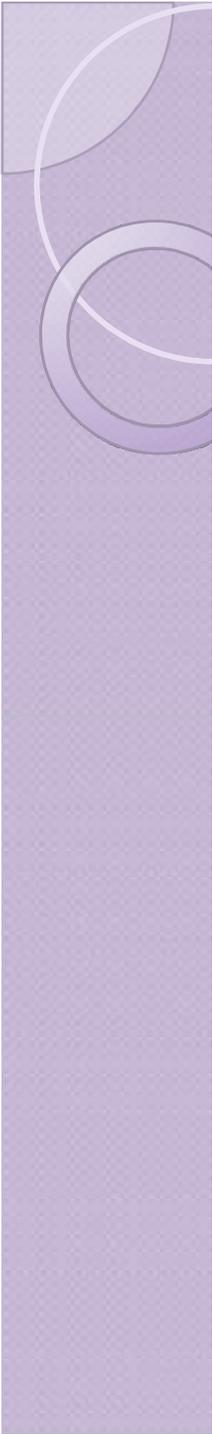


Judicial Process an Instrument of Social Ordering

PROF. PRIYA. P. PATIL

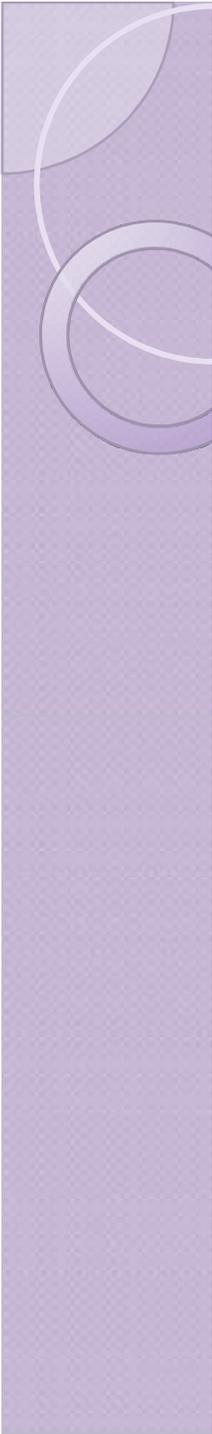
DAYANAND COLLEGE OF LAW

LATUR



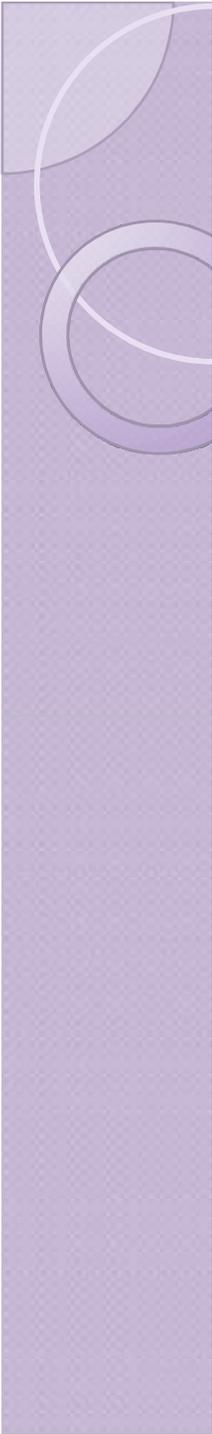
INTRODUCTION

- “**Judicial Process**” means any judicial proceeding in connection with the dispensation of justice by any court of competent jurisdiction
- “**Social Ordering**” means activating the instrument of Judicial Process in setting right the wrong done or eliminating injustice from the society.
- But here we are mainly concerned with **role of the constitutional courts** evolving new juristic principles during the course of judicial process for **upholding social order** keeping in view the need of fast changing society.



