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## THE ROLE OF SUPREME JUDICIARY IN CURRENT SOCIAL TRANSFORMATION

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### ABSTRACT

**L**aw plays an important role in envisaging the disciplined life in a civilized society. It is a dynamic instrument in grooming the minds towards building a better society than it was yesterday. Law in collaboration with the other agents of the society in which it operates to cater those social needs which only law can feed. Therefore there is no substitute for law. It produces an orchestra in which different instruments work in unison.

**KEY WORDS-** Supreme Judiciary, Social Transformation, Law in collaboration, dynamic instrument.

### INTRODUCTION

Law is one of the forms of social science. The society and the law are very closely related to each other. The social world changes every second. These changes occur because of the contradicting views in the minds of the indigenous people. The laws that were constituted at a considerable time before cannot be made applicable in the changed scenario. Therefore changes in law bring out the positivity and brighter side of social change and shun the negativity that is still incorporated in our societies, fulfilling the social needs of the people.

Change is a process. Change denotes any alternation, difference or modification that takes place in a situation or in any object through time. It is the universal law of nature. It refers to the difference that exists between the past and the present situation. Change is an “on-going” process, No society remains completely static. Society is subject to constant changes. The term social change refers to changes taking place in human society. Basically the changes in human inter-actions and inter relations, indicate social change. Society is the net-work of social relationship. Hence, social change obviously implies a change in the system of social relationship. So any difference or any modification or transformation in the established pattern of human interaction and standards of conduct amounts to change.

Social transformation is a philosophical, practical and strategic process, to effect revolutionary change within society. It is systematic, comprehensive and progressive approach to social change.. Social transformation is the process by which an individual alters the socially ascribed social status of their parents into socially achieved status for themselves. Social transformation is an accumulative process – that is a process in which insignificant changes accumulate quantitatively until they become significant enough to generate to qualitative changes in the entire society.

Law is a very effective and important medium instrument in bringing about social change in a particular country or in a particular society. At the same time law has to change according to the social changes. It is essential that the law should change with the changing needs of the society. The law has to play an important role in these social transformations and it is only through the medium of law that these social changes can be

appropriately coped up with and thus can be controlled and regulated. Thus it can be seen that the interplay between law and social change is a catalytic relation both being benefitted from each other and both being influenced by each other. Together they can bring out desirable changes needed for the welfare society.

Legislation, being the lengthy and complicated process, which has to be done with established norms of the law making, is felt short in answering the speedy change taken in the society. This can be to certain extent considered proper because the law cannot be changed or amended day by day neither the change of volatile nature needs the recognition of law. In the background of the same, the judiciary has stepped up with the job of interpreting the existing provision of the law with the interpretation according to changed situation of the society.

The interpretation of the law by the judiciary gives birth to new species of law called Precedents. This is very important aspect of the law. Where there is a lack of written or express provision of law, the expansion or assumption of existing facet of the law by the judge, considered as judge made law. So the proposition of law, propounded by the judge of Court of law which is converged from what has been laid down before by the legislation and which is not contrary to the basic principles of law, is considered as judge made law.

Indian judiciary has always been played pro active role in making the new interpretation of the law in accordance with the changing necessity of society. For instance, the interpretation given to the Art 14 in the case of *Chiranjitlal*<sup>i</sup>, *R. D. Shetty*<sup>ii</sup>, *Maneka Gandhi's case*<sup>iii</sup> have shown the pro activeness of Indian judiciary towards the changing nature of society. At the same time expansion of the scope of right to life and personal liberty under art 21 is the best example of the same. The role of higher courts in curbing corruption and preserving environment is well known. Indian Judiciary has been ideally dealing with the social transitions through effective interpretation of laws and it indeed reflects its keen approach towards adaptation of the progressive social changes as they are happening.

The role of Supreme Judiciary has become more important in the current phase of globalization and cultural transition. With the advent of information technology any information across the world can be accessed at a click of mouse. This in turn has resulted in intimation of foreign cultures and traditions bringing a significant change in the social arena and lives of the people. The emerging trends such as live in relationships, same sex marriages, recognition of rights of transgender, and legal recognition of assisted reproduction technologies are some of the glaring instances of it.

Live in relationship has been a modern concept where a man and woman can live together as husband and wife without being formally married. The concept has its emergence in the late twentieth century with the onset of modernity. Prior to this, there was only one legally recognized and socially approved mode of a man and woman living together called marriage, which almost prevailed in every part of the world. It had its own significance and importance. It has its special privilege as a sacred institution. Almost every country in the world and every religion recognized only mode of union of man with union called marriage. All the legal and social, rights and obligations followed through this mode of union.

With the advent of this novel form of relationship forth came the issues of rights and obligations of the live in partner and issues born to them. With all personal laws recognizing the rights of the spouses only out of sacred union through marriage these cohabitating relationship was a sort of challenge in the form of its legal implications. The Indian judiciary has taken this challenge effectively. Through various precedents it has tried to regulate this new social phenomenon. In *Khushboo vs Kanniamal*<sup>iv</sup>, *D.Velusamy vs D Patchaimmal*<sup>v</sup> and *Indra Sarma vs Union of India*<sup>vi</sup> are the cases where it granted recognition to live in relationships. Not only it granted recognition to live in relationships but also set down number of norms to regulate it.

