment of Children Act (1938)
- The Bombay Shop and Establishments Act (1948)
- Child Labour -Prohibition and Regulation Act (1986)
- The Indian Factories Act (1948)
- Plantations Labour Act (1951)
- The Mines Act (1952)
- Merchant Shipping Act (1958)
- The Apprentice Act (1961)
- The Motor Transport Workers Act (1961)
- The Atomic Energy Act (1962)
- Bidi and Cigar Workers (Condition of Employment) Act (1966)

2. The Child Labour -Prohibition and Regulation Act (1986)

The problem of child labor continues to pose a challenge before the nation. Government has been taking various proactive measures to tackle this problem. However, considering the magnitude and extent of problem and that is essentially a social-economic problem inextricably linked to poverty and illiteracy. It requires concerted efforts from all sections of society to make a dent in the problem.

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Penalties under this Act

According to Section 14 of the Act, whoever employs any child or permits any child to work in prohibited occupation or process shall be punishable with imprisonment for 3 months to one year or fine of Rs. 10,000 to Rs. 20,000 with both.

a. Conclusions

The Government of India has issued notification to prohibit child labour as domestic servant and in working hotels, motels, Tea-shop. Undoubtedly, this will increase the job of the district magistrate. But, it will prove as fruitful results, relating to bright future of the children. Here the point is that it is not the problem with single city or factory or company butit is with the every tea-shop.

It is social- legal problem and so needs to be treated with deterrent (exemplary) theory of punishment, if we implement compulsory education, we can get solution to four problems, namely:

- Unemployment
- Poverty
- Exploitation of child
- Illiteracy and Low wages

BONDED LABOUR

Introduction

The problem of bonded labour was closely linked to the broader socioeconomic problems of surplus labour, unemployment/under-employment, inequitable distribution of land and assets, low wages, distress migration, social customs etc. with the phenomenon of small and marginal farmers and rural artisans steadily becoming landless labourers generate environment, which can perpetuate the system of bonded labour. This socio-economic unbalance is the root cause of other illegal acts like robbery, rape etc. **Therefore to reduce socio-economic unbalance, Bonded Labour System (Abolition) Act, 1976 acted as an instrument to change the society.**

Constitutional and Legal Provisions

The Constitution of India: guarantees to all its citizens- justice, social, economic and political, freedom of thought, expression, belief, faith and worship, equity of status and opportunity and fraternity, dignity of individual and unity of the Nation.

Under Article 23 of the Constitution: Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Bonded Labour System (Abolition): Ordinance was promulgated. Which was later on

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replaced by the Bonded Labour System (Abolition) Act, 1976.

Salient Features Of The Bonded Labour System (Abolition) ACT, 1976

This Act provides for the abolition of the system of bonded labour. It freed unilaterally all the bonded labourers from bondage with simultaneous liquidation of their debts.

The Act does away with every obligation of a bonded labourer to repay any bonded debt; it also dispenses with the future liability of repaying a bonded debt. The law provides that

(a) No suit or other proceedings shall be instituted in any Civil Court for the recovery of any bonded debt

(b) Every attachment made before the commencement of the Act for the recovery of any bonded debt shall stand vacated and

(c) Such movable property shall be restored to the bonded labourer.

The district and sub-divisional magistrates have been entrusted with certain duties/responsibilities towards implementation of statutory provisions.

Under Section-13 of the Act, Vigilance Committees are required to be constituted at the district and sub-divisional level for implementation of the provisions of the law. They are composite bodies with representatives from different cross sections of the society and have a life of 2 years.

Registers containing the names and addresses of all freed bonded labourers, their vacation, occupation and income, details of the benefits received are required to be maintained under the Bonded Labour System (Abolition) Rules.

Punishment: The Act provides for imprisonment up to 3 years and fine up to Rs.2000/- to whoever compels any person to render any bonded labour and whoever advances any bonded debt. An offence under the Act may be tried summarily and every offence under the Act shall be cognizable and bailable.