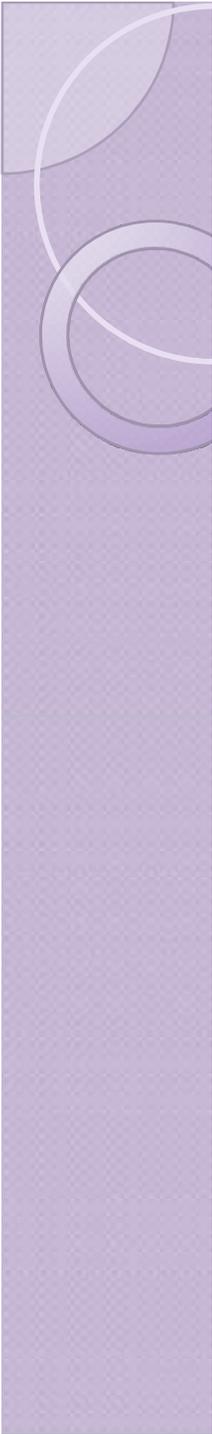
Goal of Judicial Process

- Ultimate goal of Judicial Process , undoubtedly, is to ensure social order and to make the society safer for its people. Law cannot be effective and useful without taking recourse of judicial process in maintaining social order.
- **Justice P. N. Bhagwati and Justice V. R. Krishna Iyer**, both were of the opinion that law is an instrument of social change, social justice and social ordering.
- **Justice Rangnath Mishra**, former C.J.I., has rightly observed that ' Law is a means to an end and justice is the end.' Therefore, undoubtedly we can say that Judicial Process, which operate laws, is an instrument of social ordering.



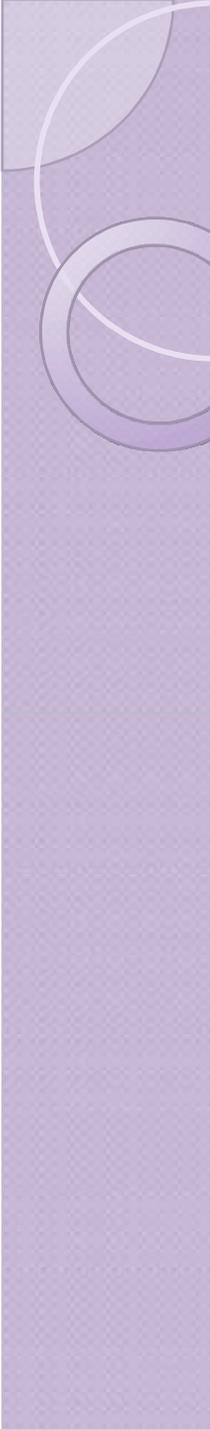
Judicial Process and Social Order

- Looking to the need of hour and demands of the changing society, the Supreme Court has innovated various tools and techniques, for securing social order.
- One can see how the Supreme Court of India has innovated, case after case, various juristic principles and doctrines, for upgrading social order. Needless to say that ,Articles 14, 15, 16, 17, 38, 39A and 42 to 47 of the Constitution of India deal with facets of social justice. Courts have played very wide role in interpreting the Connection for achievements of social justice.



Need of Judicial Process

- Noble preamble of our Constitution promises citizens of India to secure Justice, – inter alia , social justice, transforming social order.
- Judicial Process has played a significant role in order to deliver social justice, by **eliminating socio-economic imbalance and social injustice from the society.**



Article 32: Instrument of Social Ordering

- Article 32 of the Constitution empowers the Supreme Court to issue directions or orders or **writs** for enforcement of any right conferred under the Constitution for securing social justice.
- The Supreme Court has granted great relief in cases of **social injustice** to the affected groups of the society under this provision.
- Deprivation of the fundamental rights often results in to **social disorder**.

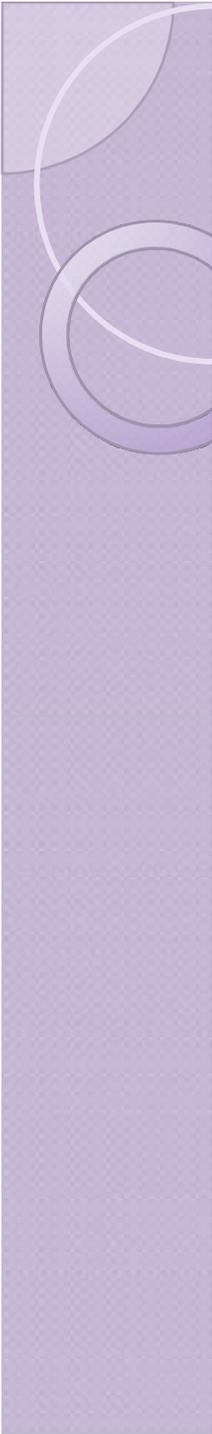
Backward Classes of the Society

- In "Indra Sawhney v. Union of India", AIR 1993 SUPREME COURT 477, the Apex Court has innovated concept of '**creamy layer test**' for securing benefit of social justice to the backward class, needy people, and excluded persons belonging to '**creamy layer** .'



