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## **UNIT : 3 □ The Application of Laws As A Means of Social Change : Legal Aid, Family Court, Public Interest Litigation, The State and National Legal Service, Lok Adalat.**

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**Structure :**

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### **3.1. The Application of Laws as a Means of Social Change**

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In social sense law making is a process by means of which new laws are made implemented and used to eradicate different social inequalities. Only those wishes of men or analysis on judgments that can transform economic and social judgment into implemental laws are considered a part of the process. Even if there are separate legal systems for every area, still the main aim of law making is creating laws for the security of the women, for the child, the old, and the unable. Like any other citizen of India women and other powerless or down trodden people can apply for work in government sectors, work independently, deliver opinions on their own, be a part of meetings and gatherings, organize those, as these are included in the constitution as their rights. It is also said in the constitution that nobody can inflict bodily harm to any citizen if India (be it men or women). Special privileges have been granted to women in case they are harassed or hurt. The accused in such cases can be arrested, imprisoned or even put in court and crossed for the deed. For the safeguard of constitutional rights and in accordance to the demands of quite a number of people of the country, law is a useful path towards social change. The areas that can benefit from the social change brought about by laws are—

### **1. To eradicate social inequality :**

There cannot be any social inequality in terms of Varna, jati, or class. It was not possible in India to develop because there was regionalism, caste based and class based inequalities. There were demands for legal securities for the backward class for long time. It was at last in 1976 that a law for equal wages, temporary worker (control and eradicate) law in 1976, Right to Information act in 2005, National Work Guarantee Programme in 2005 etc. that aimed at eradicating various inequalities in society. This way a large section of the backward class got the opportunity to develop their means of living. As a result it has brought about a way towards social change.

### **2. For the equal distribution of property :**

In case of transfer of ownership rights of movable and immovable property, it was seen that there were exploitations and one-sidedness. One class of people had owned a large amount of property, whereas the other class was largely non-owners or were owners of a small amount. This created a serious impediment to development. Other than that on the one hand, this unequal distribution of property ensured luxury for one class and on the other, non-ownership or ownership over less property brought about poverty to the other class. With an objective to ensure development on the basic needs of people, a number of laws were implemented. Noteworthy among those are, Hindu Succession of Property Rights 1956, Property Rights etc. As a result of such implementation of laws the unprivileged people especially women, had started to enjoy the right to property. This led to growth in courage and power in their social living, which is a main determinant of social change. As a result of such implementation the backward people especially members of the scheduled castes and scheduled tribes, faced complex problems in property succession as well. By the implementation of Land Reform Laws, another significant social law for movable and immovable property succession was envisaged. As a result a large number of people like the landless labourers were endowed with Land Patta in West Bengal. This envisaged the growth in social prestige of the people especially that of the farmers. Their new role has envisaged a commendable place in the vision towards social change.

### **● Social Exploitation :**

A class of people are the worst sufferers as a result of social exploitation, over the years . Especially in British ruled India, social exploitation oppression over women, children and aged were most common the disabled and people in distress were not spared either. The said society took important steps towards social change following the path showed by social reformist thinkers like, Hindu Marriage Act in 1955, the Child Marriage Prohibition Act in 1929, The Family Court Law in 1954, the Dowry Act in 1961, The Sati Prohibition Act in 1829, The Illegal Trafficking Act in 1986, The Domestic Violence Prohibition Act in 2006. As a result of such Acts there were

significant legal steps towards social development, this led to abolition of exploitation, oppression that had been rampant in traditional India. There has been important cases where women are coming forward to ensure apt punishment to the wrong doer. This is an important step towards social change.

● **Towards Empowerment for the weaker class :**

There was a time when the weaker section of the society faced trouble in expressing their opinions independently or even conducting any meeting on their own. Special mention can be made of women in this regard. But with changing times there has been significant changes in these ideas. Women are now part of the empowerment programme and with this objective the 73<sup>rd</sup> and 74<sup>th</sup> Amendment of the constitution has been envisaged so that women can actively participate in the political sphere with 1/3<sup>rd</sup> seat reservation ensured for them. This has also led to the widening of social life, family life and has helped to gather courage to overcome many problems. It has been seen that in West Bengal and in other state in India, these two amendments have helped women in large to work together for their social benefit.

