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COURT CASES AND SOCIAL ISSUES IN INDIA.**Gurmehar Randhawa¹ and Ananya Bose²****ABSTRACT**

As evidenced by the history of mankind, human wisdom has devised various methods and means to meet the structural changes in the social system that occur with the advancement of knowledge. Anthropologists and historians can investigate interactions and decisions in a wide range of social and political contexts, such as social and family relationships, criminality, environmental protection, natural resource management, religious practises, and human rights. The developing and broad culture of legality, as well as the increasing influence of the courts, have been blamed for the political and social elites' tentative hegemony, as well as its contestation. While the Indian Supreme Court is the sole guardian of India's fundamental rights, this is an unjust conclusion. Despite issuing these landmark, forward-thinking decisions, the Court has disappointed advocates on other, equally important issues, and strategic litigation has failed. The study seeks to ascertain the relationship between court decisions in India and the various social issues that it faces today. The researcher in this study took into account a number of factors, including the relationship between social structure and law, social transformation and law, and other issues such as PIL, slavery and bonded labour, governance and internet issues, and so on.

INTRODUCTION

“The history of mankind reveals that human wisdom has devised different methods and means to meet the structural changes in the social system which take place with the advancement of knowledge”³

What value does it add to our understanding of society to study court cases and legal documents? What role does the judiciary have in shaping social, economic, religious, and political issues? There is a widespread perception that the role of courts of law is expanding at the expense of other institutions and that judicial processes are increasingly adjudicating and

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³ Ajitesh Mohan, Social Transformation: Interplay between Law and Social Change (with Special Reference to India), 2, SSRN

managing all aspects of human life, from global issues to intimate relationships—a process dubbed "judicialization" by a growing body of literature.⁴

The impacts of this process have been assessed in a variety of ways. The developing and broad culture of legality, as well as the increasing influence of the courts, have been blamed for the political and social elites' tentative hegemony, as well as its contestation (Lazarus-Black and Hirsch 2010). "The way law and state have been organized during last two hundred odd years does not give that indication."⁵ The evolution of this juridical reasoning has significant ramifications for how society is understood to be properly organized, namely as a collection of people with equal rights rather than a structured community. As a result, the social fabric is completely reworked: "the language of the law... individuates the citizen and, by making cultural identity a private asset rather than a shared one, makes cultural identity a private asset rather than a shared one."⁶

The trend of "judicialization" in India dates back to British rule, particularly in the religious domain, where courts of law began to arbitrate disputes over endowments and other temple concerns in the second half of the nineteenth century. It has grown even more since Independence, not only in matters of religion, where the Supreme Court has acquired "a brooding omnipresence" that extends to ordinary legislation and even the exercise of executive⁷ powers, "3 as Upendra Baxi (2007:49) put it but also in other areas, as some of the following contributions show (e.g. Bhuwania, Smadja).

Law does not exist outside society, despite its status as a "semi-autonomous social sphere" (Moore 1973). As a result, anthropologists have stressed law as a process that cannot be separated since the 1950s. Distinguishing a legal domain from a political one, for example, appears to be extremely difficult, as Comaroff and Roberts have previously suggested: "legal" and "political" modes of dispute resolution, according to them, do not simply coexist; they represent poles in a single continuum that are "systematically related" and "transformations of

⁴ Academike. 2015. *Law and Society - Academike*. [online] Available at: <<https://www.lawctopus.com/academike/law-society/>> [Accessed 25 November 2021].

⁵ DR. A. P. Singh, The role of law in social transformation, 3, *Rostrum's Law review*, 2, 1 – 10, 2014

⁶ Jaisawal, n.d. *Interrelationship Of Law And Society*. [online] Legalserviceindia.com. Available at: <<https://www.legalserviceindia.com/legal/article-3334-interrelationship-of-law-and-society.html>> [Accessed 25 November 2021].