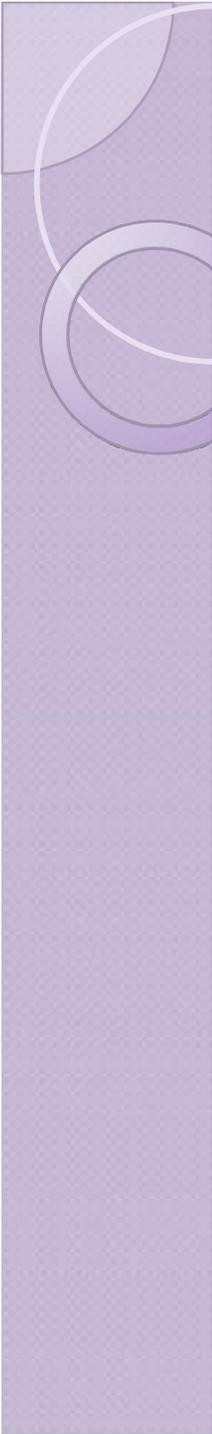
BIGAMY

- Bigamy is a social evil which often creates social disorder. The Apex Court has tightened the noose over those avoiding punishment by taking plea of conversion to Islam.
- In "Lily Thomas v. Union of India", AIR 2000 S C 1650, it was held by the Apex Court that the second marriage of a Hindu husband after conversion to Islam without having his first marriage dissolved under law, would be invalid, the second marriage would be void in terms of the provisions of Section 494, IPC.
- This verdict of the Apex Court would certainly be helpful in **eliminating social evil of bigamy.**



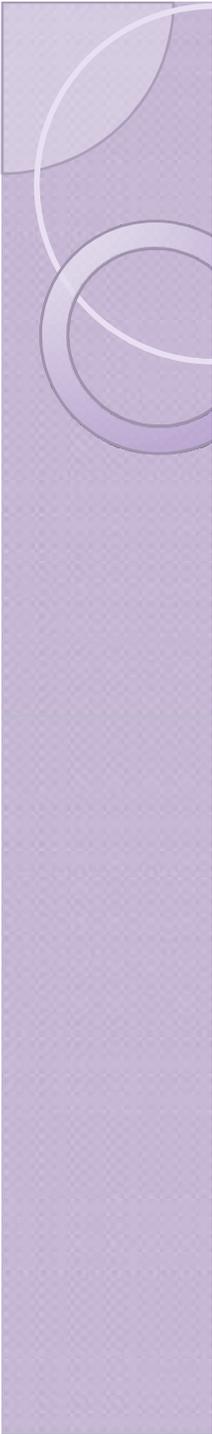
Bride Burning

- In "Paniben v. State of Gujarat", AIR 1992 S C 1817, the Apex Court held that it would be a travesty of justice if sympathy is shown when cruel act like bride burning is committed. Undue sympathy would be harmful to the cause of justice. The Apex Court directed that in such cases heavy punishment should be awarded.