After India had gained independence, the government has taken initiative to take different legal steps mainly in four sectors— social reform in developing labour power, reform in tax patterns and ensuring speedy actions in social welfare programmes. Other than these, legal steps are being taken in areas like the laws that help the weak the oppressed to overcome their condition and protect their interest. Although measures have been taken to protect self respect of every human being, but still in reality there are different opinions in this respect. Till now the accused was regarded as a criminal by the society. This was specially true of juvenile delinquents because there was no special system of judiciary of these delinquents. But in 1986 Juvenile Justice Act was implemented as a result a new way of justice was ensured. This paved for good news for the juveniles. It can be well understood from this discussion that law-making can be a potent means for the goal of changing society.

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### **3.2. Legal Aid**

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In literal sense, the term legal aid means helping people with legal advice. Such advice play an important role in the political and social life of people. Specially this is true for the poor and needy people. As a result different measures are available from the central and State governments. People who reside in far off places, those who are economically backward and those who are in need, all are liable to take help from the Legal Aid. The important role of Legal Aid is to provide legal service to all people irrespective of caste, religion and creed. The different sides of the Legal Aid that aim at providing service to people are—

- ➔ to provide information on legal matters.

- ➡ to propagate for legal literacy.
- ➡ to provide service to people who need help in legal matters.
- ➡ to organise awareness programmes for people who are associated with legal matters.
- ➡ to organise public opinion for taking recourse to the law whenever necessary.

The government directly or indirectly associate with the non-government voluntary organizations with the aim of providing such services. Along with other non-government organisation Legal Aid Service In West Bngnal [LASIB] has taken up such issues. Centre for Implementation of Legal Aid Scheme [CILASS] is another such important agency. The helpless and destitute who are in need of legal help are identified by these organisations. But though there has been positive steps taken in this direction, legal aid has not been fully utilised in a nation like India. There are still many people who are not inclined towards taking legal help. In analysing the present situation, many areas where drawbacks are, can well be identified.

First : As the legal procedure takes too long and is highly costly the backward section of the society cannot take proper recourse to the legal help provided by the organisation.

Second : The people who are must in need of such help are themselves not aware and are mostly illeterate.

Third : Traditionally such people have been so much underprivileged that they do not have the strength to fight against that powerful.

Four : Many people do not want to wage a conflictual situation with the socially and economically powerful.

Fifth : Politically these people do not like to take recourse to such help.

Sixth : Many do not have the necessary mental strength to take the long time bound pressure of a legal procedure.

Seventh : Many people have misconceptions about legal affairs.

For these reasons, the legal aid has not attained the proposed success.

The families that have an yearly income of not more than Rs. 9000, are liable to get help from government lawyers and the costs of legal affair are taken care of. Those who want to take such help, have to apply to either of the following the Pradhan of Gram Panchayat, Sabhapati of Panchayat Samiti, any Member of the Zilla Parishad, any member of the Bidhan Sabha or the Lok Sabha, the commissioner of a Municipality for an attested letter stating the income of the family. This attested letter has to be produced to the B. D. O., District Magistrate or the District Administrator. After a preliminary examination of this letter, the applicant is sent to any lawyer. The help an applicant can receive are—

- A reduction in the cost of Court Fee, the travel fare of the , other costs of the litigation.
- The applicant can have a lawyer for free.
- The applicant is liable to receive a copy of the verdict and copies of other papers.
- To prepare papers for the
- To prepare a

Other than these, to extend the services of the Legal Aid to every district a committee has been formed at all district level. Many workshops are organised at the Block and Municipality areas. As a result there has been an increase in interest among common people about accident related. Women Specially those who are poor and exploited are given priority. There has also been an increase in awareness among women regarding the rights of women and for this the voluntary organisations have taken a significant role in extending the works of the legal Aid. Many voluntary organisations so far has come forward to help needy women.

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### 3.3. Family Court

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Many interest groups work in society. These are mainly class based. There are elite classes on the one hand and backward classes on the other. The class based interest groups play an important role in extending their class interest through these. But the interesting point is that in a democratic country like India only the opinion of the public is maintained in the constitution. Moreover, in the Panchayat areas, public opinion is formed by Gram Sabha and in Municipal areas by ward committee according to the Directive Principles stated in the constitution. According to these principles, many laws have been enacted at different times in our country. In 1984, by the enactment of the Family court law, in every district and states, it is mandatory to establish family courts. Matters regarding marriage, family matters are taken care of in these courts.