Rights of transgender had been another burning issue before the Indian Judiciary. Transgender people are individuals whose gender identities do not pertain to their biological sex, and thus they differ from the stereotype of how men and women normally are. 'Transgender' does not include sexual orientation or physical sex characteristics, but is in fact a less clinical term which pertains to gender identity and gender expression. Thus transgender people encompass those people whose identity and behavior do not adhere to the stereotypical gender norms. They may be gay, transsexual, transvestite, or gender queer. Since the beginning of time and the existence of mankind, transgender have been very much a part of the society. It is just that they have been given

a name and a status in the society in recent times, and now there is even medical technology available especially for them.

In India, transgender people include hijras/ kinnars (eunuchs), shiv-shaktis, jogappas, Sakhi, jogtas, Aradhis etc. In fact, there are many who do not belong to any of the groups but are transgender persons individually. Transgender fall under the LGBT group (lesbian, gay, bisexual and transgender). They constitute the marginalized section of the society in India, and thus were facing legal, social as well as economic difficulties.

In National Legal Service Authorities case<sup>vii</sup> Supreme Court of India granted recognition to rights of transgender and identified their rights at par with the other genders adding new dimension to gender equality in India. The Supreme Court has affirmed the constitutional rights and freedoms of transgender persons, including those who identify as third gender and those who identify in a gender opposite to their biological sex, i.e., persons, assigned female sex at birth, identifying as male and vice-versa. By recognizing diverse gender identities, the Court has broken the binary gender construct of 'man' and 'woman' that has pervaded Indian law. The decision of the Supreme Court is a very positive towards elimination of the removal of gender bias. Thus what so far Supreme Court has been doing for promoting woman equality in its various decisions, so far the current decision can be seen as having far reaching effects in understanding the new dimensions of gender equality.

The rights of homosexuals had been another key issue on which the Judiciary had to address. With the advent of homosexual relations throughout the world and its legal acceptance by almost all the major legal system of the world had a close bearing on the homosexual movements in India. There had been a huge demand from such community in India regarding the recognition of their rights and legalizing same sex marriages in India. This was really a challenge before the Indian legal System where such kind of relationships considered as a sin and also kind of an offence under the Indian Penal Code<sup>viii</sup>. However in the significant Judgment given in a Naz foundation case<sup>ix</sup> the Delhi High Court recognized the rights of homosexuals. It was a affirmation of Indian legal system accepting this strange form of relationship. Though the decision was subsequently overruled by Supreme Court showing its inability to accept such relationships in Indian traditions and cultures still the subsequent admission of review petition by it, has been seen as ray of hope for thousands of homosexuals who are waiting for the affirmation of their rights as a homosexual.

Another significant social phenomenon which has entered the Indian scenario with the advent of modernity is the concept of surrogacy. The term surrogacy has been defined as the practice whereby one woman carries a child for another with the intention that the child should be handed over after the birth. The Gestational surrogacy and the traditional surrogacy have been the practiced forms of it. The moral issues involved with the surrogacy agreements are that it leads to the commoditization of the child and breaks the bond between the mother and the child and interferes with the nature and leads to the exploitation of the poor women in the underdeveloped countries. The legal issues such as right to reproduce, right to privacy, citizenship of the surrogate child and validity of the surrogacy agreements are prominent in this behalf. The Guidelines on Surrogacy and Assisted reproductive Technology in 2005 by Indian Council of Medical Research is only the guiding factor in that behalf. The Assisted Reproductive Technology bill had been pending in the Parliament since long. But even though the law making process on the subject has been slow and steady the problem of Surrogacy has been well tackled by Judiciary. In the case of Jan Balaz vs Anand Municipality<sup>x</sup> the Gujarat High Court not only upheld the validity of such agreements but also granted the Indian citizenship to the child. The Court further expressed its concern over the delay in the legislation over the subject.

All these decisions suggest that judiciary has been pro to these social changes. All these judgments strongly reflect the role of higher judiciary towards a progressive social change. Judiciary is backing up the social transformations in India which is indeed is a positive sign for a democratic State like India. These decisions not only show the pro activeness of the judiciary in accepting and legalizing these social transformations but also its will and desire to be accommodative to these inevitable social phenomenon.

- I. Chiranjitlal Chowdhari vs. Union Of India AIR 1951 SC 41
- ii. R.D. Shetty vs. International Airport Authority AIR 1979 SC 1628
- iii. Maneka Gandhi Vs Union of India AIR 1978 SC 597.
- iv. Khushboo vs. Kanniammal (2010) 5 SCC 600.
- v. D.Velusamy Vs D.Patchailmmal
- vi. Indra Sarma Vs V.K.V.Sarma 2013 (14) SCALE 448
- vii. National Legal Services Authorities vs Union of India
- viii. Unnatural sex is an offence within the meaning of Section 377 of Indian Penal code
- ix. Naz Foundation vs Govt of NCT of Delhi 160 Delhi Law Times 277
- x. Jan Balaz vs Anand Municipality and 6 others decided on Nov 11 2009



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