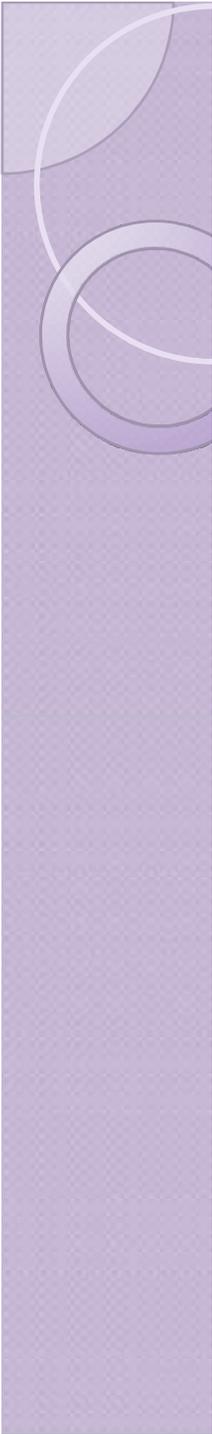
Bonded Labourers

- **Bandhua Mukti Morcha v. Union of India", AIR 1984 S C 802, is a good example of social ordering by way of judicial process. The Apex Court has tried to eliminate socio-economic evil of bonded labour, including child labour and issued certain guide lines to be followed, so that recurring of such incidents be eliminated.**



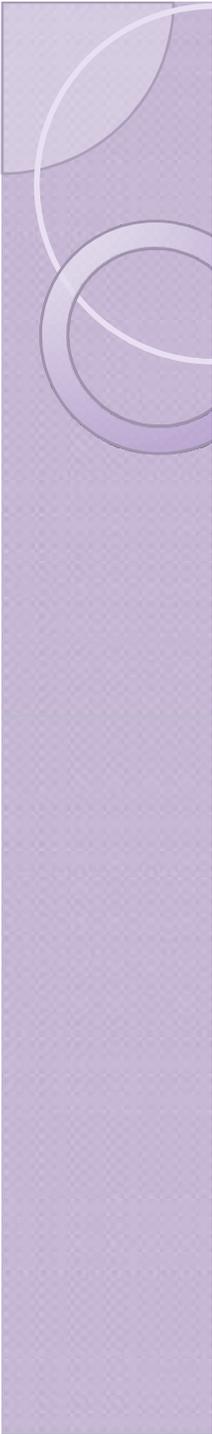
Caste system and Judicial Process

- In "Lata Singh v. State of U. P.", AIR 2006 SC 2522, the Apex Court has given protection to the major boy and girl who have solemnized inter-caste or inter-religious marriage.



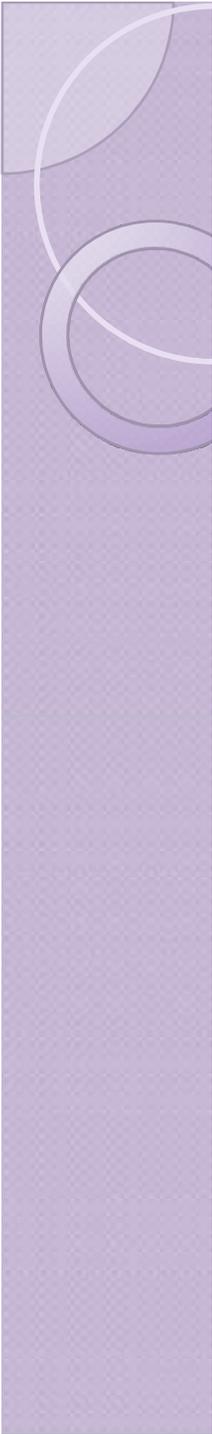
Child Labour

- In "M.C. Mehta v. State of T.N.", AIR 1997 S C 699, the Supreme Court has issued direction the State Governments to ensure fulfillment of legislative intention behind the Child Labour (Prohibition and Regulation) Act (61 of 1986).
- Tackling the seriousness of this socio-economic problem the Supreme Court has directed the Offending employer to pay compensation, a sum of Rs. 20,000/ for every child employed.



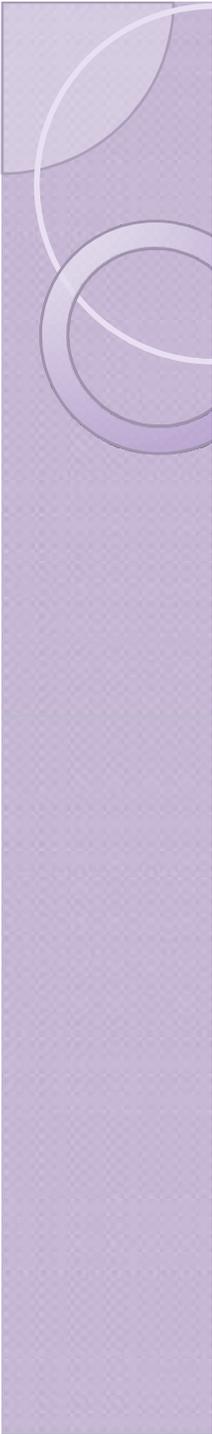
Child Prostitution

- In **Gaurav Jain v. U.O.I.** AIR 1997 SC 3021, the Apex court issued directions for rescue and rehabilitation of child prostitutes and children of the prostitutes.



