

(6) Law is Social Engineering :

Roscoe Pound (1870–1964), an American jurist, rightly associated with the thesis that law is social engineering. He was the leading exponent of sociological jurisprudence, the idea that the law must be sufficiently flexible to take into account social realities in order to provide the maximum of people's wants with the minimum of friction and waste. According to him, 'Law is social engineering which means a balance between the competing interests in society', in which applied science are used for resolving individual and social problems.

There are various competing/conflicting social interests in the society as a whole. Law is one of the very important mechanisms by which a relative balance of stability is maintained in a dynamic or rather precariously balanced society. The function of law is to reconcile the mutually competing/conflicting social interests with a view to maximize the total social interests. But, the main function of the law is, to act as an effective instrument of social engineering, that is balancing the competing/conflicting interests in the society fulfilling the maximum of wants with the minimum of friction.

He classifies legally protected interests into three main categories: (a) Public interests, (b) Private interests and (c) Social interests.

(a) Public Interest.—The public interests should be at first, the interests of the State as a juristic person in the maintenance of its personality and substance. The innovation of Public Interest Litigation (PIL), has liberalized the concept of *locus standi* for those, who due to lack of sound economic conditions are deprived to have access to court to seek justice for their rights. Any public-spirited person or social action group through the new innovative PIL strategies are allowed to move to the court for seeking redressal to the genuine grievances and restituting rights, claim and entitlements of the poor, down-trodden, ignorant and illiterate.

(b) Individual interest.—Pound enumerates three kinds of individual interests: interests of personality, of domestic relations, and of substance.

Interest of personality includes the protection of physical integrity, freedom of will, reputation, privacy, freedom of belief and opinion. They would cover such branches as law of defamation, principles of contract or the limitations of the power of the police to interfere in meetings, privacy, possession of property, etc.

The interests of domestic relations mainly concern the legal protection of marriage, maintenance claimed and the legal relations between parents and children. They cover such problems as the parental right of corporeal punishment, parental control over the earnings of the children and the powers of supervision of Juvenile Courts [Juvenile Justice Boards] over the legal relations between parents and children.

Interest of substance includes the protection of property, freedom of succession in testamentary dispositions, freedom of industry and contract, and

the consequent legal expectations of promised advantages. Pound also includes the right of association although one would expect this to be an interest of personality rather than an interest of substance.

(c) Social interests.—Social engineering means a balance between the competing interests in society, in which applied sciences are useful for resolving individual and social problems. Pound enumerates six paramount social interests as—

- (i) *The social interest in general security.*—This interest includes the interest in the legal protection of peace and order, of health and safety, of security of transactions and acquisitions.
- (ii) *Security of the social institutions.*—The security of the social institutions cover the protection of domestic relations with political and economic institutions long recognized in legal provisions, securing the institution of marriage or protecting the family as a social institution. Such problems as the balancing of the sanctity of marriage against the right of divorce, or the undesirability of actions between husband and wife against the general right to claim damages for wrong done, or the balance between the protection of established religious institutions and the claim of the freedom of belief, come under this general heading.
- (iii) *Protection of society against moral disruption.*—The social interest in the general morals concerns the protection of society against moral disruption. Provisions against corruption, gambling, blasphemy, the invalidity of transactions contrary to good morals, or the stringent provisions regarding the conduct of trustees, come under this heading.
- (iv) *The conservation of social recourses.*—The social interest in the conservation of social recourses is described by Pound as — “*the claim or want or demand involved in social life in civilized society that the goods of existence shall not be wasted*”. The law as to riparian rights or things of common usage, and the modern tendency to deny legal protection to “abuse of rights” fall under this category.
- (v) *Social interest in general progress.*—The claim, want or demand involved in social life of civilized society is that the development of human powers and human control over the nature of satisfaction of human wants go forward; the demand that social engineering be increasingly and continuously improved; as it were, the self assertion of social group towards higher and complete development of human powers.