The problems that are taken in Family Court are—

- Cancellation of Marriage
- Re-establishing rights of marriage-partners.
- Legal Divorce.
- To break marriages.
- To give marital status to individual.
- To apply before court for maintenance.

- ➔ To take over guardianship of minors, ensure legal security of individuals, legal validity etc.

In coordination with Upper Courts, these courts function at district levels.

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### **3.4. Public Interest Litigation**

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The Supreme Court and the High Court for the last fifty six years have successfully carried out the responsibility of safeguarding the fundamental rights of the citizens. Many cases have been sought out and as a result statuses of citizens have been maintained. Although to maintain fundamental rights of citizen, the highest court of law has played an important role, but to uphold the rights of public interest, the responsibility lies with the State. In India a large part of the population is poor, illiterate and politically unaware and this has caused unawareness among them to consider the importance of Public Interest. As a result many people do not think it appropriate to take recourse to a court of law when necessary specially for political and social rights. Furthermore most people of the underprivileged class do not have the economic stability to take matters to the court. In this respect their rights as guaranteed by the constitution do not have any meaning for them. The right to cases in Public Interest was first initiated through a verdict by honourable Justice P. N. Bhagawati in the 1980s.

As a result a positive impact on the judicial system and on the security of fundamental rights was envisaged. At the primary level, though such cases were filed only in the Supreme Court, later on High Courts were also guaranteed the permission to handle such cases. The most important characteristic of such cases is that any one case file the case in place of the affected person. A handwritten post-card to the Chief Justice or a telegram can also start the case. As a result Public Interest litigation is a convenient method for the common people to pave the way for social change. The underprivileged people can easily avail such facilities. It has also helped to bring a clear image of the judiciary among the common people. Such cases are generally filed in areas where public interest is at stake. For example torture of children within prisons, security of destitute children in Mumbai, establishing factories that produce insecticide in a crowded place like Howrah.

In sections 227 and 32 of the Constitution, it is stated that if rights of any citizen is transgressed then he / they can take recourse to Public Interest Litigation Law. In that case, the Honourable Court promises pro-bono-public. In this respect, All India Exploited Employees Association (Railways) Vs State of India litigation can be cited. The said organisation though not being registered had asked for written an application by its members in public interest. The Honourable Justice Sri Krishna Ayar had given his verdict in favour of the rights of citizen to file cases in court of law in Public Interest.

After this permission was granted, so many applications in post-cards were sent that the cases could not be administered within seven days. As a result, many of such cases could not be taken care of within stipulated time-period.

Though the Public Interest Litigation scheme has some difficulties, it can act as a very important medium of putting up cases in the interest of a group of people. With the increase of mass media attention public interest litigation is now universally accepted. This is an important, successful means in the hands of the common man.

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### **3.5. The Authority in National and State level legal service**

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On the one hand, for economic development some measures have been taken and on the other, by providing different advantages to the backward class people, various laws have been enacted. The Directive Principles of State Policy in the Constitution has guaranteed distinctive actions by the state to fight against any kind of exploitations to any caste, religion, varna, caste or gender. With this, in 1986, Legal Services Authorities Act was established and its role is very significant in enacting laws. The areas of enacting important laws are—

- ➔ To pave the path for a situation where the weaker section can take legal services without any cost.
- ➔ To see that the backward section of the society can take help via the Lok Adalat.

For these above objectives, to provide everyone with the legal services there is a three tier.

Legal service as follows—

- a. National Legal Service Authority.
- b. State Level Legal Services Authority.
- c. District Level Legal Services Authority.

The functions of the National Legal Services Authority and the State Level Legal Services Authority can be discussed with reference to Section 4 of the Legal Services Authorities Law (1986)—

- (a) The functions of National Legal Services Authority

As being the National Level Legal Services Authority, the functions of the State and District Level Legal Services Authority can also be performed. The type of functions performed only at the National level are—

- ➔ to prepare the norms and working conditions of the State Legal Services.
- ➔ to prepare a most functional and Cost Saving project.
- ➔ to ensure the right of the consumer, to protect environment, exploited people and take important steps in that direction.