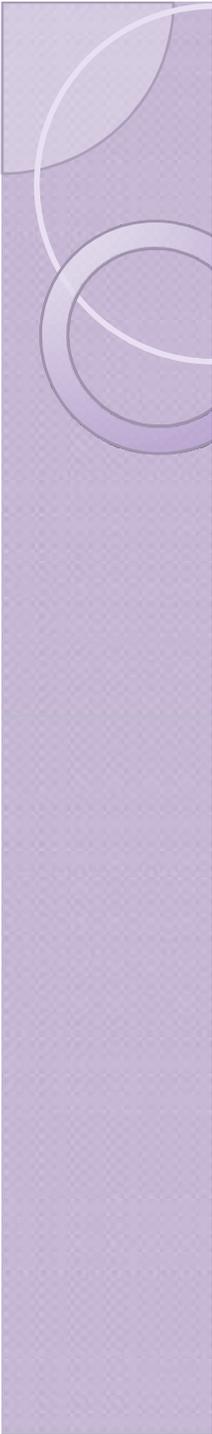
Dowry Death

- Dowry death is perhaps one of the worst social disorders prevailing in the society, which demands heavy hand of Judicial Process to root-out this social evil.
- In "Raja Lal Singh v. State of Jharkhand", the Supreme Court has laid down that there is a clear nexus between the death of Gayatri and the dowry related harassment inflicted on her, therefore, even if Gayatri committed suicide, S. 304-B of the I. P. C. can still be attracted.



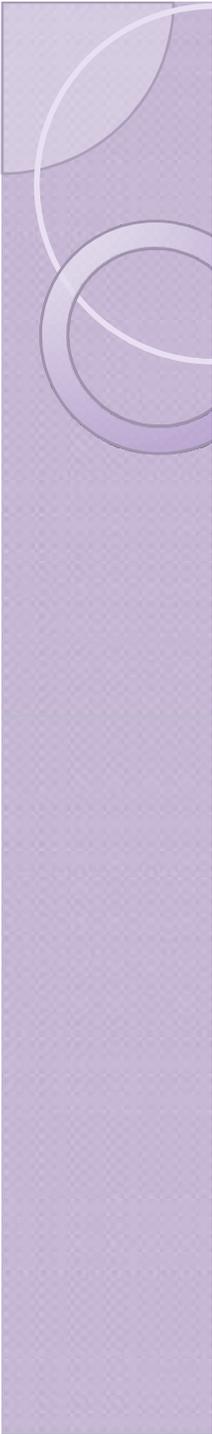
Equality: Man and Woman

- In AIR India v. Nargish Mirza, AIR 1981 SC 1829, the Apex Court declared that — —the provision of AIR India Service Regulation 46 (i) (c) or on first pregnancy whichever occurs earlier is Unconstitutional, and is violative of Article 14 of the constitution.



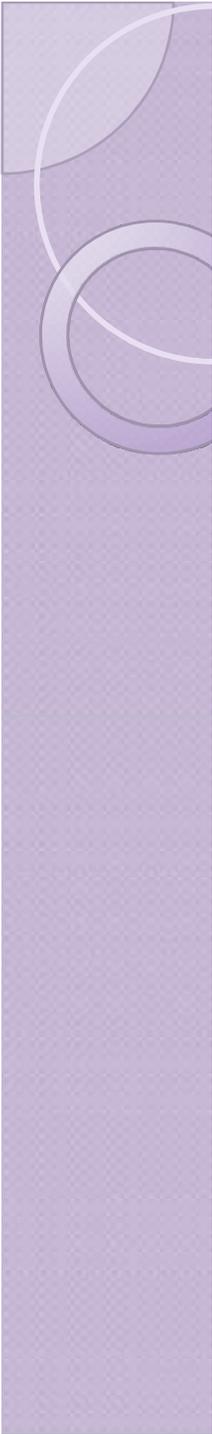
Female Foeticide and Judicial Process.