The category is both the vaguest and the most controversial of all. In Pound's own view, it comprises of four major policies. *viz.*, freedom of property, free trade and protection against monopoly, freedom of industry, and encouragement of invention. Pound himself admits that some of these policies have had to give much

ground in recent legislation and judicial decisions, and the fundamental assumption that these four policies are in themselves guarantees of general progress depends on certain basic political and economic beliefs. Pound includes in the same category the interest of political progress, through the protection of free criticism, fair comment, freedom of education and others.

- (6) *Social interest in individual human life.*—The claim, want or demand involved in social life in civilized society is that each individual be able to live a human life therein according to the standards of the society.

It is the interest which Pound describes as "in some ways the most important of all". It is recognized in the legal protection to free speech or freedom of vocation as well as, with changing strength and emphasis, in freedom of industry.

India has adopted the principle of social engineering, so as to maintain a proper balance between individual liberty and social control in order that the freedom guaranteed to the individual may subserve the larger needs of the community and thus insure orderly progress towards securing socio-economic justice.

The Bombay High Court has observed that where there is a conflict of private interest to carry on a particular activity which the public authority considers as damaging to the social interest, surely, the power under the statute has to be read as an enabling power.¹

(7) Law as an instrument of social change :

The Hon'ble **Supreme Court** has observed that, "an unusual fact situation posing issues for resolution is an opportunity for innovation. Law, as administered by courts, transforms into justice. The law does not operate in a vacuum. As social norms and values change, laws too have to be reinterpreted, and recast. Law is really a dynamic instrument fashioned by society for the purposes of achieving harmonious adjustment of human relations by elimination of social tension and conflicts."²

Justice V.R. Krishna Iyer said, "Justice is the basis of any society that wants peace and progress. Law is the instrument for delivering of justice. And yet the tragic truth is that law is often not on talking terms with justice and is even hostile to it. This shall not be a new awareness, a creative consciousness, a purposive art which will expose this unjust and unjustified antagonism and promote a cross fertilization of law and justice is the demand the people make out on the jurists statement."³

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

1. *Melpant Infertility Clinic Pvt. Ltd. and Ors. v. Appropriate Authority*, FNDT Act, 2004 (4) M.S.L.J. 1074 - AIR 2005 Bom 26 - 2005 (107) Bom LR 737.

2. *H.P. Acharya Anand v. S. Appt. Body*, (2005) 3 SCC 313.

3. Justice V.R. Krishna Iyer, Legal News and Views August, 2003.

through enactment of statutes. In India, every session of Parliament and State Legislature introduces the Bills to amend 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 the requirement 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, **Justice Arjuna Pasayat** 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 the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it to 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."¹

Social changes are necessary within the society for its development. The 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 certain things if you want to change these things, 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. In India, law prohibited slavery, bonded labour, sati, child marriage, child labour, and advocated free and compulsory primary education, approved of widows' marriage, introduced country adoption, rehabilitation of prostitutes and their children, protection of women from sexual harassment at working places, and also introduced compensation to the victim of crime, etc.

It is to be noted that social change is necessary in every society and it is possible if it takes place by the instrument of law. There is no value of moral change 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.

(a) Abolition of slavery and bonded labour system :

The history of slavery reveals that in 6800 B.C Mesopotamia was the world's first city to introduce ownership of land and with the beginning of agriculture technology came warfare in which enemies were captured and forced to work as slaves. In 2575 B.C., Egyptians sent expeditions down the Nile River to capture slaves. In 550 B.C., the mighty Greek city-state of Athens used up to 30,000 slaves in the silver mines it controlled. In 1000, slavery was not only a practice in England's rural economy, as destitute agricultural workers pledged themselves and their families in a form of debt bondage to landowners.

data reveals so on. In 1641, Massachusetts became the first British colony to legalize slavery.

On the other hand, as far as abolition of slavery is concerned, it began in 1781; Holy Roman Emperor Joseph II abolished serfdom in the Austrian Habsburg dominions. In 1789, during the French Revolution, the National Assembly adopted the Declaration of the Rights of Man, one of the fundamental charters of human liberties. The first article of the declaration stated, "*Men are born and remain free and equal in rights.*" In 1807, after prolonged lobbying by abolitionists in Britain, led by William Wilberforce and Thomas Clarkson, the British Parliament made it illegal for British ships to transport slaves and for British colonies to import them.