Limitations of Law

Bonded Labour System is a dynamic problem; it can occur and reoccur at any point of time in any industry or occupation

Once the bonded labourers are identified and released, in case they are not immediately rehabilitated, they become even worse off as compared to the situation when they were bonded and were at least able to survive by getting two square meals.

Contrary to the traditional perception that bonded labour is confined to the agricultural sector alone, it can also occur and reoccur in any form of economic activity such as, agriculture, stone quarries, carpet weaving, etc.

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POLYGAMY

Introduction

Before independence polygamy existed in all corners of India. Polygamy, however, remains a criminal offence, and its practice or the avoidance of the offence have various implications under other branches of law. In section 494 IPC, it is declared a punishable offence. Now almost in every part of India, it is fully implemented. **It proves that law acted as an instrument to uplift the traditional views of morality and family life in society.**

Provision in IPC:

According to Section 494 of IPC, whoever is having a wife living marriage in any case, in which such marriage is void by reason of its taking place during the life of such wife,—shall be punished with imprisonment up to 7 years, and fine. Further, explains that second marriage Is not an offence where—.-(l) Marriage with such husband or wife has been declared void by a court of competent Jurisdiction; or (ii) The husband or wife has been continually absent and not heard of for 7 years. Provided that the facts are disclosed to the person with whom the second marriage is contracted.

As discussed above, if the first marriage is not valid marriage, no offence will be committed by contracting a second marriage.

Christian Marriage Act, 1872

Christian law prohibited polygamy by **Section 60** of Indian Christian Marriage Act, 1872.

Parsi Marriage and Divorce Act, 1936

Parsi were restricted and made punishable under Section 494 by **Section 5** of Parsi Marriage and Divorce Act, 1936.

Special Marriage Act, 1954

Similarly Restriction is imposed by **Section 4** of Special Marriage Act, 1954.

Provisions under Hindu marriage Act, 1955: Bigamy

Section 5(i), Hindu Marriage Act.- Bigamy includes both polygamy and polyandry. Polygamy permits a male to have more than one wife simultaneously. From the ancient times to 1955, polygamy was recognized in Hindu law. In Bombay, it was prohibited by a statute of 1948 and In Madras by an Act of 1949. Polyandry permits the female to have morethan one husband simultaneously. Polyandry was not recognized by Hindu law, though by custom it prevailed in some regions, in North and South.[5] Polygamy and polyandry have

[5] In Lahaul valley in Himachal Pradesh and among Thiyyas of South Malabar polyandry was recognizedKrishnan v. Ammolu. 1972 Ker 91.

now been abolished and monogamy has been made a rule for all Hindus. Section 5(i) of the Hindu Marriage Act, 1955 lays down that neither party should have a spouse living at the time of marriage. This is a condition precedent to every marriage.

Monogamy means that one is permitted to have only one wife or one husband at a time. Bigamy is the reverse to the monogamy. Section 5(i) of the Hindu Marriage A prohibitsbigamy. Section 11 makes a bigamous marriage void and Section 17 makes it a penal offence for both Hindu males and ales under Sections 494 and 495, I.P.C

The offence of bigamy is committed by a Hindu marrying again during the life time of his or her spouse (wife or husband, as the case may be), provided that the first marriage is not null and void. If the subsisting marriage is voidable then also offence of bigamy is committed. The offence of bigamy is committed only if the required ceremonies of marriage are performed.[6] The second marriage cannot be taken to be proved by the mere admission of the parties; essential ceremonies and rites must be proved to have taken place.[7]

The solemnization of marriage is proved by showing that the marriage was performed with the proper and essential rites and ceremonies of marriage prescribed under the law or custom applicable to parties. A prosecution for bigamy will fail if what is established is that some sort of ceremonies (not the essential ceremonies as prescribed by law or custom) were performed with the purpose that the parties were to be taken as married, and it is immaterial even if it is established that the parties intended seriously to marry and thought that the ceremonies performed by them would confer marital status on them. It is now established that if the second marriage of the accused is declared void before the prosecution is commenced, no prosecution for bigamy can be made. The mere intention of parties, however serious, will not make them husband and wife and the accused will escape prosecution even if he deliberately performed defective ceremonies.[8] So long as the solemnization of a marriage depends upon the performance of a ceremony, the law cannot be otherwise. Two persons cannot be husband and wife by seriously intending to, live and living as husband and wife, If they do not perform the necessary ceremonies. Similarly, persons who perform bigamous marriage cannot be guilty of bigamy if they omit, deliberately or inadvertently, to perform theessential ceremonies of marriage. The solution lies in prescribing one ceremony for all Hindu marriages, and by providing for registration of marriages.[9] So long as we recognize all sorts of ceremonies, such things are bound to happen; dupes may take advantages and innocent persons may become their victims.