- Leading to unhindered female infanticide affecting overall sex ratio in various states causing serious disorder in the society.
- In "Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India", AIR 2001 S C 2007, the Apex Court has held that despite the PNDT Act being enacted by the Parliament five years back, neither the State Governments nor the Central Government has taken appropriate actions for its implementation.
- Hence, directions are issued by the Court for the proper implementation of the PNDT Act, for eliminating this Social evil.



Harassment of Woman

- The Apex Court in Vishakha v. State of Rajasthan (AIR 1997 SC 3011) created law of the land holding that the right to be free from sexual harassment is fundamental right guaranteed under Articles 14, 15 and 21 of the Constitution. The Court has issued guidelines to be followed by employer for controlling harassment of woman at her work place.



Immoral trafficking

- Immoral trafficking has now become a widespread social disorder. This is a deep rooted social evil has to be controlled.
- The Apex Court is of the opinion that accused persons are to be dealt with heavy hands of the Judicial Process in such cases. In "State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain", AIR 2008 SUPREME COURT 155 , the Court has rejected application for anticipatory bail, in a case where a minor girl was driven to flesh trade by accused persons , comprised of police officers, politicians and all were absconding for long time.

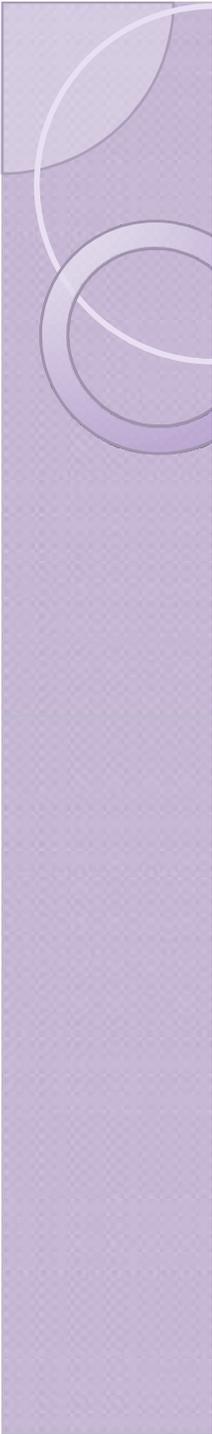


Maintenance

- In Mohd. Ahmed Khan v. Shah Bano, AIR 1985 SC 945, the Apex Court, for the first time, granted maintenance to divorced Muslim woman under section 125 Cr. P. C., ignoring her personal law, keeping in view essence of equality before law.
- In "Dimple Gupta v. Rajiv Gupta", AIR 2008 S C 239, the Apex Court has granted Maintenance to illegitimate child under S. 125 Cr. P.C.
- This path breaking judgment has given breath to the innocent children who were victim of no fault of their own. These verdicts are judicial instruments of social ordering.

Outraging Modesty of Woman

- Outraging the modesty of a woman is a serious social disorder has to be taken seriously by courts during the course of Judicial Process.
- In "Kanwar Pal S. Gill v. State (Admn. U.T. Chandigarh)", the accused slapped on the posterior of the prosecutrix, Mrs. Rupan Deol Bajaj, an I.A. S. officer , in the presence of other guests. The accused, who was then the D.G.P. of the State of Punjab. The CJM convicted him under Sections 354 and 509 IPC. Appeal filed by the accused was dismissed by the Apex Court. That by itself is setting a model for others and it is a good example in connection to social ordering



Rape

- In "State of M.P. v. Babulal", AIR 2008 SUPREME COURT 582, the Court has laid down the principle that rape cases need to be dealt with sternly and severely.
- A socially sensitized Judge is a better armor in cases of crime against women. Once a person is convicted for an offence of rape, he should be treated with a heavy hand and must be imposed adequate sentence.
- This goes to show that how the Supreme Court is keen in eliminating social disorder by the heavy hands of judicial process.