In Britain, the Abolition Act of 1833 abolished slavery throughout the British Empire, including its colonies in North America. The purpose of the slavery abolition Act was to abolish slavery, for promoting the industry of the manumitted slaves and for compensating the persons hitherto entitled to the services of such slaves. The bill emancipated the slaves in all British colonies and appropriated a sum equivalent to nearly \$100 million to compensate slave owners for their losses. In 1837, Thomas F. Buxton began a campaign to abolish coolie labour in India. He argued that coolie labour amounted to slavery.

To remove slavery from India, in 1843, India Slavery Act was passed and later on declared it an offence by sections 370 and 371 of IPC, 1860. After the revolution of 1848 in France, the new government abolished slavery in all French colonies. Brazil had abolished it in 1850, Russia in 1861, U.S. in 1863. In 1888, Brazil freed the country's 725,000 slaves by enacting the Lei Aurea (Golden Law).

Following the Civil War in the United States, hundreds of thousands of African-Americans were re-enslaved in an abusive manipulation of the legal system called "peonage." Across the Deep South, African-American men and women were falsely arrested and convicted of crimes, then "leased" to coal and iron mines, brick factories, plantations, and other dangerous types of work. The system began to slow after the First World War, but didn't fully end until the 1940s.

The International Labour Organization in 1919 and League of Nations in 1920 were founded as international agencies. In 1930, the Forced Labour Convention was formed due to the combined efforts of the League of Nations and the International Labour Organization. The Convention sought to protect the rights of colonial labourers. Unfortunately, the League of Nations lost its existence during the Second World War. But, soon it was felt that without an international organization, peace at international level was difficult, therefore, in 1945 United Nations, took the place of the League of Nations.

In 1948, the United Nations produced the Universal Declaration of Human Rights. Article 4 provides : "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."

Article 23 of the Constitution of India protects trafficking of human being

and forced labour as a part of fundamental rights. But, there are number of incidents of *dasi partha* (slavery system) even after independence. India has also passed a law banning bonded labour in 1976. But the practice persists to this day. In 2005, the ILO published the Global Report on Forced Labour and estimated worldwide 12.3 million slaves

(b) Abolition of *sati* system :

It was a great honour to become *sati*¹ among the Hindus from ancient time and it was not opposed even by the Hindu sages for a long time. The first formal ban was imposed by Britishers in 1798, in the city of Calcutta. The practice continued in surrounding regions. The movements against abolition of *sati* put pressure on the Company to ban the act, and the Bengal Presidency started collecting figures on the practice in 1813. From about 1812, the Indian social reformer **Raja Rammohan Roy** started his own campaign against the practice, as he was deeply moved by seeing his own sister-in-law being forced to commit *sati*.

There were no reliable figures for the numbers who died by *sati* across the country. A local indication of the numbers was given in the records kept by the Bengal Presidency of the British East India Company. The total figure of known occurrences for the period 1813 to 1828 was 8,135;² another source gives a comparable number of 7,941 from 1815 to 1828,³ thus giving an average of about 507 to 567 documented incidents per year in that period. Raja Ram Mohan Roy estimated that there were ten times as many cases of *sati* in Bengal compared to the rest of the country. **William Bentinck**, in his report of 1829, stated that 420 occurrences took place in one (unspecified) year in the 'Lower Provinces' of Bengal, Bihar and Orissa, and 44 in the 'Upper Provinces' (the upper Gangetic plain).⁴

On 4th December, 1829, the practice was formally banned in the Bengal Presidency lands, by the then Governor, Lord William Bentinck by passing a Regulation XVII of 1829-A regulation for declaring the practice of *Sati*, or of burning or burying alive the widow of Hindus, as illegal and punishable by the criminal courts [passed by G.-G. in C., Dec. 4, 1829].⁵ The ban was challenged in the courts, and the matter went to the Privy Council in London, which was upheld in 1832. Other company territories also banned it shortly

after. Jaipur banned the practice in 1846.¹ Even after the custom was outlawed, this custom did not vanish completely.