⁷ MIT OpenCourseWare. n.d. *Law and Society*. [online] Available at: <<https://ocw.mit.edu/courses/anthropology/21a-219-law-and-society-spring-2003/>> [Accessed 25 November 2021].

a single logic" (Comaroff and Roberts 1981:244; see also Kirsch and Turner 2009 on law and religion).⁸

Rosen (2006:xii) spoke on culture from a somewhat different angle, stating that "law is so deeply enmeshed in the particularities of each culture that separating it as a separate realm and then subsequently making notice of its cultural linkages distorts the character of both law and culture." This isn't to suggest that legal experts don't try to make the law separate from culture: in India, for example, cultural views are rarely used as reasons by parties during trials. However, once outside the courtroom, there are a plethora of cultural interpretations for the same situations, stated by the same characters.⁹

Law is a social institution fully integrated into social life, in contrast to popular belief that it is a separate sphere, owing to debates on the autonomy and formality of the law. "When a conflict enters the legal system and becomes a 'case,' its language is altered," said Conley and O'Barr. "The attorneys reformulate the selected stories to fit the legal categories' standards" (Conley and O'Barr 1990:168). Furthermore, as Veena Das pointed out in her article about the victims of the Bhopal catastrophe, "any reference to victims and their suffering merely helped to reify 'suffering' while dissolving the genuine victims in the legal discourse." The transformation of events and people into linguistic objects, as well as the application of broad, "logical" thinking to legal categories, relate to what has been called a "universalizing attitude" of legal language (Bourdieu 1987). Court cases do indeed combine this social construction of law as an abstract set of rules with the specific interests and motivations of those involved (litigants and legal professionals), touching on a wide range of domains—from social and family relationships to criminality, environmental protection, natural resource management, religious practices, and human rights. The transformation of events and people into linguistic objects, as well as the application of broad, "logical" thinking to legal categories, relate to what has been called a "universalizing attitude" of legal language (Bourdieu 1987). Court cases do indeed combine this social construction of law as an abstract set of rules with the specific interests and motivations of those involved (litigants and legal professionals), touching on a wide range of

⁸ Esudu, S., n.d. *On The Relationship Between Law And Society Today*. [online] Grin.com. Available at: <<https://www.grin.com/document/453478>> [Accessed 25 November 2021].

⁹ In.sagepub.com. n.d. [online] Available at: <https://in.sagepub.com/sites/default/files/upm-assets/86864_book_item_86864.pdf> [Accessed 25 November 2021].

domains—from social and family relationships to criminality, environmental protection, natural resource management, religious practices, and human rights.¹⁰

SOCIAL STRUCTURE AND LAW

The relation of the law, in all of its dimensions, to a social environment should be seen as an essential component of comprehending that situation. As a result, the creation of analytical forms that allow for such interconnected comprehension is essential. “People have a limited understanding of their environment, are sometimes short-sighted, and occasionally act in perverse ways.”¹¹ A socio-legal theory recognizes that legal interpretation is inextricably related to the study of the social context to which the law applies, and that law should be viewed through the lens of that situation, examining the role the law plays in the development, maintenance, and/or modification of the condition. It has been suggested that, due to the nature of the legal system and the social tasks it provides, it needs a unique type of examination than other social structures. “Social organization in our society exhibits the same regularities and conforms to the same scientific principles as do comparable phenomena among other societies.”¹² Nevertheless, it is not excluded from this study as a result, notwithstanding the frequently misused contrast of laws being prescriptive, and thus of social science method is inapplicable. Simply said, the requirement is a distinct strategy based on the need to ask different questions. A socio-legal method differs fundamentally from some of the most positivistic systems in that the whole emphasis, rationale for it, and meaning cannot and must not be related to other approaches. It does not reject other points of view, but rather establishes other ones. The conceptual distinction necessitates new theoretical assumptions as well as a new technique. Furthermore, as per a socio-legal perspective to legal research, how one thinks of "law" is part of the study technique. It has been suggested that, due to the nature of the legal system and the social tasks it provides, it needs a unique type of examination than other social structures. Nevertheless, it is not excluded from this study as a result, notwithstanding the frequently misused contrast of laws being prescriptive, and thus of social science method is inapplicable. Simply said, the requirement is a distinct strategy based on the need to ask different questions. According to the methodological assumptions of that theory, a

¹⁰ Berti, D. and Tarabout, G., 2018. *Introduction. Through the Lens of the Law: Court Cases and Social Issues in India*. [online] open edition journal. Available at: <<https://journals.openedition.org/samaj/4433>> [Accessed 20 November 2021].