In the case of a bigamous marriage, the second wife‖ has no status of wife.[10] But In

[6] Kanwal Ram v. H.P.. 1966 SC 614: S. Varadarqjan v Stale of Madras, 1965 SC 1964: Bhau Rao v. State ofMaharashtra. 1965 SC 1964: Poduliaparthy V. Padullaparthy, 1962‘ A? 311: Kuntadeut v. Srlrani, 1963 Punj 235. Priyalata v. Suresh, 1971 SC 1153: ModI v. Modi. 1975 Cal U 298: Santt V. Kancha.n, 1991 SC 816.

[7] Priya v. Suresh, 1971 SC 1153: Laxmt v. Mahestiwar. 1985 Oil 11.

[8] Dr. A.N. Muklterjt v. State. 1969 All 489.

[9] See Paras Diwan, Ceremonial Validity of Hindu Marriage : Need for Reform, (1977) 2 SCC (J) 22.

[10] Yamunabi v. Anantrao, 1988 SC 644

case she files a petition for nullity, she can claim both interim and permanent maintenance. If a husband (or wife) is about to take a second wife (or husband), the first wife (or husband) can ask for an injunction from the court.[11] A suit for perpetual injunction by one spouse against the other can be filed under Section 9, C.P.C. read with Section 38, Specific Relief Act, 1963.

The first wife of a bigamous marriage has no right to file a petition for nullity under the Hindu Marriage Act, since Section 12 clearly lays down that a petition for a declaration that the marriage is null and void can be filed only by either party to the marriage.[12] But the first wife can file a suit in a civil court for a declaration under Section 9, C.P.C. read with Section 34, Specific Relief Act that the second marriage of her husband is null and void.[13] She can also file a petition for divorce under Section 13(1)(i) (adultery).

The Hon'ble Supreme Court in *Sarala Mudgal Case* and it issued some directions to the Government of India to frame Uniform Civil Code under Art.44 of the Constitution. Basically the problem was related with 2 or 4 marriages in Muslim as permitted by their personal law.

LAW AND PROSTITUTION

Introduction

Trade of prostitution is like a termite that is eating the roots of society tree. Historically, the AIDS epidemic in India was first identified amongst sex workers and their clients, before other sections of society became affected. In a country like India where most of the people indulge themselves in unprotected sex with prostitutes it is very difficult to eradicate the problem of AIDS. Immoral Trafficking (Prevention) Act, 1956 is a great aid to society to root out this problem. This law acted as instrument to change the society. Without providing law society can't solve this problem.

Laws related to prostitution in India:

Immoral Traffic in Women and Girl Act -1956

Immoral Traffic (Prevention) Act-1956

The Immoral Trafficking Prevention Act, 1956 ("ITPA"), the main statute dealing with sex work in India, does not criminalise prostitution or prostitutes per se, but mostly punishes acts by third parties facilitating prostitution like brothel keeping, living off earnings and procuring, even where sex work is not coerced.

Section 3. Punishment for keeping a brothel or allowing premises to be used as a brothel.

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[11] Shankarappa v. Bansamma, 1964 Mys 247; Sitabai v. Ram Chndra, 1958 Bom. 116.

[12] Kedar Nath v. Suprava, 1963, Pat 311

[13] (1964) 2 AWR 142; Surjeet Sinmgh v. Mohinder, 1988 P & H 156.

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(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel, shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent to conviction with rigorous imprisonment for a term of not less than two years and not more than five yearsand also with fine which may extend to two thousand rupees.