In fact, sati is not suicide, but cold-blooded murder. In many instances, it is found that woman cried and also ran away from the pyre, but, the people surrounding the pyre caught her and pushed her into burning pyre of her husband. In the case of suicide, the person committing suicide lights her pyre herself, but here other person lights the pyre. Between 1980 and 1983, some instances of Sati were reported from U.P., M.P. and Rajasthan. This time legislature took serious steps by introducing a special law for the treatment of persons who abet Sati and made it exemplary punishable up to death sentence under Commission of Sati (Prevention) Act, 1987. Now almost all areas of India have forgotten Sati system. In 2001, one case of sati was reported from Jammu and Kashmir.

(c) **Approval of widows' remarriage :**

In order to protect their family honour and family property, upper-caste Hindu society had long disallowed the remarriage of widows, even of child and adolescent ones, and all of them were expected to live a life of austerity and abnegation. **Ishwar Chandra Vidyasagar** pressed on and urged the British to pass legislation that would allow Hindu widows to remarry. To support his request, he collected almost 1000 signatures and sent his petition to the Indian legislative council. The council received thousands of signatures for and against this measure, but the members finally decided to support the enlightened minority, the Hindu Widow Remarriage Act was passed in 1856.

The **Hindu Widows' Remarriage Act, 1856** (Act XV of 1856) was enacted on 25th July, 1856, to legalize the remarriage of Hindu widows and to provide legal safeguards against loss of certain forms of inheritance for remarrying a Hindu widow in all jurisdictions of India under East India Company rule. The Act especially targeted Hindu child widows whose husbands had died before consummation of marriage. This was an Act to remove all legal obstacles to the marriage of Hindu Widows. It was enacted as follows :

- No marriage contracted between Hindus shall be invalid, and no issue of such marriage shall be illegitimate, by reason of the woman having been previously married or betrothed to another person who was dead at the time of such marriage by any custom or any interpretation of Hindu Law to the contrary notwithstanding.
- All rights and interests which any widow may have in her deceased husband's property by way of maintenance or by inheritance to her husband or to his lineal successors or by virtue of any will or testamentary disposition conferring upon her, without express permission to remarry, only a limited interest in such property, with no power of alienating the same, shall upon her re-marriage cease and determine as if she had then died; and the next heirs of

her deceased husband or other persons entitled to the property on her death, shall thereupon succeed to the same.

- A widow shall not by reason of her re-marriage forfeit any property or any right to which she would otherwise be entitled, and every widow who has re-married shall have the same rights of inheritance as she would have had, had such marriage been her first marriage.

Despite the great efforts by Vidyasagar, Jyotirao Phule and many other reformers, widows' remarriage never received the approval of the society. William Hay Macnaghten said in 1862 that second marriages after the death of the husband, are wholly unknown to the Hindu Law; though in practice, among the inferior castes, nothing is so common.

In fact, the problem of widows, and especially of child widows, was largely a prerogative of the higher Hindu castes among whom child marriage was practised and remarriage was prohibited. Irrevocably, eternally married as a mere child, the death of the husband she had perhaps never known left the wife a widow, an inauspicious being whose sins in a previous life had deprived her of her husband, and her parents-in-law of their son, in this one. Doomed to a life of prayer, fasting, and drudgery, un-welcome at the celebrations and auspicious occasions that are so much a part of Hindu family and community life, her lot was scarcely to be envied, even after independence. But, now-a-days remarriage of Hindu widow is common but not in all the cases.

(d) Prohibition of child marriage :

In our society, the marriage of a child was solemnized in his/her childhood. It was opposed by Shri Jyotirao Phule, Maharishi Dyanand Saraswati, Mahatma Gandhi and many other reformers and they had suggested prohibition of child marriage. Even, at the time of marriage, spouses were not aware about the meaning of marriage, but society had changed their personal laws. Christians (1872), Parsis (1936) and Hindus (1978) had introduced in their Acts that marriage of a boy below the age of 21 years and girls of 18 years is not a valid marriage and hence it is voidable.¹ Muslim law also provides that spouse at the time of marriage should be at puberty. In 1929, an Act was enacted to restrict the child marriage in Indian society by the Child Marriage Restraint Act, 1929, which made it punishable. According to the Act, child meant a person who, if a male, has not completed twenty one years of age, and if a female, has not completed eighteen years of age. Presently, some areas of Rajasthan, Gujarat and Madhya Pradesh witness child marriages.