¹¹ H. Peyton Young, *Individual Strategy and Social Structure - An Evolutionary Theory of Institutions*, 152, 1998

¹² psycnet.apa.org/record/1949-04761-000.

theory of law is independent of the social order, i.e. that law is normative and has its existence. While, according to the analytical criteria used, a theory of law is based on the social order, the law is a phenomenon inside society. 2g There are significant methodological interrelationships between the dependent and independent domains of law. So (a complete vacuum for law) or total political power (sovereignty theories). “A fundamental characteristic of social structure is the degree to which various forms of inequality and heterogeneity intersect”¹³. According to the methodological assumptions of that theory, a theory of law is independent of the social order, i.e. that law is normative and has its existence. While, according to the analytical criteria used, a theory of law is based on the social order, the law is a phenomenon inside society. 2g There are significant methodological interrelationships between the dependent and independent domains of law. So (a complete vacuum for law) or total political power (sovereignty theories). A theory of dependent legal phenomena can be subdivided into studies of law as secondary forces reliant on existing social structures (Durkheim), social controls (Ehrlich), and social systems (Ehrlich) (Parsons). In functionalist terms, the law may be seen as either playing a main role in developing other social criteria or as being shaped by those criteria. “It is for the same reason, incidentally, that the concept of structure assumes its fundamental importance in logic: there, too, comparability (without which there could be no systematizing of anything) is considered to rest on ‘relation likeness’, i.e. on structure.”¹⁴ Many sociologists and others have highlighted the social system's functional interdependence. As Julius Stone puts it:

“It seems clearer now than it was in 1945 that movements of thought and action touching the relations of law and society. in so far as they move into fruitful contact with other social sciences, must come to place more stress on the importance of cognition of the social and economic order in its complex unity.”¹⁵

INTERACTION BETWEEN LAW AND SOCIAL TRANSFORMATION

Changes in technology, demographics, and ideology, changes in political life and economic policy, and changes in legal principles or institutions all contribute to social transformation. According to American Judge Benjamin Cardozo, the "final cause of law is the benefit of society." Law should not be fixed, but rather be adaptable to the needs and desires of society.

¹³ Inequality And Heterogeneity - A Primitive Theory Of Social Structure, Office of Justice Programs www.ojp.gov/ncjrs/virtual-library/abstracts/inequality-and-heterogeneity-primitive-theory-social-structure.

¹⁴ 1, S.F. Nadel, *The Theory of Social Structure*, 163, Routledge, 2004

¹⁵ David N. Schiff,, *Socio-legal Theory: Social structure and law*, the modern law review www.jstor.org/stable/2230.1976.tb01458.x.pdf

The law cannot be unchangeable. Because of the communication revolution, social life has changed. As a result, to keep up with technological advancements, the law must be capable of detecting and preventing numerous offenses. With the rise of electronic commerce, cybercrime, and the internet, the methods of giving remedies have changed dramatically. Aside from them, legislation plays a critical role in environmental protection. The advancement of technology has put a significant strain on environmental deterioration. As a result, the legal system had to change its legal methods and implement new concepts, doctrines, processes, and so on to safeguard the environment, human habitation, and civic life. Aside from society and the environment, transformation occurs in the economic sector, culture, religion, morality, social viewpoint, and many other areas.

Again, legislation weaves its way through economic life, offering opportunities for economic progress but also imposing limits on the type of development through a plethora of statutes, such as Intellectual Property Rights.

- **Changes in the legislation are required.**

Any civilized country's law is not immutable but rather evolves in response to societal demands and circumstances. Law not only establishes the standards that are acceptable to a particular community, but it also establishes the norms that the society should follow in the interest of its well-being. The standards or code of behavior that a community develops through experience and formalizes as law for uniformity, consistency, performance, and penalty. As a result, an accepted standard becomes law. In criminal law, deviation from that point is a crime, but in civil law, it becomes a code of behavior that governs society. In general, the Indian court has been regarded to be sensitive to the requirements of social thought. The courts have introduced additional aspects to the law by introducing new consequences. As Justice P N Bhagwati correctly stated-

“It is the judge who infuses lifeblood into the dry skeleton provided by the legislature and creates a living organism appropriate and adequate to meet the needs of the society”.