(2) Any person who, -

(a) Being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) Being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is willfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

(2-A) For the purposes of sub-section (2), it shall be presumed, until the contrary is proved, that any person referred to in clause (a) or clause (b) of that subsection, is knowinglyallowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if, -

(a) A report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or

(b) A copy of the list of all things found during the search referred to in clause (a) is given to such person.

Section 5. Procuring, inducing or taking person for the sake of prostitution.

(1) Any person who-

(a) Procures or attempts to procure a person whether with or without his/her consent, for the purpose of prostitution; or

(b) Induces a person to go from any place, with the intent that he/she may for the purpose of prostitution become the inmate of, or frequent, a brothel; or

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(c) Takes or attempts to take a person or causes a person to be taken, from one place to another with a view to his/her carrying on, or being brought up to carry on prostitution; or

(d) Causes or induces a person to carry on prostitution; shall be punishable on conviction with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may extend to two thousand rupees, and if any offence under this sub-section is committed against the will of any person, the punishment of imprisonment for a term of seven years shall extend to imprisonment for a term of fourteen years:

Provided that if the person in respect of whom an offence committed under this sub-section, -

(i) *Is a child*, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years but may extend to life; and

(ii) *Is a minor*; the punishment provided under this sub-section shall extend to rigorous imprisonment for a term of not less than seven years and not more than fourteen years.

So it can be seen that both the sections namely section 3 and **section 5 punishes only the acts of the 3rd party and same does the other sections in the Act and so new legislation shall be passed as to punish the client who are visiting the prostitutes.**

Directions issued to rehabilitate the prostitutes and their children:

The Hon'ble Supreme Court in it landmark judgment[14] has issued the direction for protection of women from prostitution and rehabilitation of their children. The Supreme Court issued a number of directions to the Government and all social organizations to take on appropriate measures for prevention of women in engaging various forms of prostitution and to rescue them from falling again into the trap of the red light areas and to rehabilitate their children through various welfare measures, so, as to provide them with dignity of person, means of livelihood and socio-economic improvement. The Hon'ble Supreme Court further held that, the children of the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so, as to be part of the mainstream of social life withoutany attached to them. The Court directed for the constitution of a committee to formulate a scheme for the rehabilitation of such children and child prostitutes and for its implementation and submission of periodical report of its Registry Again.

The Supreme Court asked the Law Commission to consider certain important issues regarding sexual abuse of children submissions 375 and 376 IPC.[15]

[14] Gaurav Jain v. Union of India, AIR (1997)8 SCC 114.

[15] Sakshi v. Union of India, (1999) 8 SCC 591.

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PUNISHMENT SHOULD BE MEASURED IN SOCIAL INTEREST

Where a person was held by the Session Court for the murder and in appeal High Court converted the conviction to culpable homicide, but punished them only for undergoing imprisonment arid fine of Rs. 15,000, on the ground of long period lapsed. The Hon'ble Supreme Court enhanced the sentence to 6 years imprisonment. Further, observed that court will be falling in its duty if appropriate punishment is not awarded for a crime which has been committed not only against an individual victim but also against society. Punishment should respond to society's cry for Justiceagainst criminals.

Where crime relates to

(3) Offences against women,

(4) Dacoity,

(5) Kidnapping

(6) Misappropriation of public money treason

(7) Other offences involving moral turpitude or moral delinquency which have great Impact on social order and public interest

(8) Any liberal attitude by imposing meager sentences or taking a too sympathetic view merely on account of lapse of time in respect of such offences will be result wise counter productive in the long run and against societal interest.[16]

Friedman view about punishment

Friedman in his *"Law in Changing Society"* stated that, *"State of* Criminal *law continues to be, as* it should *be, a decisive* reflection, of social *consciousness* of *society".* Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances arc relevant facts which would enter into the area of consideration. For instance; a murder committed due to deep-seated mutual and personal rivalry may not gall for penalty of death. But an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence.