On 10th January, 2007, the Child Marriage Restraint Act, 1929, was substituted by the Prohibition of Child Marriage Act, 2006. It introduces 'Child Marriage Prohibition Officer' and extended the power of family court to decide the matter under the Act. The Act says that child marriages are to be voidable at the option of contracting party being a child. The Act also provides for maintenance and residence to female contracting party to child marriage. The

Act recognizes legitimacy of children born of child marriages, and empowers the court in deciding of custody and maintenance to a child born from such marriage. The Act also enhanced the punishment up to two years' rigorous imprisonment, or with fine up to Rs. 2,00,000, or with both. The Act also declares marriage of a minor child to be void in certain circumstances. The courts are also empowered to issue injunctions prohibiting child marriage. Child marriages in contravention of injunction orders shall be void. The offences under this Act are cognizable and non-bailable.

The Karnataka High Court in its landmark judgement held that the Prohibition of Child Marriage Act, 2006, is applicable to all the citizens of India, except J&K. Therefore, no citizen on the ground of his belonging to a particular religion, can claim immunity from the application of the Act.¹

Child marriage is a common practice in many countries around the world, however it is especially prevalent in India, where more than one third of all child brides live. According to UNICEF, 47% of girls are married by 18 years of age, and 18% are married by 15 years of age.² According to Census of 2001, some 300,000 girls in India who were under the age of 15 had already had at least two or more children. It is not surprising, that these girls are also the most vulnerable to ill health, due to early pregnancies and pregnancy related complications.

On the other hand, according to NCRB Reports, in 2009 there were only five cases of child marriage recorded in across the country, whereas it was 104 in 2008, 60 in 2010, 113 in 2011 and 169 in 2012. In fact, being a social problem, society creates hurdles in making complaints of the incidents of child marriage; it has even been observed that higher officials from police and government are present in the marriage ceremony. In some of the cases, initially such cases are reported by social defence officer but withdrawn just after, due to social and political pressure. This kind of behaviour of society discourages the officers to report the cases. It also has been observed that some of higher government officials are pressurizing the concerned officers for not reporting such cases. On the other hand, *Khap Panchayats* are arguing to reduce the minimum marriageable age of girls. According to them, it increases the incidents of rape. Therefore, it is also not priority of the police and other stakeholders.

(e) Elimination of child labour :

In India, the Factories Act, 1881, was the first Act to prohibit employment of child below the age of seven years and working hours were limited to nine hours for a child between seven to twelve years of age, which was amended as the time passed in the subsequent amendments made in the Factories Act. The special legislation to prohibit pledging of the labour of children is the Children (Pledging of Labour) Act, 1933. According to the Act, an agreement to pledge the labour of a child, below the age of 15 years, shall

be void and therefore, making of an agreement for pledging labour of child, made an offence. Under the Act, the parent, the employer and the contractor, as the case may be, are punishable in their capacity if such agreement is taken place. The Act is still in force. Another special legislation was passed in 1938, in the form of the Employment of Children Act, 1938, to prohibit child labour in hazardous processes. Initially, under both the Acts child means a child below the age of 15 years.

Besides these legislations, the Factories Act, 1948, the Plantation Act, 1951, the Mines Act, 1952, the Merchant Shipping Act, 1958, the Motor Transport Workers Act, 1961, the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, and the [State] Shop and Establishments Act, prohibit child labour in their sphere. In 1986, the Employment of Children Act, 1938, was substituted by the Child Labour (Prohibition and Regulation) Act, 1986. The Act generalizes the age of child to 14 years for the purpose of prohibition of child labour. Presently, the Act listed 17 prohibited occupations and 6 processes in Schedules A and B.

In practice, all these enactments are on paper and child labour continues across the country. The Hon'ble Supreme Court has also observed that child labour cannot be eliminated until the rescued child cannot be rehabilitated by the Government. The Government has introduced many schemes and made right to education as free and compulsory, but facts reveals otherwise. In 2001 census, there were 12.67 million working children which came down to 12.63 million in 2011. In the recent development, the Government has drafted a Bill to amend the Child Labour Act to abolish child labour up to 14 years of age in all kind of work and proposed to regulate for 14-18 years in non-hazardous work.