To demonstrate the impact of legislation on social development, it is important to examine some specific changes that have occurred in India, because nothing is permanent, but change is.

- **Slavery and the bonded labor system were abolished.**

“Bonded labor, which is characterized by a long-term relationship between employer and

employee, is usually solidified through a loan, and is embedded intricately in India's socio-economic culture—a culture that is a product of class relations, a colonial history, and persistent poverty among many citizens. Also known as debt bondage, bonded labor is a specific form of forced labor in which compulsion into servitude is derived from debt.”¹⁶ To abolish slavery in India, the Indian Slavery Act was established in 1843, and sections 370 and 371 of the Indian Penal Code 1860 made it an offense. “Bonded labor is a sort of patronage when the minimum wage paid to the workers is barely enough to meet the daily expenses of the employee and the relation between the employer and employee is often characterized by unsettled and exploitative payment agreements which are beneficial to the employer.”¹⁷ Human trafficking and forced labor are protected as fundamental rights under Article 23 of India's constitution. Despite several attempts, the Act was the only way to properly address the issue of bonded labor. It is a serious crime to prevent a youngster from enjoying his youth. The Factories Act of 1881 was the first of its type, prohibiting the employment of children under the age of seven, and limiting working hours. “Children sold into bondage work longer hours over many years in an attempt to pay off the debts that bind them”.¹⁸ Many laws were enacted, culminating in the Child Labor (Prohibition and Regulation) Act of 1947, which generalizes the age of a child to 14 years to prohibit child labor. In Schedules A and B, the Act additionally lists 17 forbidden vocations and 65 procedures.

PUBLIC INTEREST LITIGATION

“Public interest litigation has historically been an innovative judicial procedure for enhancing the social and economic rights of disadvantaged and marginalized groups in India. In recent years, however, a number of criticisms of public interest litigation have emerged, including concerns related to separation of powers, judicial capacity, and inequality.”¹⁹

“PIL, offers a ladder to justice to disadvantaged sections of society, provides an avenue to enforce diffused or collective rights, and enables civil society to not only spread awareness about human rights but also allows them to participate in government decision making.”²⁰ The Honorable Supreme Court has adopted a wider interpretation of the concept of locus standi to allow public-spirited individuals to petition the courts to intervene in the general or collective

¹⁶ Devin Finn, Bonded Labor in India, 12, Topical research digest: Human rights and contemporary Slavery, 1-16, 2008

¹⁷ Radhika Kapur, Bonded labor in India, 2, Multidisciplinary International Journal, 2454-8103, 2016

¹⁸ Lee tucker, Child Slaves in Modern India: The Bonded Labor Problem, 19, Human Rights Quarterly, 1997.

¹⁹ Varun Gauri, Public Interest Litigation in India: Overreaching or Underachieving? 5109, World Bank Policy Research Working Paper, 2016

²⁰ Surya Deva, Public Interest Litigation in India: A Critical Review, 28, Civil Justice Quarterly, 19-40, 2009

interest even if they are not personally harmed in their rights. The most essential aspect of PIL is that, by loosening the locus standi idea, any public-spirited individual can approach the constitutional courts and raise to the courts' attention gross abuses of Fundamental Rights of those who are unable to contact the courts themselves. A PIL can also be filed in a magistrate's court under Section 133 of the Criminal Procedure Code.

PIL can also benefit people by allowing citizens, advocates, and social welfare organizations to bring cases on their behalf on behalf of persons who are unable to contact the courts. The philosophy of Public Interest Litigation (PIL) is consistent with the principles enshrined in Article 39A[a] of the Indian Constitution to secure and transmit social fairness via the use of law. In this Modern Era, PIL has gained amazing authenticity and constraining force, and it is considered a magnificent tool in the fight against legislative instability and community exploitation. The legal material sent by PIL suits provides legal assets to conduct struggles against control and severe abuse. It emerged as a means of enacting legal capacity to compel the administration to fulfill its duties. PILs today emphasize the affirmation of the interests of an individual or group of individuals who are either overcomer of administrative issues, abuse, or social maltreatment or who have been denied their genuine rights and who are unable to approach the court for the payment of their complaints due to a lack of resources, ignorance, or their burdened social and financial situation.