The Hon'ble Supreme Court, while refusing to reduce the death sentence observed that it will be a mockery of Justice to permit the accused to escape the extreme penalty of law,

[16] State of M.P. v. Ghanshyam Singh, (2003) 11 ILD 900 (SC)

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when faced with such evidence and such cruel acts. To give the lesser punishment to the accused would be to render the justice system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the informative jargon.[17] In another case the Court observed that undue sympathy to impose Inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore the duty of every court to award proper sentence having regard to the nature of the offence and the manner In which it was executed or committed etc.[18]

In the matter of death sentence, the courts are required to answer new challenges and mould the sentencing system to meet these challenges. The object should be to protect the society and to deter the criminal in achieving the avowed object of law by Imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be, Even though the principles were indicated in the background of death sentence and life sentence, the logic applies to all cases where appropriate sentence is the issue.[19]

PUBLIC INTEREST LITIGATION

Introduction

Social change is the necessity of any society. In India, it is done through Public Interest Litigation. In this chapter, an attempt is made to assess the impact of PIL over Indian Society. The jurisprudence of PIL is necessary to understand the nature of PIL in India.

Before the introduction of Public Interest Litigation (PIL) in India, the courts were inaccessible to the illiterate and poor people of our country. The high cost of justice and long court proceedings made it near impossible for the ordinary people to get justice. Besides, earlier in case of the violation of the rights of the poor people, no third party could file litigation on behalf of them. With the arrival of the PIL, however, the courts have become accessible to the disadvantaged people also. Even if these people do not complain about the violation of their rights, a third party can take up their issues and file legal petition before the courts.

[17] Mahesh v. State of M.P., (1987) 2 SCR 710.
[18] Sevaka Perumal v. State of Tamil Nadu, AIR 1991 SC 1463
[19] Jashubha Bharatsinh Gohil v. state of Gujarat, (1994) 4 SC 353.

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WHAT IS PIL?

Public Interest Litigation means a legal action initiated in a court of law regarding a matter which relates to or is connected with the interest of the public. Public means an individual, body of individuals or the masses in general. Its purpose is to provide justice to the ordinary people. It has been devised for those people who are unable to approach the court on their own because of their deprived conditions, i.e., illiteracy, poverty, social and economic backwardness, lack of awareness. Public Interest Litigation is a new feature in India's judicial system. In our country, it came into being during the late 1970s and the 1980s. The term 'PIL' was first used by Justice V.K. Krishna Iyer and Justice P.N. Bhagwati in a judgement. The PIL for the first time originated in **USA** in the 1960s. Lawyers and the peoplewho were sensitive to the cause of the under-privileged groups in **U.S.A** initiated this procedure.

The PIL can be filed by a third party if the constitutional rights of an individual or group of individuals are violated. In such case the individual or groups of individuals is not able to move court personally for justice because of poverty, helplessness, lack of awareness or socially and economically disadvantaged conditions. The petitioner of the PIL does not fileit for personal gain or private profit. He/she does not file it for political or other oblique motivation.

The PIL can also be filed by a petitioner by writing a letter to the court. The jurisdiction of judgments relating to the letter-petitions is known as "epistolary jurisdiction". This term was first used by Justice V.R. lyer and Justice P.N. Bhagwati when they introducedthe term "PIL"

Distinction between Public and Private Interest Litigation

The PIL is different from the conventional litigation. The petitioner in the PIL may be a third party, which is not personally involved in the dispute, while in the conventional petition the petitioner is one of the two parties involved in the dispute. The PIL deals with theissues of general interest, On the other hand, the conventional litigation deals with one of the parties in a dispute; it is private interest litigation. The PIL is essentially co-operative or collaborative effort on the part of petitioner.

Features of PIL

Commentators have emphasized eight identifying features of PIL which distinguishes it from traditional litigation. These are :

i) In PIL, the scope of the law suit is consciously shaped by the court and parties, rather than being limited by a specific past event.

ii) The party structure is sprawling and amorphous, rather than limited to individual adversaries.

iii) The fact inquiry resembles the kind of inquiry taken into current problems by legislative bodies, rather than a simple investigation of past historical events.

iv) Relief 1s often prospective, flexible and remedial having a broad impact on many persons, rather than limited to compensation for a past wrong given only to a party to the lawsuit.

v) The relief is often negotiated by the parties rather than imposed by the court.

vi) The judgment does not end the court's involvement but requires a continuing administrative judicial role.

vii) The judge plays an active role in organizing and shaping the litigation and is not passive.

viii) The subject matter of the law suit is a 'grievance about public policy and is not a private suit'.