(f) Right to elementary education (Free and Compulsory) :

The root of education in India may be traced from Veda, Purana, Ramayana and Mahabharata era and then after to Kings, Moguls and British administration. But in these all administrations, education was limited only for privileged classes of the society. It was not available for all people, i.e. the well known incident of Ekalavya from Mahabharata, where he was refused by educational institution to admit him in the institute on the ground that he belonged to backward class, and later on Guru Dronacharya had asked his thumb in gurudakshina. The above incident reveals that during Mahabharata era, all people were not entitled to be educated, but only some of the classes were privileged to have access to education.

Since almost two centuries, the State has been making some endeavour to provide free and compulsory education since 1813 in one form or the other. Clause 43 of the Charter Act of 1813 made education a State responsibility.¹ The Hunter Commission (1882-83) was the first to recommend universal education in India. Thereafter, the Patel Bill, 1917, was the first

compulsory education legislation. It proposed to make education compulsory from ages 6 to 11. Shri Bal Gangadhar Tilak, Jyotirao Phule, Pt. Nehru and almost all social reformers of that time were in support of education.

Shri **Gopal Krishna Gokhale** while debating a Bill on compulsory education in the Imperial Legislative Council in 1911 had said that elementary education be both compulsory and free. The Government of India Act, 1935 provided that education should be made free and compulsory for both boys and girls. Free and compulsory education got a further boost when the Zakir Hussain Commission recommended that the State should provide it. The 1944 Sargent Report strongly recommended free and compulsory education for children aged six to fourteen. By 1947, primary education had been made compulsory in 152 urban areas and 4995 rural areas.

In 1992, the Supreme Court declared right to free and compulsory education as fundamental right in the ambit of 'right to life' under Article 21 of the Constitution.¹ In judicial review, it was restricted by larger bench of the Supreme Court up to the age of 14 years.² In 2002, the Constitution was amended by inserting Article 21A to implement the right to free and compulsory education of every child aged between 6-14 years and inserted fundamental duties of the parents/guardian to send their child/ward to school and also substituted Article 45 accordingly. In 2010, the Right of Children to Free and Compulsory Education Act, 2009, was put in force with effect from 1st April to provide free and compulsory education from I to VIII standard to every child. The Central Government also introduced Rules (Model) to implement the Act.

The Supreme Court has observed that most Western countries enjoy almost universal literacy, while 35% of our population is illiterate. While a robust financial incentive programme may not have been possible in 1917, it is today. If we wish to develop further, we must educate each and every citizen aged six to fourteen.³ The national level literacy rate has shown significant increase from 52% in 1991 to 66% in 2001 and 74% in 2011.⁴ According to the Census 2011, 82.14% of male are literate, whereas the figures for women are 64.46%. This is the figure of literacy, not of the educated persons.

(g) Introduction of Social or Public Interest Litigation :

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

The innovation of Public Interest Litigation (PIL) has liberalized the concept of *locus standi* for those, who due to lack of sound economic conditions are deprived access to court to seek justice for their rights. Any

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

The innovation of Public Interest Litigation (PIL) has liberalized the concept of *locus standi* for those, who due to lack of sound economic conditions are deprived access to court to seek justice for their rights. Any

public-spirited person or social action group. These strategies are allowed to move the court for seeking redressal to the genuine grievances and restituting rights, claim and entitlements of the poor, downtrodden, ignorant and illiterate persons.