Public interest litigation emphasizes the right to equality, life, and individuality, as guaranteed by Part III of the Indian Constitution. Before the 1980s, only the offended party could seek justice in the courts. Following the end of the emergency period, i.e. after 1977, the high court contacted individuals and devised a procedure for any member of the public or NGO approaching the court to seek legal redress in instances when the public interest is at issue. PIL is concerned with the affirmation of the interests of an individual or group of individuals who are either overcomer of administrative issues, abuse, or social maltreatment, or who have been denied their genuine rights, and who are unable to approach the court for the payment of their complaints due to a lack of resources, ignorance, or their burdened social and financial situation. It emerged as a means of enacting legal capacity to compel the administration to fulfill its duties. PILs today emphasize the affirmation of the interests of an individual or group of individuals who are either overcomer of administrative issues, abuse, or social maltreatment or who have been denied their genuine rights and who are unable to approach the court for the payment of their complaints due to a lack of resources, ignorance, or their burdened social and financial situation.

- **Right to Information - A Prerequisite for Effective Governance**

“Good Governance is prerequisite for democracy. Such governance includes some factors such as transparency, accountability, rule of law and people’s participation. India is a democratic country and in every democratic country, there is a need of good governance and transparency”²¹

“Transparency and accountability in administration is the sine qua non of participatory democracy.”²² It is one of the most important and historic pieces of legislation in terms of social development, dating back to 1975 when the honorable Supreme Court ruled that freedom of speech and expression includes the right to know about every public act performed in public by their public servants. “RTI is the most fundamental law this country has seen from the local panchayat to parliament, from a nondescript village to posh Delhi, and from ration shops to the 2G Scam”²³. The right to know is implied in the right to free expression and expression, and transparency of information on government operations must be the rule. “Right to Information is a basic human right of every human being”²⁴ Because of its excellent implementation, “While the Right to Information Act 2005, being a Central legislation, allows State Governments to make Rules for its implementation. It attempts to create a practical regime for the exercise of the Fundamental Right to know and establishes a mechanism within the Government to facilitate the same, in an alternate to judicial enforcement.”²⁵ the Right to Information Act of 2005 has proven to be a robust piece of law with teeth. “However, use of the law was constrained by uneven public awareness, poor public planning, and bureaucratic indifference or outright hostility.”²⁶

CONCLUSION

Law practices and their discursive productions provide a way for anthropologists and historians to study interactions and decisions in a variety of domains of social and political life, ranging from social and family relationships to criminality, environmental protection, natural resource management, religious practices, and human rights. Studying how people utilize law and how it affects their lives is all the more essential since, despite delays, inadequate facilities, and

²¹ Shilpa, Right to Information Act: A Tool to Strengthen Good Governance and tackling corruption, 2, International Journal of Humanities and Social Science Invention, 2319 – 7722, 2013.

²² Sahina Mumtaz Laskar, Importance for good governance in India, 21, Bharati Law Review, 216, 2016

²³ Aruna Roy, Right to information act – A tool for good governance, 3, Rustron’s Law Review, 3, 2-10, 2016

²⁴ Gunjan Arora, Right To Information Act: A Tool For Good Governance, 2, IJARIII, 2395-4396, 2016

²⁵ Right to Information and Good Governance, onlinecourses.nptel.ac.in/noc20_lw01/preview.

²⁶ Alasdair Roberts, A Great and Revolutionary Law? The First Four Years of India’s Right to Information Act, 24, Public administration review, 2010.

pervasive corruption, courts are frequently the best, if not the only, way for many people to get their complaints resolved. As a result, the Courts are humming with activity, demonstrating the critical role they play in society as centers of authority that influence every aspect of life.²⁷