WHO IS ENTITLED TO FILE PIL?

The right of a person to file a suit or conduct a litigation in a court of law is known as 'Locus Standi'. The locus standi for PIL has been liberalized in relation to the traditional view on the locus standi. The traditional view on the locus standi for a specific legal action is that it would be available only to that person or class who has suffered a legal injury by reason of violation of his legal right, or a right legally protected. But in case of the PIL, the court has adopted a liberal stance. *Subbarao Vs. Government of AP*[20].,. The court, in *Brij. Raj Pershad Vs. Seethamma (AIR 1983 AP 118),* further diluted the requirement of a legal right when it held that the residents of a locality who were making an unauthorised use of corporation lands, had the locus standi to challenge its transfer, as long as they had a bonafide grievance.

In S.P. Gupta Vs. Union of India[21], the Supreme Court held that when a public wrong or public injury was caused by an act or an omission of the state or a public authority, which is contrary to the Constitution or the law, any member of the public, acting bonafide and having sufficient interest, can maintain an action for redressal of such public wrong or public injury.

However, a person is not entitled to file PIL, if he/she lacks sufficient public interest, acts for self-gain or personal profit, involves in political activities or has Malafied intention.

CONCLUSIONS FROM THE PRESENT WORK

1. The following conclusions have been drawn from the '**Sati System'**:

Raja Ram Mohan Ray has played an appreciable role in abolition of sati system. *The Rajasthan High court* had observed that sati is a suicide, where the woman had consented to become sati and the persons alding and abetting the offence were convicted under section 306 and

[20] AIR 1968 AP 98

[21] AIR I982 SC 149

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sentenced to 5 years RI.[22]

In fact, sati is no suicide but cold blooded murder. In many instances, it is found that women cried and also ran away from the pyre, but the people surrounding the pyre caught her and pushed her into burning pyre of husband, In the case of suicide the person committing suicide lights her pyre herself but here other person is lighting the pyre.

Between 1980 and 1983, some instances of Sati were reported from U.P., M.P. and Rajasthan. This time legislation has taken serious steps, by introducing a special law for the treatment of persons, who abet Sati and make it exemplary, punishable up to death sentences under commission of **Sati (Prevention) Act. 1987**, Now almost all areas of India have forgotten Sati system.

2. The following conclusions have been drawn from the '**Child Labour'**:

The Government of India has issued notification to prohibit child labour as domestic servant and in working hotels, motels, Tea-shop. Undoubtedly, this will increase the job of the district magistrate. But, it will prove as fruitful results, relating to bright future of the children. Here the point is that it is not the problem with single city or factory or company butit is with every tea-shop.

It is social- legal problem and so needs to be treated with deterrent (exemplary) theory of punishment, if we implement compulsory education, we can get solution to four problems, namely:

- Unemployment
- Poverty
- Exploitation of child
- Illiteracy and Low wages

3. The following conclusions have been drawn from the '**Bonded Labourers:**

Freedom from bondage would be meaningful only when the uncertainty and insecurity associated with bondage is removed through productive and income generating schemes. In the absence of poverty eradication measures, the rehabilitated bonded labourers are likely to fall back into their original state of bondage.

The scheme for rehabilitation should be chosen in consultation with the beneficiary and it should be well planned with all requisite components and infrastructural facilities tide up.

[22] Tejsingh and others, v. state of Rajasthan, AIR 1958 Raj. 169

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By an order of immediate priority, pockets in different parts of country which are dry, drought-prone and poverty stricken and prone to other natural calamities, migration, indebtedness and also from where the incidence of bonded labour system have been reported on one time or the other, could be identified and surveys undertaken on selective basis to identify the bonded labour system. The bonded labour so identified should be released and rehabilitated on priority basis. Besides special efforts should be made to remove the general economic backwardness of such area by focused integration of various ongoing plan programmes.