The courts exercising their power of judicial review found to their dismay that the poorest of the poor, deprived, the illiterate, the urban and rural unorganized labour sector, women, children, handicapped by 'ignorance, indigence and illiteracy' and other downtrodden have either no access to justice or had been denied justice. A new branch of proceedings known as 'Social Interest Litigation' or 'Public Interest Litigation' was evolved with a view to render complete justice to the aforementioned classes of persons. It expanded its wings in course of time. The courts in *pro bono publico* granted relief to the inmates of the prisons, provided legal aid, directed speedy trial, maintained human dignity and covered several other areas. Representative actions, *pro bono publico* and test litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wished to bypass the real issues on the merits by suspect reliance on peripheral procedural shortcomings.¹

PIL is actually a collective effort on the part of the public-spirited citizens, the State and the courts of law, to secure the entitlement of constitutional and legal rights made available to the citizens by welfare legislation. Through PIL, social control has been organised by the courts to ensure accountability of the State or the Public authority to the people. The social change, which has been brought about by the courts, is aimed at providing social justice by enlarging the area of social action to achieve the goals. Liberal interpretation of the law keeping in mind the aspirations of the developed society is judicial creativity and when used with judicious restraint and caution plays a great role in the evolution and development of law.

The task of judges takes them deeper into the future to make decisions, which will affect the future course of social, economic and even political development and therefore they have to be aware of the social needs and requirement and adapt law to the changing needs and requirements of the peoples.

The Hon'ble Supreme Court held that PIL is not a pill or a panacea for all wrongs. It is essentially meant to protect basic human rights of the weak and the disadvantaged and is a procedure which is innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief.²

The Hon'ble Chandigarh High Court held that PIL was initially resorted to ventilate the grievances of the poor, ignorant and socially disadvantaged segments of the Indian society. By normal process, many weaker sections of

the society are not able to reach the portals of justice due to the normally tardy (slow) and expensive procedure of law. PIL is resorted for protecting the human rights of the weaker sections of the Indian society guaranteed under Article 21. Merely because a writ petition is stated to be filed in public interest is not to be taken by the courts on its face value. The courts have to examine as to whether the petition has been bona fide presented to protect any of the fundamental rights or to root out any particular menace in the society.¹

The Supreme Court held that the court must not allow its process to be abused by politicians and others to delay legitimate administrative action or to gain a political objective.² Today, public spirited litigants rush to courts to file cases in profusion under this attractive name. They must inspire confidence in courts and among the public. They must be above suspicion.³ It has been said that public interest litigation is a weapon which has to be used with great care and circumspection. Further, the court held that public interest litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters for entertainment of such petitions.⁴

(h) Prevention of prostitution and rehabilitation of prostitutes :

Prostitution has been an age old trend in the Indian society and no one today can even find out the approximate date from when this profession came into existence. It is claimed that it has been a part of our society even before Christ came into existence. Though surprising, it is still true that prostitution has still not got any specific legal recognition in our country. One can say that it is neither illegal nor legal in India. In 2007, the Ministry of Women and Child Development reported the presence of 2.8 million sex workers in India, with 35.47% of them entering the trade as child prostitutes before the age of 18 years. According to a survey, there are approximately 10 million sex workers in India out of which 1,00,000 are in Mumbai alone, Asia's largest sex industry centre. There about 300,000 to 500,000 children in sex trade in India, among which Bangalore along with five cities together account for 80% child prostitutes in the country. This is the extent to which prostitution is prevalent in India.⁵ Currently, prostitution in India is a Rs. 40,000 crore annual business.

In India, although prostitution, when practiced privately, is not illegal, but keeping brothels, pimping and any public act of seduction is illegal. Many innocent victims are forced into prostitution by their husbands, relatives, many get kidnapped and are forced, others enter due to lack of resources, or they fall prey to tricks. In 1956, the Immoral Traffic (Suppression) Act (SITA), 1956

was passed, the title of which was substituted in 1986 by "the Immoral Traffic (Prevention) Act, 1956¹ (ITPA)". Basically, this law forbids a sex worker to carry on her activities within 200 yards of a public place so that nothing is done in a place where the normal public lives.

Rehabilitation of prostitutes is necessary.—In May, 1958, the Allahabad High Court observed that, it is true that the society and the Government owe a duty to rehabilitate the prostitutes if they are by law being forced to give up their profession. But considerations of difficulty in rehabilitating the prostitutes in society or the fact that several causes lead to prostitution over which the girls carrying on prostitution have no control can be no grounds on which the Act can be invalidated if it has been constitutionally passed and is also not otherwise ultra virus.¹ The Hon'ble Supreme Court rejected the contention to demand for separate educational institutions for the children of persons engaged in prostitution and appointed a Committee headed by a senior advocate of Supreme Court, Mahajan, to look into the magnitude of the problem.² In its report, the Mahajan Committee found that a large number of persons engaged in prostitution were children.