The Supreme court has given various landmark judgment that has influenced and helped society to develop the first time, the Supreme Court determined in 2017 that there is a fundamental right to privacy. Gender and sexuality-related rights have also been developing and being protected during this period. In a landmark decision, the Supreme Court narrowed the rape exemption to make child marital rape a criminal offense 2018, the Supreme Court ruled that Section 377 of the Indian Penal Code, which criminalized same-sex partnerships, was unconstitutional in the context of consenting adult relationships, in response to a series of petitions submitted by gay, lesbian, and transgender people. In a separate case, the penal offense of adultery, a colonial relic in the Indian Penal Code, was declared unconstitutional because it discriminates against women and promotes sex stereotyping. The Indian Supreme Court has made a significant contribution in the year of the #metoo campaign, which has transformed public discourse on gender relations throughout the world, including in India.²⁸

In other decisions involving religion and women's rights, the Supreme Court found the practice of Muslim personal law's immediate triple talaq (i.e., quick divorce) unlawful and invalidated the Sabarimala Temple's restriction on women of menstrual age. These victories are not insignificant. The Supreme Court has addressed religion and discriminatory practices front-on²⁹ by taking on religion and enshrining gender equality as a non-negotiable aspect of the right to religious freedom. Following these verdicts, there has been widespread public resistance to women attempting to enter the Sabarimala Temple, and the government has even filed review petitions to overturn the decision.³⁰

While the Indian Supreme Court can be the sole guardian of India's basic rights, this is an unjust conclusion. Although the Court has issued these historic, progressive decisions, it has disappointed advocates on other equally critical issues, and strategic litigation has failed. The

²⁷ Berti, D. and Tarabout, G., 2018. *Introduction. Through the Lens of the Law: Court Cases and Social Issues in India*. [online] open edition journal. Available at: <<https://journals.openedition.org/samaj/4433>>

²⁸ In.sagepub.com. n.d. [online] Available at: <https://in.sagepub.com/sites/default/files/upm-assets/86864_book_item_86864.pdf> [Accessed 25 November 2021].

²⁹ Esudu, S., n.d. *On The Relationship Between Law And Society Today*. [online] Grin.com. Available at: <<https://www.grin.com/document/453478>> [Accessed 25 November 2021].

³⁰ Kothari, J., n.d. *India's Supreme Court is making landmark judgements in social change*. [online] OpenGlobalRights. Available at: <<https://www.openglobalrights.org/Indias-Supreme-Court-is-making-landmark-judgements-in-social-change/>> [Accessed 20 November 2021].

government's Aadhaar program requires every Indian citizen to receive a unique ID number and to share biometric and personal data, making the Aadhaar number necessary for receiving welfare and benefits. The initiative was challenged by many civil society organizations, but the Supreme Court supported it in a majority judgment, refusing to identify it as a breach of the fundamental right to privacy. There are several reasons why this case did not prevail. One of the reasons for the project's failure is that the strategic litigation failed to gather together various civil society forces to oppose it. The anti-Aadhaar campaign was a minor part of India's broad and thriving human rights movement. All of our strategic litigation experiences have proven that litigation wins when there is grassroots activism, action, and momentum, which is supported by collaborations throughout the human rights movement. The S. 377 case, for example, saw the conventional homosexual rights movement join forces with transgender groups, women's groups, and mental health specialists, among others. While individual Muslim women challenged the practice in the Triple Talaq case, many organizations from the women's movement intervened, including Muslim women's groups, academics, and human rights organizations campaigning against it; this united effort ultimately resulted in the verdict.³¹

There are lessons to be learned for future litigation in India to preserve basic rights. However, there is no doubting that public interest litigation in India has gotten a new lease on life in recent years. If we learn properly from past experiences—both successes and failures—its impact will grow even more in the years ahead. However, when the gap between the (lack of) efficacy in resolving popular concerns and a rising understanding of the rights to which people, as citizens, are entitled increases, these collective activities target the courts as well as the administration or politicians.³²

³¹ Jaisawal, n.d. *Interrelationship Of Law And Society*. [online] Legalserviceindia.com. Available at: <<https://www.legalserviceindia.com/legal/article-3334-interrelationship-of-law-and-society.html>> [Accessed 25 November 2021].

³² Kothari, J., n.d. *India's Supreme Court is making landmark judgements in social change*. [online] OpenGlobalRights. Available at: <<https://www.openglobalrights.org/Indias-Supreme-Court-is-making-landmark-judgements-in-social-change/>> [Accessed 20 November 2021].