All the pending cases filed under the Bonded Labour System (Abolition) Act, 1976 be disposed of by taking recourse to summary trial and issue of release certificate in favour of those who are found to be having bonded.

There is a need to have a massive programme of familiarization, orientation and sensitization of functionaries dealing with identification, release and rehabilitation of bonded labour at all levels and through periodic training programmes/workshops. **Enforcement of the law on minimum wages and strengthening of Public Distribution System can go a long way in minimizing the circumstances,** which force the workers to get into that bondage.

There is a need for strengthening and activating the machinery for ventilation and redressal of grievances of the aggrieved.

4. The following conclusions have been drawn from the '**Polygamy':**

Before independence, there were no provisions in the law to prohibit the bigamy. But after the codification of Hindu marriage act, 1955, having 2 or 4 wives is considered an offence and punishable under this act. This social change could be possible only with the help of law. So it is clear that in our society law acted as an instrument of social change.

5. The following conclusions have been drawn from the '**Prostitution':**

Some people opinion that prostitution shall be made legal in India and accept them as a part of society because the problem of prostitution is inevitable. The benefit of legalizing prostitution in India will be that at least we will have a track record of Sex workers as *for example* when dance bar in Bombay were closed most of the bar dancers migrated to Gujarat and Karnataka and other neighbouring state and started their business undercover. Legalizing prostitution will see these women, who live life on the edge everywhere, gaining access to medical facilities, which can control the spread of AIDS. There is a very strong need to treat the sex industry as any other industry and empower it with legal safeguards. The practical implications of the profession being legal would bring nothing but benefits for sex workers and society as a whole. Keeping prostitution illegal also contributes to crime because many criminals view prostitutes and their customers as attractive targets for robbery, fraud, rape, or other criminal acts. The criminals realize that such people are unlikely to report the crimes to

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police, because the victims would have to admit they were involved in the illegal activity of prostitution when the attacks took place, now if it is legal then they will easily go and report this to police. Benefits of legalizing prostitution are:

1. Legalization of prostitution and the sex industry will stop sex trafficking.
2. Legalization of prostitution will control the sex industry.
3. Legalization of prostitution will decrease clandestine, hidden, illegal and streetprostitution.
4. Legalization of prostitution will protect the women in prostitution as they will have rights. Women in systems of Prostitution want the sex industry legalized as they are the one who suffers the most as they don't have any rights.
5. Legalization of prostitution will promote women's health as they can have easy access to medical facilities which they don't have when it is illegal. Recognizing prostitution as an economic activity, thus enabling women in India to obtain working permits as "sex workers".

Thus either India shall legalize prostitution which is the most suitable step that can be taken or shall make such deterrent laws as to curve up the problem of prostitution. Laws should not be such as to just remove the prostitutes but also to change the mentality of peoplewho are interested in paid sex by punishing them in such a manner that people of same mentality will dare to indulge themselves in similar activities.

6. The following conclusions have been drawn from the '**Public Interest Litigation'**:

It would be appropriate to conclude by quoting Cunningham, "Indian PIL might rather be a Phoenix: a whole new creative arising out of the ashes of the old order." PIL represents the first attempt by a developing common law country to break away from legal imperialism perpetuated for centuries. It contests the assumption that the most western the law, the better it must work for economic and social development such law produced in developing states, including India, was the development of under develop men.

The shift from legal centralism to legal pluralism was prompted by the disillusionment with formal legal system. In India, however instead of seeking to evolve justice- dispensing mechanism ousted the formal legal system itself through PIL. The change as we have seen, are both substantial and structural. It has radically altered the traditional judicial role so as to enable the court to bring justice within the reach of the common man.

Further, it is humbly submitted that PIL is still is in experimental stage. Many deficiencies in handling the kind of litigation are likely to come on the front. But these deficiencies can be removed by innovating better techniques. In essence, the PIL develops a new jurisprudence of the accountability of the state for constitutional and legal violations adversely affecting the interests of the weaker elements in the community. We may end with

the hope once expressed by Justice Krishna Iyer, "The judicial activism gets its highest bonus when its orders wipe some tears from some eyes".

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