Directions issued to rehabilitate the prostitutes and their children.—The Hon'ble Supreme Court in its landmark judgement³ 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 organisations to take appropriate measures for prevention of women engaging in 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 without any pre-stigma 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.⁴

Prostitutes are not criminals but victims of the society.—Prostitutes are not criminals but they are victims of the society and surrounded by criminal 'world' constituting of traffickers, kidnappers, procurers, pimps, madams, drug pushers and murderers. In this trade, police corruption extended from brothels to the soliciting in the street. They extorted protection money from brothels and enjoyed free sex with women in return for which they guaranteed immunity from prosecution to illegal brothels, massage parlors, dancing halls.

bars, blue film stalls, etc.¹

Justice R.K. Abichandani, of Gujarat High Court has observed that if a rehabilitation plan has to be worked out, first a conducive environment has to be built to make the women agreeable to such plan and the police authorities should be directed to stop arresting the women. It is stated that due to police raids and harassment, all such policy measures are on the verge of failure and the intervention programmes will have no impact. It is contended that the women in prostitution/sex work are entitled to right to privacy, and equal protection of law and that prostitution or sex work, which is one of the oldest professions, serves an essential social function. Such women earn their daily bread through sex work which is the only means of their survival. It is submitted that the said Act aims at punishing the trafficker or the abuser.²

(i) Good governance—Right to Information :

Right to information is an instrumentality of law regarding social change started in 1975, when the Hon'ble Supreme Court upheld that freedom of speech and expression includes the right to know every public act, everything that is done in a public way, by their public functionaries.³ The Government is not the owner of the state property but timely trusted with rights or real beneficiary on the estate of State. Similar views were expressed, while upholding that "right to know is implicit in right of free speech and expression, and disclosure of information regarding functioning of the Government must be the rule."⁴

It was expended again by Hon'ble Supreme Court and held that "the right of citizen to freedom of speech and expression includes the right to receive and impart information. For ensuring the free speech right of the citizens of this country, it is necessary that the citizens have the benefit of plurality of views and a range of opinions on all public issues. A successful democracy posits an 'aware' citizenry. Diversity of opinions, views, ideas and ideologies is essential to enable the citizens to arrive at informed judgment on all issues touching them".⁵ Again, it was held that "freedom of speech and expression includes right of the citizens to know about the affairs of the Government".⁶

Finally, the Hon'ble Supreme Court issued the directions to protect voters' right to know antecedents of candidates.⁷ The Central Government amended the Representation of the People's Act, 1951, by passing the Representation of the People's (Third Amendment) Act, 2002. The petitioners challenged the said amendment and contended that some of the directions issued by the Supreme Court were incorporated by the statutory provisions but with regard to the remaining directions in section 33B, it was provided that no

candidate would be liable to disclose or furnish any such information in respect of his election which is not required to be disclosed or furnished under the Act or the Rules made thereunder, despite the directions issued by the Supreme Court. Thus, the validity of section 33B was challenged on the ground that it violates the fundamental rights of the citizens/voters declared and recognized by the Supreme Court.

A three judge Bench of the Supreme Court held that—(a) Section 33B is, on the face of it, beyond legislative competence and, being violative of Article 19(1)(a) of the Constitution, is illegal, null and void. (b) A voter, being first a citizen of the country, has a fundamental right under Article 19(1)(a) to know antecedents of a candidate and said right is independent of any statutory right under election law. (c) Legislature can remove basis of decision rendered by competent court under Article 141, thereby rendering that decision ineffective, but Legislature has no power to ask instrumentalities of State to disobey or disregard decisions given by Court. The series of cases are the instrumentality, to enact Right to Information Act, 2005.¹

The Right to Information has proved to be a strong legislation with good teeth. Number of cases have been resolved; number of corruption cases have been busted and proved before the authority through the evidence collected by usage of RTI Act. Now, by introducing Amendments, political parties are kept out of the reach of RTI.

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