- ➡ to import legal education in inslum areas, village areas, labour colonies and also to see that litigations that are long pending are put to an end as fast as possible.
- ➡ to ensure inter communication.
- ➡ to take necessary steps so that the fundamental duty as stated in Section 4 of the constitution is properly enacted.
- ➡ to establish universities, colleges and other institutions for importing legal education and to see that the Bar Council is contacted for this.
- ➡ to see that the awareness about legal matters and legal literacy is increased among public.
- ➡ to see that at the grass root level the voluntary organisations that work for the scheduled castes and tribes are given proper legal cooperation.

To implement the above functions, the following infrastructural development is necessary—

- ➡ The Chief Justice of the Highest Court Should be the Patron in chief.
- ➡ An ordinary member of this organisation would be a working or retired Justice nominated by the President.
- ➡ Among those members two elected members should be chosen who have the required education and experience. The Central Government rules are to be followed in their selection.

#### (b) State Level Legal Service Authority

The structure of the organisation would be as follows—

- ➡ One chief Patron, who is the chief justice of a Higher Court.
- ➡ One member who is a working or a retired Justice.
- ➡ Any two members who have the required education and experience.

The type of work done by the organisation is—

- ➡ The State government to abide by the norms and functions of the National Legal Service.
- ➡ To deliver legal help to individual or group according to the laws laid down by the legal service.
- ➡ To organise Lok Adalat.
- ➡ To organise strategic and resistance oriented programmes by legal aid.

In addition to the above the State Legal Aid services would be liable to work for the National Legal Aid Services.

#### (c) District Level Legal Services Authority

The structure of the District Level Legal Services Authority is—



- One President, who is Justice of the District Judge Court, working or retired.
- One member, who is working or retired member of the District Judge Court.
- Two efficient and experienced worker / member those who have the requisite knowledge.

The functions of the District level legal Services Authority are—

- To maintain the directires and working structure of the State Level Legal Services Authority.
- To help in adding the functions like legal services at the District Level.
- To organise Lok Adalat at the district level.
- To work in coordination with government and private universities, legal organisations, college and other institutions for extending legal help.
- To be responsible for working in coordination with the National and state level legal Aid Authority.

This is a simple illustration of the structure and function of the National, State and District level legal aid authority. Further, one important area of the three tier system is to whom can this service be extended. According to the No. 12 law— any individual can receive such help but he / she has to register a case with the court if—

- he / she is a member of the SC / ST family.
- a victim of human trafficking.
- a beggar as described in section 23 of the constitution.
- a woman or a child.
- a mentally retarded person (as described in rule no. 12)
- a victim of riot, violence or any other caste based conflict .
- an industrial labour.
- an inmate of a Home, a child inmate of any Home.
- a member of a family whose yearly income is less than Rs. 9000.
- Yearly income family's Rs. 12,000, or less than that only of a member of such family has filed a case at any District Court or the Supreme Court.

In summary, the aim of presenting legal aid to common people is the primary task of such organisation. This is an important path towards social change. The most significant aspect of such organisation is that it can help in fulfilling demands of many people who are in need.

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### **3.6. Lok Adalat**

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The poor people of our country are a victim in the complexity of filing cases at the courts for their needs. To see that no citizen of this country are deprived of legal oportunities,

Legal Aid services were established. One of the functions of the Legal Aid services at national, state and district level is to organise Lok Adalat. Day by day the applicability of Lok Adalat is on the increase. The two conflicting parties are made to be present face to face in the Panchayat, Municipality or any other such platform in the Lok Adalat. Further the conflicting parties of a long drawn legal battle can also be finalised in a Lok Adalat. The main aim of Lok Adalat to put an end to a conflict after listening to both the parties. In the section 39A of the Constitution justice for all has been recognised. By such Lok Adalats, long drawn pending cases have been resolved so far.

One retired Justice, a government official or a ministerial worker of the Upper or Lower Court, two councillors and two officials make up the structure of Lok Adalat. A special law recognizes the justice administered by Lok Adalat as the verdict of Departmental Justice. Generally two conflicting parties are brought together and two counsellors are given the responsibility of talking to both parties. After both parties have been heard, a verdict is given on the basis of a case filed by both the parties.

The counsellors are efficient and experienced. The aim of Lok Adalat is to resolve the process of conflict by alternative method (Alternative Dispute Resolution Process) but in accordance to legal procedures.

In this process long pending cases can be resolved faster. But Lok Adalat are so much in demand that a member of cases have piled up. It is becoming impossible to work efficiently within a time period.

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### **3.7. References**

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